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Abstract Assassination: How Police Militarization Has Contributed to the Rise of “Swatting”

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Eastern Kentucky University

Abstract Assassination:
How Police Militarization Has Contributed to the Rise of “Swatting”

Honors Thesis
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Abstract Assassination: How Police Militarization Has Contributed to the Rise of
“Swatting”

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Abstract

In recent decades, police militarization has firmly planted itself at the forefront of academic discourse in institutions of higher learning around the globe. Various stances, positions, and theories have been extolled as to its origins, implications, and repercussions; however, this decade has produced what is arguably the most tangible embodiment of police militarization as a whole: swatting. Ostensibly a prank, this phenomenon entails the false reporting of a serious crime with the covert intention of this report being to direct as many heavily armed police officers to a location as possible. This phenomenon has become increasingly popular in the world of online gaming, with many perpetrators seeking to settle scores or exact revenge for breaches of gaming etiquette on individuals that are often a considerable distance away from them. Within the last decade, several deaths have resulted and numerous close calls have been brought to light following intense media coverage of high-profile incidents, including several instances involving celebrities. While policy makers scramble to assign blame and institute plans to circumvent the loss of any additional lives, many fail to recognize that this is merely the latest symptom of a desperately ill criminal justice system. This thesis will demonstrate that swatting is the latest in a string of increasingly overt side effects of the militarization of police. To this end, both contemporary and historical sources will be used to illustrate swatting’s lineage; as well as to provide a prism through which to contemplate possible solutions to this alarming new trend.

Key words: swatting, police, police militarization, excessive force, hoax

Table of Contents

1. Introduction.....	1
2. Literature Review.....	5
a. Early Militarization.....	7
b. War on Drugs.....	9
c. War on Terror.....	10
3. Swatting in the Real World.....	11
4. Recommendations.....	17
a. Less Aggressive Approaches for Calls to Service.....	18
b. No-Knock Warrants.....	20
c. Training.....	23
d. Criminalization of Swatting.....	26
5. Conclusion.....	29
6. References.....	32

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Introduction

Imagine a stereotypical Southern California afternoon, where a cloudless blue sky stands above America's second largest city and its ever-present layer of smog. The 405 freeway is beginning to clog up as workers head home; however, circling above this vibrant metropolis, an astute observer might note a swarm of news and police helicopters. Not all that unusual of a sight in the congested airspace above Los Angeles, these small black blips in the distance seem to be making a lazy circuit no more than a few hundred feet above the foothills of the Santa Monica Mountains, just north of downtown. If one is at all familiar with the geography of the greater L.A. area, they would know that directly below these aircraft lie the palm-tree lined streets of Beverly Hills, the neighborhood synonymous with the opulence and grandeur that the City of Angels has become internationally renowned for. Beyond the vision of the casual downtown observer but ever so clear from the air is a scene rather uncommon for the ritzy suburb that is home to countless singers, actors, and assorted celebrities. These avenues, lined by multi-million dollar mansions and estates, are awash with a sea of black-and-white police cars; the vehicles standing out starkly against the perfectly manicured lawns of the rich and famous. As the helicopters maneuver above in the pursuit of the ever-elusive perfect angle for their cameras, blue-clad police officers mill about their patrol cars. Slowly filtering through the oversized archway

above the entrance to the estate in question are members of the LAPD SWAT team; who strut past the patrol officers, stripping off pieces of their tactical gear as they return to their matte black Mine-Resistant Ambush-Protected (MRAPS). If one happened to be strolling along Rodeo Drive and came across this scene, they would be perfectly justified in mistaking it for the set of an upcoming action film or the next episode of a police drama. However, this scene is all too real and represents the limitless reach of the frightening new phenomenon known as “swatting.”

This hypothetical scene has played out repeatedly in real life, with real celebrities, while millions of people around the globe gleefully gobbled up the images broadcast by the media frenzy that inevitably follows such an event. From comedian Russel Brand to actor Tom Cruise to the Canadian heartthrob Justin Bieber, an ever-growing and quite diverse range of celebrities have all had their homes “swarmed” by police officers (Goldberg, CNN). While a handful of these celebrities have become infamous for their encounters with law enforcement, i.e. Charlie Sheen; the common theme amongst all of these police incidents is that they stemmed entirely from a hoax. Commonly referred to as “swatting”, this relatively new trend involves an anonymous call to 911 alleging a crime has occurred at a certain residence; an alleged home invasion in the case of Miley Cyrus and domestic dispute in the case of Chris Brown (Goldberg, CNN). While it is easy to understand how the average American would feel little to no sympathy for these uber-rich celebrities, unless they were a Belieber, of course; the fact of the matter is that this trend is in no way limited to the extravagantly wealthy. While it is likely that the first anyone heard of this trend was as a result of one of the aforementioned incidents, this scene has played out numerous times across the nation; rarely with the same cheery results. As will be thoroughly analyzed later in this work, far too often these “pranks” culminate with grievous

harm to completely innocent individuals; sometimes the target of the hoax, sometimes not. If nothing else is taken away from this anecdote, the fact that those located at the upper strata of society can be successfully targeted and so easily “touched”, with a mere phone call no less, should be exceptionally frightening to those that do not enjoy the advantages of wealth, power, etc.

One may be left questioning how, in a nation whose entire existence is ostensibly based upon the concept of personal liberty and the preservation of life, such a travesty could play out time and time again. Closer examination of the phenomenon would demonstrate that it is only within a relatively recent time frame, the mid-2000’s onward, that this “prank” has become so popular. Of course, it would be exceedingly easy to lay the blame for these instances on the proliferation of the internet and social media. After all, it is highly unlikely that an adolescent in Canada or a pimple-faced teenager in Smalltown, U.S.A. would possess the capability, impetus, or wherewithal to carry out such an attack were it not for the existence of a seemingly all-knowing entity such as the internet. That is not to say that a determined individual could not have pulled such a stunt in the 1970’s or even the 1940’s; however, the relative ease with which these assailants can access and immediately act upon the personal information of such a wide range of individuals is undeniably a byproduct of the Worldwide Web. It would be even easier to point the finger at these individuals themselves; after all, there could not be a prank call without a prank caller. However, as this work will strive to demonstrate, the case can be made that the true root cause of these incidents, especially the seemingly lesser-covered non-celebrity incidents, are a direct result of the militarization of America’s police.

