

THE BILL BLACKWOOD  
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Guidelines for Police Administrators: The Justification of a  
Crisis Management Team in Hostage Situations

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## ABSTRACT

The manner in which today's law enforcement organizations react and handle hostages or barricaded suspects is under a great deal of scrutiny, both from society and the courts. The recent tragedies of failed negotiations at Ruby Ridge and Waco highlight the potential volatility and uncertainty of these situations. Throughout the recent past law enforcement has been criticized for the use of force surrounding the arrest of barricaded suspects exposing those agencies to a tremendous amount of civil liability.

The purposes of this research project have been to review the justification for the development of a crisis management team to deal with barricaded or hostage situations, and to demonstrate how a trained response to these types of situations could be justified and structured. The essential element of a contemporary response is presented to illustrate the need of an understanding between each component of a critical incident team and the liabilities when these situations are not professionally resolved.

The conclusion of this research indicates that professionally trained and experienced personnel trained in negotiation and tactical responses guided by a command element can make an armed assault against a hostage or barricaded situation unnecessary. In addition a well trained and organized response to these situations will more appropriately protect a department from liability issues.

## INTRODUCTION

The recent tragedies of failed negotiations at Ruby Ridge and Waco highlight the potential volatility and uncertainty of situations involving hostages or barricaded suspects. The department that ignores these situations and figures that "It won't happen here," are in for a rude awakening (Maher vii). To justify the development of a program for law enforcement agencies to handle incidents such as these, there must be an understanding between each component of a critical incident team and an understanding of liability issues when these situations are not professionally resolved.

From time to time these incidents will occur and will pose a threat to the welfare of the community and the safety of its citizens. Every year law enforcement agencies deal with hundreds of situations that require negotiation with individuals who are in conflict with the laws of the state and nation. Hostage situations seem to be on the increase. Today more than ever, police are responding to armed robberies, family disturbances, and other crimes in progress in a fraction of the time it required just a decade ago (Strentz, 1983: 5; 1979: 2). Each agency must have a negotiation response to barricaded individuals with or without hostages. The negotiation response is only one element of a team designed specifically to address these situations. This option is mandated by current legal decisions,

public concerns and humane considerations (Stenning, 1997a). The liability issues and questions associated with these incidents occur when there is inadequate preparation or training to handle these occurrences (Geiger 52).

The intended audience for this research project will be sheriff's and police department administrators, policy research developers, training coordinators, and anyone with an interest in the implementation of a crisis management team. This research project encourages the development of a critical incident response to hostage and similar situations, and outline the needs' appraisals of a crisis management unit for a law enforcement agency.

Sources of information are case laws on liability issues as they relate to departments and their ability to suitably respond, or failure to respond, to hostage or barricaded subjects. Furthermore, the fundamental review of literature that focuses on the history and insights that contributed to the conception of a crisis management team will be examined. Foremost to this technique will be the identification and review of published literature concentrating on the location of applicable material that could be employed as a guideline toward discerning conventional opinions and sentiments of law enforcement professionals.

## Historical and Legal Context

The law enforcement agency prepared to react professionally to hostage or barricaded suspects, has an advantage over another department that has no plan or guidelines. Those agencies having no plan leave officers to figure out what to do after they arrive at a scene (Maher 5). Half of those who take hostages are not doing it for financial gain. Current research tends to show that the person who most frequently take hostages in the United States fall into a psychiatric classification. These hostage takers are usually responding to stressors that are the outgrowth of personal problems such as domestic disputes, mental disease and even post-traumatic stress disorders (Lanceley 4, Strentz, 1983: 2). Some others, whose acts are the outgrowth of criminal endeavors, have been classified as antisocial or inadequate personalities. Their acts of hostage taking can be the result of a poorly planned robbery (Strentz, 1983: 2). The anxiety may overpower rational thought processes and the hostage taker is more likely to act on impulse or out of desperation (Dolan and Fuselier 2). The vast majority of hostage incidents are accidental (Strentz, 1979: 5).

In political terrorism, the reasons for hostage taking include showing the public that the government is not able to protect its own citizens. Also, taking hostages virtually guarantees immediate media coverage, and after repeated hostage

incidents, it is the hope of the terrorists that the government may overreact and become excessively restrictive with its own citizens, thus causing civil discontent and a grassroots movement to overthrow the government (Fuselier 1986: 5).

A common approach used by law enforcement personnel in handling hostage taking events prior to 1972 focused on two courses of action: demand the hostage taker to surrender or engage the police tactical team in a planned assault (Maher 7). The concept of hostage negotiations was a product of the 1972 Munich Olympic Games (Taylor 64). This highly publicized hostage situation with the resultant deaths of Israeli athlete-hostages at the hands of terrorists made law enforcement professions take a second look at these standard hostage-taking police procedures (Rogan et al. 2; McMains 9).

