

A Lawyer's Special Weapons and Tactics

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A few years back, two of us had the privilege of joining a highly trained SWAT team in New Orleans responding to a call for a barricaded subject with an assault rifle. To be clear, by “joining” we mean observing from the relative safety of the command vehicle. From that vantage point, we had the privilege of watching the incident response unfold from start to finish through a wide-angle lens, so to speak.

If you never have seen a SWAT Roll, it's something to behold. SWAT members are some of the best trained men and women in a police department. They are carefully selected, outfitted with high tech gear, and given countless hours of scenario-based training. As a result, they typically go about their task with thoughtfulness, deliberation, and precision. It's like watching a carefully choreographed dance, with everyone having a role to play and each member of the team contributing to the effectiveness of the group as a whole.

In the end of this particular SWAT Roll, the New Orleans police officers convinced the subject, who was in the midst of a mental health crisis, to lay down his weapons and come out of the house with his hands up. No one was hurt. Not a shot was fired. What struck us most about the event, however, was the patience exhibited by everyone on the scene. From start to finish, the incident lasted 8 hours. It was nothing like what one sees on TV, where SWAT officers routinely kick down doors, charge into buildings, and take down their subjects in a hail of gunfire – all in 30 minutes, including commercial breaks. An actual SWAT Roll is extremely methodical and, usually, quite slow.

Over the years since that first SWAT Roll, we have had occasion to watch many others, and each has exhibited the same deliberation, focus, and patience as the first. If there is any truth to the saying “to a hammer, every problem is a nail,” a SWAT team is not a hammer. A SWAT team is far better described as a multi-function tool.

Like a SWAT team, a lawyer's specialized knowledge and training arm us with a variety of tools to solve problems before resorting to the big guns (i.e., litigation). The truth is, very few crises are nails, and fewer still require the hammer to be the first tool out of the box. Problems more often than not can be solved through deliberate thought, active listening, patience, and creativity.

To give us all more access to more tools — and a greater willingness to use those tools — we offer the following three lessons from SWAT.

Think Before We Act

The first thing a SWAT team does at the scene of a critical incident is evaluate the situation. They look for information that will help them assess the risk of various approaches. Is someone in immediate need? Is time on their side? Who are the key players? What is driving their decisions? In short, they think.



Thinking about a problem before we act gives us the opportunity to see the bigger picture — to look at the issue through a wide-angle lens rather than a telephoto lens.

Dealing with organizational crises (whether in the context of a corporation, a university, or any other entity) similarly requires, first and foremost, thought. While speed can matter in some circumstances, more often than not circumstances allow at least some time for thoughtful deliberation. Thinking about a problem before we act gives us the opportunity to see the bigger picture — to look at the issue through a wide-angle lens rather than a telephoto lens. What is the root cause of the problem? Is it just a legal issue, or is there an underlying institutional or cultural issue? Are there business imperatives or reputational risks that must be considered also or even first? If we attack the manifestation of the problem, will we actually cure the root cause of the problem? What does the organization's mission, vision, and values tell us about how we should respond?

Our work with the University of North Carolina and the way it handled its very public “paper course” scandal back in 2014 presents an apt illustration of the risks of failing to think first, and the game-changing benefits of bringing thought and evaluation back into the picture. There, the University's leaders began with an all-too-typical hammer-first response to a burgeoning scandal by trying to minimize what had occurred and direct attention away. But a change in leadership brought about a recognition that a more holistic response was necessary. Instead of continuing to respond in the same way, university leaders decided to take a step back, re-evaluate the institution's initial response, and change how it was addressing the situation. That change led to a more thoughtful, probing investigation which, while painful in the short term, eventually let UNC put the scandal behind it.

As lawyers' plates become fuller and fuller, and as clients understandably have become more cost conscious over the years, we run the risk of thoughtfulness falling to the bottom of our toolbox, when it actually should be the first tool we reach for in a crisis situation.

Slow Down The Scene

Ask any police officer who has been on the streets for a while and he/she will tell you the dangers of being in a hurry. You miss things — sometimes obvious things. You make mistakes. You lose sight of opportunities for safer resolutions of problems. To fight against these risks, police officers are taught to take a breath and give themselves a chance to break through the tunnel vision that often goes hand in hand with high stress situations. Police officers call this “slowing down the scene.” And study after study confirms the wisdom of this advice in areas well beyond policing.