From socio-economic oppression (Shantz, 2016) to an attempt to address the rise of domestic terrorism (Bolduc, 2016), the rise of the phenomenon known throughout criminal justice academia as “police militarization” has been interpreted from virtually every conceivable perspective. There exists a plethora of sources that deal directly with the subject as it exists today, as well as its long and storied history and the potential far-reaching ramifications of its continued existence. However, one of the most singularly understated of these ramifications, or “symptoms” if you will, is arguably one of the most flagrant and the most deadly. While a multitude of treatises have delved heavily into law enforcement’s recent responses to civil unrest, such as the widely covered large-scale protests in Ferguson, Missouri and Baltimore, Maryland; very little attention has been directed to the subject of “swatting” and its all too frequently fatal consequences.

For the purposes of this work, the phenomenon of “swatting” and all affiliated variations will refer to the utilization of police forces, particularly heavily armed paramilitary units commonly and colloquially known as Special Weapons and Tactics (SWAT) Teams, for nefarious purposes by an anonymous perpetrator, often located a considerable distance away. Most commonly, this phenomenon manifests itself in the form of a call to emergency services, wherein the perpetrator claims to have witnessed or acted out a heinous crime at a certain address. In some instances, which will be expanded upon later in the work, the perpetrator goes so far as to make explicit threats against supposed hostages and emergency responders; thereby seeking to ensure a heavy-handed response to the call on the part of the police.

This work attempts to fill the void regarding this topic within the literature surrounding the militarization of law enforcement; a somewhat surprising void when one

considers the relative regularity with which it occurs when compared with other, more commonly cited examples of police militarization. This end will be met via a historical overview and literature review of the concept of police militarization; as well as a representative case study that illustrates the dangers involved with swatting. Finally, a number of policy suggestions and recommendations will be made as to how to most adequately address the wide range of issues surrounding the topic. Included within these are recommendations are a decrease or outright cessation of the use of no-knock warrants, less-aggressive approaches to calls for service and, if nothing else, an increase in training in regard to “swatting” situations. A similar emphasis should also be placed on “shoot, don’t shoot” training scenarios, as a preponderance of the innocent deaths associated with “swatting” have been unarmed individuals that simply failed to immediately comply with the commands of the officer on scene. Finally, the physical act of initiating a “swatting” incident should be codified and prosecuted as a serious crime. It is worthy of note that efforts to this rather common sensical effect are currently underway in statehouses around the nation but the matter remains relatively unaddressed on a national scale. While a certain portion of these goals may seem lofty and idealistic at first glance, implementation of even a single facet of a single recommendation would reduce the risk of any further needless deaths and the untold trauma they wreak.

Literature Review

First and foremost, a thorough understanding of precisely what is meant by “the militarization of police” must be had before one can begin to truly appreciate just how critical of an impact police militarization, as well as its various accoutrements, has had on the meteoric rise of “swatting” within American culture. After all, one cannot begin to

remedy the symptoms of a disease without at first acknowledging and attempting to understand the disease and its underlying causes.

For the purposes of this work, the phrase “police militarization” will refer to the physical distribution of military-grade weaponry, equipment, and uniforms to police departments throughout the United States; as well as the dissemination of para-military tactics imported directly from the battlefields of the Middle East. Also encompassed within this definition are the theoretical side effects of this dispersion of material items; i.e. the rise of the “warrior cop” and “us vs. them” mentality (Balko, 2014). This definition of police militarization is crafted intentionally broad so as to best encompass the overall concept police militarization, without becoming bogged down in attempting to promote one approach to it over another.

Ultimately, the existence of an at least moderately militarized element in the average American police force is virtually undeniable; after all, a cursory examination of any randomly selected SWAT team is almost certain to evoke far more comparisons to the military than to Mayberry, as Kraska so poignantly pointed out over two decades ago (Kraska & Cubellis, 1997). As such, one can make the argument that the existence of “police militarization” be taken for granted on a certain level; particularly in terms of the overall trends in policing as a field. This understanding in no way implies that every police force in America is heavily militarized, nor does it make the claim that every SWAT team in America is poised to “swat” an innocent individual at a moment’s notice; however, it does imply that the overall militarization of the police can be taken as factual and therefore referred to without undue and tedious examination of the trend as a whole. With that said, a cursory examination of the leading theories in regard to police militarization does follow;

predominately due to the fact that several of the aforementioned perspectives shed a direct light onto the rise of swatting as a phenomenon. This is not to say that these perspectives are necessarily more valuable or more accurate than any of the other theories that have been put forth; rather, it stems simply from the fact that they will be utilized to provide context to the author's claims on "swatting" and a general understanding of them is thus appropriate.

Early Militarization:

As elaborated upon extensively previously, a multitude of beliefs are held as to the actual origin of militarization. Some sources contend that militarization is interwoven with the contemporary conceptualization of law enforcement, essentially arguing that it would be impossible to disentangle the police and their para-military traits while maintaining any semblance of the current system (Coyne & Hall, 2014; Kuzmarov, 2009; Shantz, 2016). While this approach may be somewhat extreme in nature, it does raise the interesting point that the police, at least as they have been envisioned since the era of Peelian reform, have always been at least somewhat militaristic in nature; i.e. the use of uniforms, military ranking systems, hierarchical chain of command, etc. At various points in the two centuries that have transpired since Sir Robert Peel formed the first professional police force in history, numerous departments have flirted with the idea of increased militarization beyond that of basic paramilitary structure. This trend took far longer to form in the United States, presumably due to the staunch separation of military and policing powers in early American society; a direct result of the Founding Father's hatred and fear of an oppressive government (Balko, 2014). However, by the turn of the twentieth century, these sentiments

had begun to wane and the first distinctly “militarized” police forces in America were formed.