Throughout the past twenty-five years, the institution of law enforcement has been criticized for the use of excessive force surrounding the arrest of barricaded suspects. The result has been a proliferation of civil suits and litigation against police officers and agencies for wrongful death and failure to protect (Taylor 64). Although special response teams have been highly successful in the majority of their operations over the years, there are many organizational and legal issues that should be addressed before developing, and while operating, a tactical or specialized unit in law enforcement (Ross 24).

The legal foundation for the use of hostage negotiation

techniques in the United States was laid by *Downs v. United States* (McMains 13). The U.S. Court of Appeals, Sixth Circuit commented on the actions of the FBI by saying that they had clearly been unreasonable by turning what had been a successful waiting game into a shootout which left three people dead (*Downs v U.S.*, 522, Fed. Reporter Supp. 990 (1975); McMains 13).

The Supreme Court on March 2, 1998, left intact a July 1997 Tenth Circuit ruling in *Allen v. Muskogee*, Oklahoma that a city can be sued for inadequate police training that leads to a single death or injury, rather than showing a pattern of misconduct as in *Canton v. Harris* in 1989 (Epstein 2; *Allen v. Muskogee*, Okl., 119 F.3d 837, 97 Daily Journal D.A.R. 1119, July 17, 1997; *City of Canton, Ohio v. Harris*, 489 US 378, L Ed 2d 412, S Ct 1197, 1989). As quoted in the *Allen v. Muskogee* ruling "...evidence of a single violation of federal rights, accompanied by showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such violation, is sufficient to trigger municipal liability (842)." This would tend to show that the plaintiff will no longer have to show "deliberate indifference", "failure to train", or a pattern or "custom" of misconduct as outlined in *Canton v. Harris*.

In *Allen v. Muskogee*, officers tried to disarm a suicidal suspect, who pointed a gun at them. Both he and the two of the officers fired and the suspect died of wounds. The officers said



they did what they were trained to do, but an expert testified that it was "reckless behavior" and "plain foolishness" for the officers to have walked up to a suicidal, armed person, stand in the open and try to grab his gun (842-843; Epstein 1998). The ruling in *Allen v. Muskogee* could represent a fundamental change in case law. The legal issues that arise from these cases do not, however, pose insurmountable obstacles to the safe and peaceful resolution of crisis situations (Higginbotham 29).

### **Review of Literature**

Since 1973, scholars and practitioners alike have written on various aspects of hostage-taking situations. The majority of this literature attempts to identify the various psychological traits of hostage takers or the psychological orientations of hostages. The majority of books written on crisis negotiations are typically couched within the larger framework of international political terrorism. While terrorism often involves hostage taking, domestic hostage incidents occur with far greater regularity and have only recently been examined (Rogan et al. 2-3). The use of negotiators is not restricted to hostage incidents. Gist and Perry (1985) found the majority of negotiator deployments were to domestic, barricaded, or suicidal situations.

In 1979, Dr. Thomas Strentz, a foremost expert in the field

of hostage negotiations with the FBI, suggested that there were four options available to the police when there is a negotiable situation, an assault of the location, selected sniper fire, chemical agents, and contain and negotiate (McMains 28-29). In 1986, there was an expansion of these options by Wayne Fuselier, Phd., Supervisory Special Agent, FBI Academy Quantico, Virginia. He wrote, in A Practical Overview of Hostage Negotiations-Revised, that whenever a barricaded subject, or hostage situation exists there are several options available. They are: contain, isolate and attempt to negotiate; contain and demand surrender; use snipers to neutralize the subject; or use a tactical option (2).

The way in which police respond to barricaded situations changed dramatically in the late 70's and early 80's and the change seems to have been well accepted by both the public and law enforcement (Taylor 64). Essentially, this change has been the implementation of a crisis team with a negotiation response as an alternative to the more traditional response of unconditional assault. More police officers than ever will be involved with a hostage taking incident due to the fact that such incidents have increased dramatically since the 1970's (King 8). In the early 1980's, the country witnessed a rise in the number of long-term hostage and barricade incidents (Botting et al). Negotiation has become the standard operating procedure of most departments. The goal of the negotiation is to resolve a hostage

situation with as little bloodshed as possible and tries to buy time (King 8).

The Crisis Response Team for a department should be made up of the key personnel necessary to respond to a negotiation incident (Macko 1). It may vary in makeup and number depending on the nature of the incident. For instance, a suicide attempt by a barricaded person will receive less of a response than a hostage taker who shot a police officer and took a hostage during an aborted robbery (McMains 229-233). However, there are basic functions that are necessary in any situation. The critical elements are (1) a well-equipped and highly skilled tactical team to contain the hostage-taker and bring the incident to a close, using if necessary, appropriate force; (2) trained and experienced negotiators; (3) behavioral science experts who can advise the tacticians and the negotiators about the suspects and assist them in developing strategies; and (4) a command structure that integrates the other elements and develops a coherent overall strategy (Heymann 6).