In one study, a group of students had to read a passage about the Good Samaritan parable from the Bible. Following their reading, they were asked to walk across the campus quad to another building to give a short speech about the parable. Some students were told they were late and had to hurry. Others were told they could take their time. En route, the students passed an individual on the ground seemingly in distress. (Unbeknownst to the students, the individual in distress actually was a confederate of the psychologist running the experiment. Psychologists are a devious bunch.)

Whether the students were told to hurry or not had a dramatic effect on their willingness to stop and help. Indeed, 63 percent of those in the “low hurry” group stopped to help, while only 10 percent in the “high hurry” group stopped. Psychologist will tell you that many (if not most) of those in the “high hurry” group might not even have “seen” the individual in distress.

Police officers, of course, are not the only groups to fall prey to this well-studied phenomenon. Surgeons, after years of tragic errors and introspective self-evaluation, now are especially adept at “slowing down” in the face of crisis — and not just medical crises. One university president, a neurosurgeon, explained that he responds to university-level problems the same way he would in an operating room: by slowing down the scene and thinking through the problem before taking action.

When lawyers don't take time to think, evaluate, and deliberate, we similarly risk tunnel vision and miss opportunities for more effective, comprehensive solutions.



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Use All The Tools In Our Toolbox

A SWAT team has a wide range of tools at its disposal. Some of them — firearms, battering rams, armored vehicles — are quite intimidating. But these typically are the last tools a SWAT team calls upon. Far more often, a SWAT team reaches into its toolbox for subtler tools; tools like communication, negotiation, deliberation, and patience. While these highly trained police officers are ready with the hammer should they need it, they readily recognize every problem is not a nail.

In fact, one of the SWAT teams' most effective tools actually is "de-escalation." While SWAT teams epitomize overwhelming force, they appreciate that force should be a last resort. They are trained to explore ways to reduce tension and threat. Sometimes they resort to simply talking to the subject, understanding his or her fears, concerns, and motivators. Other times, simply waiting out the subject is the right tool.

For a lawyer's clients, a crisis can feel like a sucker punch. It comes fast, without warning, and usually feels unfair. There is an understandable temptation to respond in kind: Strike back, deny, shoot the messenger, go on the offensive, or take 'em to court. Often, however, these responses exacerbate the problem. As in a SWAT Roll, the best response usually is to look for ways to defuse tensions. What can be done to buy some time, to relieve the pressures that lead to tunnel vision and missed opportunities? Is there something that will placate your adversary and not hurt your client? These softer responses may be the most effective and inexpensive even if they do not satisfy the understandable desire to strike back with escalating force.

Each of us has had experiences in which we have had to counsel a client to have patience despite his/her desire to strike back quick and hard. We have had to explain that waiting a few days or a week to see whether the threat is as immediate and serious as it initially appears, or simply talking to our adversary, may be the better course. ("Why don't we just give them a call and see whether we can straighten this out before we roll out the big guns?") It may not provide the same immediate gratification as writing that acerbic letter or drafting a complaint. It may even seem weak to some clients. But the truth is, it's not weak. Lawyers, like SWAT officers, have lots of high-impact weapons at our disposal to go after the other side, but we should try to use them as a last resort. After all, in litigation as in law enforcement, once you pull the trigger there likely will be significant collateral damage (not to mention the truckloads of paperwork).



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Conclusion

Most lawyers are not SWAT-trained police officers, but we do bring to the table our own specialized expertise, weapons, and tactics. We generally are a thoughtful bunch. We have a foundation of extensive training to help us think through problems and find solutions beyond the strictly legal. We often (not always, but often) have time on our side. And as with SWAT teams, our toolboxes are filled with all sorts of multi-function tools to help us solve problems; tools like thoughtfulness, creativity, patience, communication, and de-escalation. We submit, in most cases, these tools should be the first ones we reach for to solve our clients' problems. More often than not they will lead to a faster and cheaper resolution than our heavy weaponry.

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