An interesting example of one such entity is the Philadelphia Police Department, which gained the leadership of Marine General Smedley D. Butler in 1924 (Leichtman, 2014). While a career in law enforcement is not all uncommon following service in the military, quite common in fact; the history-setting precedent stemmed from the fact that Butler was still an active-duty officer. While he was officially on leave, Butler only resigned his commission to take the job of police chief upon being directly ordered to do so by President Coolidge.

Not at all surprising given his prior position, Butler set about molding the Philadelphia Police Department into a far more military-esque organization. Included within this restructuring was an emphasis on firearms proficiency, arrest rates, and strict enforcement of prohibition laws; all common concerns of contemporary police forces. It is interesting to note that his police force became so aggressive, particularly in regard to their enforcement of the liquor laws of the Prohibition-era; that the public outcry became so great, the mayor openly campaigned for his removal. If police raids on the thinly-veiled speakeasies of the 1920’s were enough to illicit public outrage, it causes one to ponder what those citizens would think of the routine use of no-knock warrants on private residences just a short century later.

While the case of General Butler is an extreme one, it does serve to illustrate one of the earliest known instances of a “traditionally” militarized police force; that is, a police force explicitly modelled after the military and, more importantly, whose training directly reflected that of the military. The case of the Philadelphia Police Department also serves

to demonstrate the power of public outrage in regard to what they perceive to be excessive militarization and excessive use of force.

War on Drugs:

America's relationship with policies restricting the manufacturing, sale, and possession of illicit substances seems to be indelibly intertwined with increases in the militarization of the police; this trend pre-dates even the Prohibition-era rise of heavily armed police forces such as Butler's. However, the most common understanding of the origin of police militarization holds it to be a direct byproduct of Nixon-era drug policies and the subsequent, aptly named "War on Drugs"; easily understandable when one considers that it was this period in American history that spawned the "no-knock warrant", as well as the increased emphasis on para-military tactics (Balko, 2014; Reddish, 2016). As will be analyzed later in the work, both of these trends have been mainstays of "swatting" incidents in the past decade. This general understanding does not limit itself to the administration of Richard Nixon alone, as the War on Drugs only escalated throughout the 1980's and into the early 1990's. Increasingly severe sanctions, as well as several drug "pandemics", were utilized to justify the increasing reliance upon SWAT teams (Balko, 2014).

While these "para-military units" as Kraska deems them, slightly pre-dated the War on Drugs, the first having been created within the Los Angeles Police Department as a direct response to the race riots of the 1960's; there is no denying that they flourished and their prevalence grew exponentially as a direct result of their utilization against the increasingly vague "enemy" in the Drug War. As one might logically expect, this time

period was also host to the first “accidental” fatalities related to what would later become known police militarization (Balko, 2014).

War on Terror:

The terror attacks that took place on September 11, 2001 are, without a doubt, the single most influential events in recent history; particularly in regard to where the field of policing is concerned. The subsequent fanatical devotion to concepts such as “homeland security” and “risk theory” have had far-reaching ramifications; both at home and abroad (Bolduc, 2016; Brown, 2011; O’Brien, Weiss, & Davis, 2013). One impact that branches both of those spheres is that of the 1033 Program, a Homeland Security program in which police departments from municipalities around the country can acquire military-grade weaponry, equipment, and supplies; often identical to those being utilized on the battlefields of the Middle East (Radil, Dezzani, & McAden, 2017). Recent terror attacks around the globe, as well as fiscal conservatism, have been used to justify this transfer of materiel between the military and police forces around the country; two entities that are ostensibly distinct from one another, yet seem to consistently overlap.

Ultimately, it has been the recent instances of civil unrest in the wake of police-involved shootings that has brought police militarization to the forefront of societal discourse. In particular, the heavily-mechanized and militarized approach the police utilized in quelling these acts of civil disobedience, in places such as Ferguson, Missouri and Baltimore, Maryland; have brought about fierce condemnation and public outrage in relation to the increasingly militarized tinge of American policing. Widely disseminated images of police officers dressed in olive drab and solid black BDU’s (Battle Dress Uniforms) riding into the fray upon MRAP’s, many wielding military-style assault rifles

and grenade launchers, seemed to strike many Americans, seemingly unaware of the commonality of these items, to the very core. As the dust settled, investigative journalists began to dig into how exactly these supplies came into the possession of relatively small police departments around the nation. Perhaps more importantly, this public outcry spurred many criminal justice academics to launch various studies into numerous topics directly affiliated with the initial police-involved shootings as well as the militarized responses; i.e. the potential for democratic oversight of a militarized police, the number of police-involved shootings, etc. (Dansky, 2016; Klinger & Slocum, 2017; Zohny, 2015). However, conspicuously absent from the discourse on police militarization that these incidents brought about was any mention of “swatting.”

While these widespread protests are far more likely to bring about a heavy-handed and overtly militaristic response on the part of the police, the fact of the matter is that the average American is simply not going to experience that militarization aside from viewing it on their television or cell phone screens. However, a far greater swath of the population is at risk of being victimized by a “swatting incident”; after all, the sole necessities are a motivated perpetrator with access to a phone, a plausible story, and an address.