To successfully manage a hostage incident, many elements within the police department and within the public and private sector must develop a quiche and effective working relationship. Without a clear definition of responsibility, the chances of confusion, poor decision making, and mismanagement increase. The larger, or the more newsworthy, or the more politically sensitive the incident, the greater the response to any given crisis. The

larger the response, the more important is the need for team structure and roles. The relationship between team members, between teams, and between police department and other agencies in a crisis situation must be examined (McMains 227).

Overall control of the situation must be maintained. A command element is necessary. The designated commander needs to assume overall command. He or she is the final approving authority for operational decisions and is responsible for ensuring that the other elements function as they should (McMains 229).

#### **Discussion of Relevant Issues**

Over the past twenty years, law enforcement professionals have increasingly relied on negotiation as an alternative to tactical assault for resolving terrorist, hostage, barricade, and suicide situations (Hammer 500). This response is mandated by both legal decisions and public concerns. There are several key issues that have been addressed to these concerns. These are liability issues revolving around excessive force options or failure to train, officer and citizen safety, and peaceful resolution to crisis situations.

To accomplish this the police response to a hostage or similar incident is a multifaceted response, requiring the coordination and cooperation of patrol, the tactical team, the

negotiating team, and department supervisors. The incident may also involve the participation of units such as criminal investigations, public relations, and other specialized units within the department. The key to this police response is prior planning, preparation, and training.

Since the primary objective of hostage negotiations is to save lives, the fundamental benefit of negotiating is to accomplish this purpose. When a situation is negotiated, there is the least likelihood that there will be loss of life or injury to everyone involved. As Captain Frank McClure of the Atlanta Police Department's Hostage Negotiations Team stated, "I want to do everything possible to resolve a situation through negotiation because this cuts down on the odds of any of our people getting killed or injured." (qtd. in McMains 7).

The tactical team is just as necessary as the negotiating team at a hostage situation. Without the threat of force, the hostage taker can simply walk away or yet endanger additional innocent bystanders. The specialized functions of the tactical team to insure the safety and security of the hostages, and to perform high-risk operations with minimal danger is paramount to a successful conclusion to any negotiable situation (McMains 324). The tactical team must prepare for a physical resolution to an incident. Team members should train anticipating a physical confrontation. Their approach is to use force to bring resolution. The negotiating team, on the other hand, trains,

prepares, and responds for a non-physical resolution. Each team mentally prepares differently but must understand the dynamics of the other team's goal.

A special issue debate currently rages concerning the operations of tactical and negotiation teams. These are relevant to every police department and must be resolved by the individual agency. One debate concerns whether the tactical team and negotiation team should be an integrated team or two separate teams. Which is best? Most studies show that the two teams should be independent entities with different personnel and different commanders (Olin 21, McMains 324). The crisis management team or a command element is necessary to coordinate these groups. The command element is the final approval as to when to talk and when to assault.

Current hostage training programs have developed more sophisticated approaches for training well beyond the initial techniques pioneered in the 1970's. Many current training methods are continuously revising to better account for a more comprehensive range of crisis situations encountered by law enforcement. Formal training approaches should include basic or introduction courses and other multiple training methodologies, such as role-play and practical training exercises (Rogan et al. 151-158). A predominate theme of most training programs is to limit the liability to which an agency is subjected. Training programs such as these can help reduce or eliminate areas where

police departments may be the most vulnerable to liabilities.

One belief many police departments have when they consider implementing a planned response to critical situations is that the start-up cost will be large. The department has allowed a necessary and needed function fall victim to technology and ignored the negotiating team's most valuable asset. All a negotiator needs is an ability to communicate. Everything else is a luxury. Whatever cost a department elects to commit to the development and training of a crisis response team will benefit the agency and the citizens it is charged to protect and serve.

#### **Conclusion/Recommendations**

The purposes of this research project is to review the justification for the development of a crisis management team to deal with barricaded or hostage situations, and to demonstrate how a trained response to these types of situations could be justified and structured. The relevancy of this issue is demonstrated when a department fails to have in place a planned course of action by trained personnel, in which case the department is exposed to tremendous liability. These situations are on the increase for a variety of reasons, and when inadequate preparation or training is evident by an agency is where liability issues and questions occur.

Professionally trained and experienced personnel, working as

a team, can be one of the greatest assets to a police department in hostage or barricaded suspect situations. A well trained team containing a negotiation and tactical element guided by a command team can make an armed assault on a hostage site, an extremely hazardous undertaking, completely unnecessary. In conclusion, a competent, well trained and organized response to these situations will more appropriately protect a department from liability by better preparing officers to handle difficult situations in today's every changing and complex society.



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