Swatting in the Real World

Should one choose to focus solely on the ever-expanding body of scholarly literature surrounding police militarization, or even the essentially non-existent body of work on “swatting”; one would likely be left pondering the age-old question: “so what?” After all, the average American will likely never take part in a large-scale protest or act of civil disobedience worthy of a heavy-handed police response; nor will they likely ever reside in a neighborhood where criminal activity is so rampant that police raids become a

common occurrence. Similarly, should one hone in specifically on the incidents of swatting that have been perpetrated against the rich and famous, they would also likely feel relatively removed from the phenomenon; perhaps even relishing the fact that even the decadently wealthy can't escape the long, albeit misdirected, arm of the law. However, perhaps the most frightening aspect of swatting that many fail to realize is that it recognizes no borders, class divisions, or "good neighborhoods." So while one may be tempted to wryly chuckle at the thought of Justin Bieber being dragged from his bed at gunpoint or shrug off an occasional police raid on the wrong house in an inner-city neighborhood, the fact of the matter is that swatting is a very real and exceptionally dangerous threat to every single American citizen. No case more perfectly illustrates this than the needless, albeit legal, slaying of Andrew Finch.

When Andrew Finch, a 28 year old father from Wichita, Kansas, awoke on the fateful morning of December 28th, 2017; he had no way to know that within a matter of hours, he would be slain over a \$1.50 online wager. Perhaps he spent the day thinking of a Christmas gift he had received a few days earlier or making plans for a New Year's Eve celebration with friends and family; completely oblivious to the fact that the course, and ultimately the end, of his life was being decided in the ethereal dimension that is online gaming. Regardless of how he spent his final hours prior to fatefully answering his front door, during that time he was completely oblivious to a tragic chain of events that had been set in motion hours earlier; a chain of events that he was in no affiliated with, connected to, or even aware of.

According to *The Wichita Eagle*, this chain reaction first began to form in the chatrooms of an online session of the popular video game known as *Call of Duty: WWII*.

Here, two groups of players initiated a dispute over a \$1.50 bet they had made with each other, as well as over an accidental “friendly fire” incident on the game. At 3:52 P.M., screenshots from Twitter show an unidentified Twitter account allegedly belonging to one of the gamers involved in the initial disagreement encouraging another Twitter user by the name of “@SWAuTistic” to “try some shit” at 1033 W. McCormick St., Wichita, Kansas. What followed that churlish exchange would inexorably alter the lives of numerous people and end with the death of a 28 year old father and the arrest of a 25 year old; all over a buck and a half.

The *Wichita Eagle* established the following timeline from the press releases and recordings provided by Wichita P.D. At 6:10 P.M., the front desk of the Wichita City Hall received a number of calls from a number with a local area code. The caller stated to the security officer who answered that he had struck his father over the head with a handgun. At 6:18 P.M., the security officer managed to transfer the call to emergency services where a 911 operator then takes over the call. The caller then tells that the operator that he has shot his father in the head and that he is no longer breathing. During the course of the phone call, the caller states that his address is 1033 W. McCormick St. and that he is holding his mother and brother hostage. Within three minutes, at approximately 6:22 P.M., the first officers began arriving on scene. At the same time, the caller states to 911 dispatch that he wants to kill himself and set the house on fire. Shortly after the arrival of the police, Finch opened the front door of his house at 1033 W. McCormick St. and stepped out onto the front porch. Within a matter of five minutes, Finch lay mortally wounded on his front porch; the recipient of a single round fired by an officer on the north side of the house. He was quickly rushed to a nearby hospital, where he was pronounced dead at 7:03 P.M. (Burgess, 2018)

Officers claim that Finch failed to comply with their commands and made a quick movement towards his waistband and, despite the fact that he was ultimately determined to be unarmed in the subsequent investigation, recently released footage from the incident does seem to corroborate the officer's claims that his hands strayed towards his beltline (Manna, 2017). However, what is not clear, is whether or not Finch realized that he was the focus of the police response or if he simply stepped out onto the porch to see what the commotion in the street was about. Of course, the possibility also exists that Finch misunderstood the officers' multiple commands or became frightened and acted without thinking. After all, Finch had not placed a call to the police nor was he aware of any event worthy of a police response so one can only imagine that he was quite perplexed by the swarm of officers arriving in his residential neighborhood. Irrespective of Finch's logic or lack thereof, whether or not the officer was justified in their decision to fire at Finch remains a subject of debate, a debate that continues to rage and that directly correlates back to the topic of police militarization.

The simple fact of the matter is that Andrew Finch, at that exact moment in time was a perfectly law-abiding and innocent citizen; yet he lost his life as a direct result of the actions of an individual that he had never met or interacted with, residing some 1400 miles away. Perhaps the most tragic and morbid twist in this sardonic tale is the fact that the caller, subsequently identified by the police as Tyler Barriss of Los Angeles, California; was on the line with 911 both during and after Finch's fatal shooting, according to *The Wichita Eagle*. In fact, news reports have stated that Barriss remained on the line for at least 16 minutes following the shooting and continued to make insidious claims; such as that his gun was black, he had his mother and brother at gunpoint, and that he had doused the house in gasoline (Burgess, 2018). Whether or not officers were aware of the fact that

emergency services were still on the line with the caller prior to and after their arrival has never been established. Several inconsistencies also exist between the house that the caller described and the house the address correlated with; whether or not officers were aware of this is also unknown. Ultimately, in albeit 20/20 hindsight, numerous red flags existed that indicated the caller was possibly making a false report.

By the following afternoon, Barriss had been placed under arrest but not before he could tweet “That kids house that I swatted is on the news” and “I DIDN’T GET ANYONE KILLED BECAUSE I DIDN’T DISCHARGE A WEAPON AND BEING A SWAT MEMBER ISNT MY PROFESSION” from his “@SWAuTistic” Twitter account (Burgess, 2018). An individual claiming to be “@SWAuTistic” also conducted a Skype interview with a popular Youtuber in which the caller claimed to be renowned for his swatting escapades, boasting that he had “evacuated” numerous buildings and events with false bomb threats. He also noted that he rarely targets “people” but would on occasion do it for money or to “teach a lesson” to someone that didn’t fear him, such as the Twitter user that he had the exchange with and who provided him with Finch’s address (DramaAlert). These claims seem to be supported by the *Los Angeles Times*, who have reported that Barriss “pleaded no contest to charges of making false bomb threats in the Los Angeles area in recent years, sparking evacuations at a Glendale television station and two schools” and that “Glendale police believe he was involved in at least two dozen other swatting and hoax calls around Southern California” (Queally, 2018). They have also reported that the Los Angeles Police Department was already investigating Barriss for making similar calls when he swatted Finch and that Canadian authorities have issued an arrest warrant for Barriss because they believe he perpetrated a swatting incident there as well, underscoring the borderless nature of swatting.

The police, who managed to track Barriss down by the Los Angeles Public Library Wi-Fi signal he used to tweet from, have also charged the two gamers that allegedly took part in the initial squabble. *The Wichita Eagle* reports that 18 year old Casey S. Viner of North College Hill, Ohio, and 19 year old Shane M. Gaskill of Wichita, Kansas, have both been indicted on multiple charges of wire fraud, conspiracy, and obstruction of justice (Leiker and Potter, 2018). Press releases allege that, following Viner's initial encouragement of Barriss, he went so far as to provide him with an address that he believed to be Gaskill's. Ever the conscientious swatter, Barriss proceeded to follow the Twitter account of his perspective victim so as to confirm the address and other details provided by his initial contact. Upon seeing that an account by the name of "@SWAuTistic" was following him, Gaskill began direct messaging Barriss and went so far as to both confirm the information and taunt Barriss with messages such as "I'll be waiting" and "You're gonna try and swat me its (sic) hilarious." Approximately twenty minutes after those messages, Barriss placed his first call to the security desk of the Wichita Police Department located inside of the Wichita City Hall. Around an hour and a half following Finch's slaying, Gaskill direct messaged Barriss again, telling him to "delete everything" because "this is a murder case now." Gaskill also admitted that he had given Barriss his former address and that he had been in contact with Viner, who he stated had also deleted evidence (Leiker and Potter, 2018).

While Barriss is undeniably deserving of some form of punishment from the justice system, he does make a compelling point. After all, his phone call was just that, a phone call. Despite the fact that the police who responded were not SWAT officers, did their aggressive, "shoot first and ask questions later" approach to the situation not escalate the situation and ultimately result in Finch's death? In the end, accepting the fact that both the

police and Barriss played a role in bringing about Finch's untimely demise opens the door to a wide range of possible solutions that wouldn't otherwise be affiliated; preeminent among those being an increased emphasis on training about swatting, reform in how police officers approach calls for service, a review of the use of no-knock warrants, and ultimately, a definitive criminalization of the role of the initial caller or "swatter."

Recommendations

Having established both the academic context and real-world existence of both police militarization and "swatting", one is ultimately left with the dilemma of how to best address these distressing and seemingly synergistic phenomena in an effective and cost-efficient manner. In an ideal world there would be no need to concern oneself with cost, as most everyone would agree that preventing the death of a single innocent individual is incalculably valuable. However, in acknowledging the ever-shrinking budgets of most all jurisdictions, one must attempt to mitigate the cost associated with these remedies as much as possible; if for no other reason than to make the solutions as widely applicable as possible. After all, not every police force is fortunate enough to have the resources at their command as the L.A.P.D. or N.Y.P.D.

To that end, this work will present four recommendations that attempt to balance cost efficiency and effectiveness. Chiefly among these being training that encourages less aggressive approaches to calls for service be employed; followed by a review of the nation's stance on the use of no-knock warrants, a hallmark of contemporary police militarization. Another potential life-saver would be training that explicitly addresses the existence and prevalence of "swatting", as well as training on indicators that officers may be dealing with an incidence of "swatting." Finally, while legislation does not solve

everything, a uniform stance on “swatting” by legislative bodies around the nation, and ideally the world, would aid greatly in simplifying the prosecution of these perpetrators.

Less-Aggressive Approaches to Calls for Service:

One of the more underappreciated aspects of the militarization of America’s police forces is the role that military tactics play in day-to-day policing techniques. That is to say, beyond the relatively rare incidences when fully armored police units are called upon to quell riots and scenes of civil unrest, a surprising number of departments are dispatching heavily armed and armored officers to calls for service. Perhaps the most common of these uses falls under the umbrella of the War on Drugs, wherein fully tactical police units storm the homes of suspected drug dealers in order to arrest them on drug-related charges; however, these same units are also routinely used to respond to calls in relation to domestic violence situations and shooting investigations. Nor does the dissemination of militarized equipment or tactics cease there, as many patrol officers now go about their days in what can appear to be full battle kit (Balko, 2014). Gone are the days of the snazzy blue uniform and .38 Smith & Wesson; even the days of 9mm Berettas and bulletproof vests worn under the uniform are giving way to BDU’s, tactical vests, and AR-15’s.

While it is true that SWAT teams were first created to respond to active shooter situations, such as school shootings, incidents of work-place violence, sniper situations, etc.; it should also be noted that they were a last-ditch effort, to be utilized solely when all other measures had failed and the situation had escalated to a point that regular patrol officers could not handle it (Balko, 2006). However, as a result of the rapid increase in the number of SWAT teams in both rural and smaller jurisdictions, many are comprised entirely of patrol officers that only serve in a SWAT capacity when called upon. Often,

these officers only train sporadically and essentially act as volunteer SWAT officers; not unlike the volunteer fire departments found in these same small communities. With almost 85% of police departments in the United States having a SWAT team (Balko, 2014), due in no small part to the 1033 Program and other government incentives noted earlier; it is only logical that at least a few of these departments have failed to adequately oversee the use of this military-grade hardware. Even those departments that do not allow their officers to patrol in full tactical gear often allow them to carry their gear with them in their patrol vehicles; ostensibly so that they can rapidly don the garb and weaponry at a moment's notice and immediately respond to whatever issue is at hand. Unfortunately for some, the "issue at hand" is a swatting incident and the results of this unfortunate scenario can be fatal, as demonstrated by the case of Andrew Finch who was felled by a single rifle round from a responding officer.

Even if one is able to ignore the obvious sociological issues associated with patrolling a neighborhood in California or Maryland in a manner eerily similar to the way American soldiers patrol neighborhoods in the Middle East, the simple fact remains that these patrol officers, even those that merely possess the military-grade equipment and have it stowed away in the trunk of their patrol vehicle, are now more likely to approach calls for service with a militarized mindset. That is to say, they are potentially more likely to respond to these calls in an aggressive manner than if they had arrived in a normal patrol car, wearing normal uniforms, without the added psychological variable of having an awesome amount of firepower at their discretion. As Radley Balko notes in *Rise of the Warrior Cop* (2014), some jurisdictions have even gone so far as to send officers to conduct live-fire training exercises with active-duty special forces teams. While there are those who would argue that an officer in a uniform and standard issue Crown Vic is still representative

of a military occupier in some neighborhoods and those that would contend the dangerousness of the job justify the use of such tactics and equipment, it is only logical that a more militarized police force would be more likely to utilize military-like tactics than a police department that sticks to more traditional approaches.

To utilize a previously noted example, the Wichita Police Department has a rate of officer-involved shootings that is 12 times the national average. The Finch family attorney is alleging in a federal lawsuit he has filed on their behalf against the city and the police department that it was this police culture, along with a lack of training about swatting in general, that led to Andrew Finch's death (Shen, 2018). In essence, they are arguing that the mentality of the responding officers played a large and potentially decisive role in the way in which the unfortunate situation ultimately transpired.

Ultimately, it is undeniable that a number of the fatal and near-fatal swatting incidents are due in large part to this increasingly aggressive, "shoot first and ask questions later" approach to calls for service. After all, the vast majority of the victims of swatting incidents are entirely innocent of any crime; yet they still find themselves on the receiving end of flashbangs, battering rams, and .223 rounds.

No-knock Warrants:

One of the traditional hallmarks of the discourse on police militarization is that of "no-knock" warrants. A wide range of authors have analyzed the topic over the years (Balko, 2006, Balko, 2014, Reddish, 2016); however, almost none have made the connection between their implementation and the desired effect of a "swatting" incident. After all, the no-knock warrant is a direct result of the War on Drugs and is traditionally analyzed in that light. Originally stemming from a fear that drug possessors would be able

to dispose of incriminating evidence before answering the police at the door, no-knock warrants have slowly been transformed into a normal facet of policing. The sole requirements for obtaining a warrant of this kind are a “compelling” reason and a sympathetic, or apathetic, judge.

Ignoring the obvious safety hazards and Fourth Amendment implications, it also bears noting that no-knock warrants are the best case scenario for a swatter and the worst case scenario for a victim of swatting. That is to say, if given the choice between the police simply knocking on the door of the victim or blowing it open and storming inside in full tactical gear, there really is little doubt as to which the perpetrator would choose. A quick YouTube search of the term “swatting” will bring up countless videos showing online gamer’s livestreams being interrupted by police officers storming into the gamer’s home, often utilizing no-knock warrants to make an entirely unexpected entry and regularly catching the gamer off-guard entirely. One can only presume that the swatter is viewing the livestream and thoroughly enjoying the sight of their victim lying on the ground at gunpoint. A perfect juxtaposition of this senseless trauma is the attempted swatting of Jameson Lopp, a self-proclaimed “cyber-punk” well-known within the Bitcoin and crypto asset community (Lopp, 2018).

In July of 2018, he spoke publicly for the first time about a swatting incident that was directed at his family in October of 2017. Upon returning from the gym, he found the entrance of his Durham, N.C. neighborhood blocked by a police cruiser. After inquiring about the nature of the incident and phoning his wife to warn her of the police activity, she informed him that the police had stopped her as they were responding to *their* address (Lopp, 2018). The local news, who Lopp stated were unaware of what swatting even was

prior to the event, later obtained the 911 call and ascertained that the police were there as a result of someone claiming that a murder had been committed, hostages had been taken, and the house had been rigged with explosives. The caller went on to claim that he had shot someone fifteen times with an assault rifle, demanded \$60,000 in cash, and threatened to shoot any police officer that approached the house (Zarcone, 2017). The average police department in America would have almost certainly initiated a heavy-handed response in the form of an all-out assault by a SWAT team. Lopp himself noted in an online post that he was “lucky that the Durham Police Department is more competent and cautious than other departments in the United States. Had a few variables been different that day, I could easily be dead.” (Lopp, 2018)

Lopp received another threatening message from a phone with a New York area code shortly after the swatting incident but the police informed that they had hit a dead end and allegedly turned the case over to the FBI, though Lopp has heard nothing from them and does not expect the case to ever be resolved. He has taken precautions such as installing a better security system and arming himself, as well as offering a \$100k reward for any information leading to the arrest of the perpetrator, as he has stated that that he has little faith in the police to be able to do anything about it (Lopp, 2018). In spite of all of these safety measures, should someone place a call to the local police department they would be obligated to respond. While it is true that they would be likely to remember the house from the previous incident or utilize the same cautious approach, all it would take for the situation to turn dangerous for all involved would be one poorly trained and/or reckless officer or one misstep or wrong move on the part of Lopp or his family.

By normalizing the seemingly knee-jerk reaction that is a no-knock warrant, the police have opened the door to numerous misuses of their power, including their use in swatting incidents. As such, the case can certainly be made that the elimination of or, at a minimum, increased limitations and further research on the use of these assaults is warranted. One can only presume that the implementation of such reform would result in far fewer fatal incidences and likely fewer swatting episodes in general, as the swatter would not have the satisfaction of knowing the police are going to storm the victim's house.

Training:

The potential for reform on the part of the police does not end with no-knock warrants, as the police's role in the phenomenon cannot be overstated. The need for policy reform and increased training does not end at the patrol officer level and a system-wide review is the only way to truly address this issue effectively. After all, swatting would not exist were it not for the ease with which the 911 system can be manipulated into producing the desired response. The Finch family and their attorney appear to share this sentiment, as they filed a federal civil rights lawsuit against the City of Wichita, Kansas and the Wichita Police Department shortly after Andrew Finch's death. In the lawsuit, they allege that the department has a history of using excessive force and that the "officers who responded to the home after the prank call were inadequately trained" (Sanchez, 2018). Whether or not those claims will turn out to be accurate or not is yet to be determined; however, it does perfectly illustrate the potential liability issue that poorly trained officers and dispatchers can pose to a department.

That is not to say that the police dispatchers involved in past swatting incidences were culpable for the subsequent actions. Most, if not all, had likely never heard of swatting

and almost undoubtedly failed to recognize the red flags that seem so obvious in hindsight. There was simply no way they could have known that the call was not legitimate due to the lack of information on the matter amongst the law enforcement community. However, it is precisely this ignorance that beckons for a thorough in-service training regimen for all emergency service dispatchers. These training regimens should be crafted around the information now possessed about the matter of swatting and instituted nationwide as quickly as possible. The phenomenon has existed long enough and been well publicized enough that there is simply no excuse for a police department to not have at least some portion of their policies and procedures dedicated to them. How to spot a potential swatting incident, how to respond once that suspicion has been confirmed and how to investigate them after they have occurred should all be covered in an officer's training curriculum.

Given the fact that swatters typically reside some distance away from the area the victim is located in, they are rarely able to utilize 911 emergency lines that are based on geographic location. As such, they will often call non-emergency line and then, as a result of the nature of the call, be patched through to 911 emergency operators. While the call may come from a number with a local area code, easily done via an app from anywhere in the world with internet access; the fact that the caller did not dial 911 and instead relied on a non-emergency line should raise a red flag. Furthermore, the use of excessive or over the top descriptors of the scene should be viewed as suspect. This in no way to suggest that the call be taken any less seriously than any other report; however, emergency operators should voice their concern to officers and warn them of the potential that they be are responding to a totally unsuspecting scene.

Similarly, police officers and other members of law enforcement should receive in-service training about the increasing prevalence of swatting and the aforementioned hallmarks of a fake report. Recognizing just a single red flag could mean the difference between life and death for all involved. Along those lines, acknowledging the possibility that the incident is a hoax does not mean that officers should respond carelessly or in a lackadaisical manner, taking for granted that there is no threat. On the contrary, officers should be on an increased level of alertness when they suspect they are responding to, or rather perpetrating, a swatting incident. The potential volatility and unpredictable nature of the scene necessitate a slow and deliberate response. A potential swatting scene is not the time for overzealous tactics or glory-seeking “bravery.” Instead, officers must be cool, calm, and collected so that they can best go about diffusing the exceedingly dangerous situation they have found themselves thrust into. Respond too harshly and innocent civilians may be suffer as a result; respond too carelessly and officers may pay the ultimate price.

At a certain point, training about the existence of and common features of swatting, i.e. a scene that does not in any way reflect what the caller stated, does little good as a result of poor communication with dispatch or simply a vague caller. At that point, the matter rests solely on the shoulders of the officers on scene. As noted earlier, their ability to restrain themselves and utilize tactics that do not rely on shooting first and investigating later are tantamount to curbing this rash of fatalities. A swatting incident is the ultimate personification of the fine line that officers must walk every day and goes to demonstrate why there can be no “off-days” in policing.

Criminality of Swatting:

While the United States' track record with criminalization is far from stellar, the fact remains that swatting is not a victimless crime like bootlegging or marijuana cultivation. On the contrary, the phenomenon has an exceedingly wide and all too real range of victims, a small sample of whom were noted previously. As such, both federal and state legislators must arrive at a conclusion on the criminality of swatting and they must do so rapidly. While it is true that legislation is not the answer to all of the world's woes, the fact remains that actions have consequences and a key step towards ensuring justice for swatting victims is clarifying the legality of swatting. An example of this is the slaying of Andrew Finch and subsequent prosecution of all involved.

In that case, the perpetrator, Tyler Barriss, was charged with “involuntary manslaughter, false information and hoaxes, cyberstalking, threatening to kill another or damage property by fire, interstate threats, conspiracy and several counts of wire fraud” (Burgess, 2018). In November of 2018, Barriss pled guilty to “51 federal charges involving fake bomb threats, murders and other violence reported at schools, shopping centers, TV stations, homes and government buildings across the country.” He stands to be sentenced in January of 2019 for what the prosecutor's office boasted would be “a significant amount of time.” The prosecutor told the press that the recommended sentence is 20 years, along with 5 years of parole supervision and restitution payments to the Finch family for funeral costs (Leiker, 2018).

The two gamers involved in the initial dispute that escalated into the swatting incident have also been charged for their actions immediately following Finch's death, i.e. wire fraud, conspiracy, and obstruction of justice (Burgess, 2018). It is commendable that

both the federal government and the Kansas state government have filed charges and are seeking justice for the senseless loss of life. The serious nature of the charges, as well as the inclusion of the initial players in the indictments, are unprecedented. However, it is worthy of note that the actual act of swatting is not included amongst the charges, as there is no consensus as to its legality and no single law addresses it and it alone. In most jurisdictions, so long as no death occurs, the most serious charge a swatter faces is that of making a false police report. However, two politicians from Finch's hometown of Wichita are seeking to address just that.

In January of 2018, as a direct response to the tragic events surrounding Finch's death and the seeming lack of legal precedent on the matter, two Kansas lawmakers "at opposite ends of the political spectrum have introduced a bill that would allow for murder prosecution if a person dies in a swatting incident" (Lefler, 2018). Specifically, House Bill 2581 would make any false call to emergency services a misdemeanor, with the charge being upgraded to a felony if the caller in anyway masks their identity or provides a false identity. Finally, should someone die as a result of the false report, the caller would be subject to punishment comparable to second degree murder as "prosecutors would also have an option to prosecute swatting fatalities under the state's murder statutes" (Lefler, 2018).

On a national level, prior even to Finch's highly publicized slaying, Representative Katherine Clark of Massachusetts introduced legislation in Congress that would have made swatting a federally recognized crime in and of itself. Specifically, H.R. 4057, or the "Interstate Swatting Hoax Act", sought to penalize "whoever, with the intent to cause an emergency response by any law enforcement agency, in the absence of circumstances

requiring such a response, uses a telecommunications system, the mails, or any other facility of interstate or foreign commerce to knowingly transmit false or misleading information indicating that conduct has taken, is taking, or will take place that may reasonably be believed to constitute a violation of any State or Federal criminal law, or endanger public health or safety” (Congress, 2015). First introduced in November of 2015, H.R. 4057 explicitly stated that any attempt at swatting would have been punishable by up to a year in jail, an emergency response would have been punishable by up to 5 years in prison, serious bodily harm as a result of that response would have brought up to 20 years, and finally, a death as a result of the response would hold the potential for life imprisonment for the swatter. The bill was referred to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations but, as of this writing, nothing has come of it. However, less than 3 months after introducing the bill, Representative Clark became a victim of swatting herself.

According to a *Boston Globe* report on February 1st, 2016, Representative Clark and her husband had just begun watching television after putting their children to bed when they noticed a sea of police lights on their quiet street in the Boston suburb of Melrose. Upon investigating what the commotion was about, Clark found cruisers blocking both ends of her street and police officers sweeping her property in search of an active shooter. A police spokesman later stated that the Melrose Police Department business line, not the emergency line, received a call at 9:57 P.M. An automated voice “referred to ‘shots fired and an active shooter’ at Clark’s address” (Miller, 2016) but the responding officers quickly determined the report to be false and are pursuing an investigation into who made the call and why. Clark herself has stated, both to the *Globe* and to NPR’s Rachel Martin

in a subsequent interview, that she believes her targeting was a direct result of the bill she introduced in Congress (National Public Radio, 2018).

While the first report on swatting may have been published by the FBI (Federal Bureau of Investigation, 2008) in 2008, a decade later there is still little to no national consensus on the crime. States such as Kansas have taken their own initiative and put forth bills to address the phenomenon but, aside from federal wire fraud and conspiracy charges, the federal government has never truly intervened in a swatting case. Given the interstate, and often international, nature of the trend, it will remain incredibly difficult to effectively seek justice for swatting victims until the federal government decides to set forth a statute that adequately addresses the serious nature of these crimes.

Conclusion

The fact that the might of the police can be wielded as a weapon by anyone with access to a telephone or computer should frighten a far greater swath of society than just online gamers, celebrities, and politicians. History is littered with examples of misuse of police power and the rise of swatting represents only the most contemporary version. One can only hope that this flagrant deviation from the purpose of law enforcement can bring about meaningful and thorough reflection as to the state of the criminal justice in the United States. After all, swatting is but the symptom and the crafting of the police into a weapon via militarization is the true sickness. Swatting could not have attained the level of “success” that it has were it not for the current state of the criminal justice system. In order to facilitate the end of this phenomenon and a return to the criminal justice system the founders of this country intended, a number of steps must be taken posthaste.

First, a training regimen must be immediately crafted that adequately addresses the prevalence of, as well as the warning signs associated with the phenomenon known as “swatting.” This training, if taken seriously, serves to prevent swatting incidents from escalating by enabling officers and dispatchers to recognize the red flags associated with a swatting incident and respond accordingly. While the police do not have the luxury of simply ignoring calls that they suspect to be false in nature, the way in which they handle these calls can have a dramatic impact on both the responding officers and the recipients of the police response. In essence, police would fall back on this training to preempt themselves from becoming engrossed in the hype of a SWAT run and overreacting to a chaotic scene.

Secondly, a decrease in the use of no-knock warrants would greatly reduce the probability of fatal results from an instance of “swatting.” This also factors into the first recommendation, increased training, in that certain red flags associated with a potential swatting incident might necessitate a softer approach on the part of the police. That is to say, if certain factors exist, the call may be made to utilize an approach similar to the one the Durham, North Carolina Police Department utilized in the Jameson Lopp incident. Ultimately, without hard knowledge regarding the location in question, a mere phone call to 911 is scarcely enough reason to blow open the door of someone’s domicile and stream in with guns at the ready.

Finally, the classification of “swatting” someone as a serious crime should be immediately put forth in Congress. The interstate aspect of the phenomenon renders it a distinctly federal crime in nature. Beyond that, federal agencies are far more equipped to handle an investigation that could potentially stretch across international boundaries, not

to mention the fact that the budgetary constraints and lack of manpower in many small to medium sized departments leave them virtually helpless in regard to acts such as swatting. Detractors will likely argue that these would be more baseless words from Washington, D.C. and it is certainly true that legislation can only do so much; however, a clear and unified stance on the legality of swatting would go a considerable way in aiding the successful prosecution of those that would seek to utilize the police as a weapon.

To that end, all of the policy recommendations noted act synergistically in bringing about some degree of reform. The more that are put into the place, the better the results; however, even the implementation of a single recommendation would greatly reduce the risk of any further loss of life as a result of swatting. Similarly, virtually all of the recommendations, sans the legislation specific to swatting, can be extrapolated into the conversation regarding police militarization. While all of these measures may seem common sensical, the fact remains that they cannot be instituted without policymakers and the general citizenry being aware of their necessity. In the end, perhaps the greatest long-term solution to swatting is an increase in the understanding of just how senseless and tragic of a phenomena it truly is. After all, no amount of legislation or training can bring Andrew Finch back to his family and one can only hope that others may be spared the pain of loss.

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