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**Guidelines for Police Administrators: The Techniques, Functions, and Processes of
Police Hostage Negotiations**

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Guidelines for Police Administrators: The Techniques, Functions, and Processes of Police Hostage Negotiations

Executive Summary:

This paper will provide guidelines into the techniques, functions and processes of police hostage negotiations for those police administrators who may be called upon to be the on-scene commander at hostage incidents. This information will be useful to them in making decisions regarding exchanges at the scene between the police and actors. Decisions can then be based upon a basic understanding of what is occurring during the negotiations.

The on-scene commander will have a basic understanding of the personality types encountered in these situations, as well as negotiation guidelines for each personality type. He or she will be able to identify the differences between a crisis intervention situation and a true hostage situation, and know the processes necessary for successful negotiation in each instance, as well as the importance of knowing the difference between the two.

Terrorist incidents and how they affect the on-scene commander will be discussed and analyzed. Some suggestions on the formation of a hostage negotiation unit will be explored, and media relations will be examined with some recommendations for appropriately dealing with media personnel at hostage scenes. Finally, the on-scene commander will learn what the tort ramifications are should a situation be unsuccessfully resolved through negotiations.

The administrator who may have to function as the on-scene commander at such incidents will be able to make informed decisions at a time when such decisions will have life or death consequences.

Introduction:

The hostage or barricaded suspect incident catapults the police administrator, as the on-scene commander, into possibly the most important decision-making role of his career. The call will come at anytime, day or night. When it happens, routine decisions will be replaced by critical ones that literally have life or death consequences.

Most police administrators have a vague idea of what their special weapons and tactics (SWAT) team will do when called into action in these situations. But, most have no idea what their negotiators are doing, except “talking the bad guy out.” *How* are they talking him out? *Why* are they recommending that the perpetrator get some item he has demanded, when he hasn’t honored the police request for something in return? *How* can they possibly maintain they’re making progress when the incident has dragged on for hours? If the on-scene commander doesn’t know the answer to these and other questions, the decisions he or she makes will probably be wrong.

This paper will provide the administrator (on-scene commander) with the fundamental knowledge necessary for making informed decisions under these crucial circumstances. Decision making without some foundation of knowledge is nothing more than guessing. The lives of innocent people may depend on how decisions are made. They deserve the best decision making process possible.

This guideline for police administrators will begin with a brief history of hostage negotiation and the genesis of modern techniques. Explored next will be the difference between crisis intervention and a genuine hostage situation. Knowing the difference can determine how the on-scene commander responds to demands of the actor. Knowledge of general negotiation concepts will enhance the commander’s ability to determine negotiation as well as tactical strategies.

The difference between terrorist incidents and common hostage episodes will be explained, along with an attempt to correct some common misconceptions often held about terrorists.

Some ideas for the formation of a hostage negotiation unit will be explained, and alternatives to some agencies forming such a unit will be examined.

Finally, civil liability issues as they relate to failed negotiations will be reviewed and discussed with reference to case law.

This paper is not intended to make the administrator a negotiator. However, the administrator who takes the short time to peruse this work will be better prepared to handle that most fragile of all police incidents, hostage or barricaded suspect situations.

HISTORY OF MODERN POLICE NEGOTIATIONS

Prior to the early 1970's police departments throughout the country had few incidents involving hostages or barricaded suspects. When the rare incident did occur, the officer who was considered the best conversationalist was brought to the scene to "negotiate" with the perpetrator. To illustrate how things changed, in 1968, there were 595,010 violent crimes committed in the United States.¹ In nine years, the reported violent crimes had almost doubled to 1,009,500². Although statistics were not kept on the number of hostage incidents during this time (nor are they kept today) it is easy to understand how the number of hostage incidents increased also.³ Predictably, the larger cities recognized a need for special units to deal with the increasing number of hostage incidents. Accordingly, the New York City Police Department developed a plan for dealing specifically with hostage situations. This was the first significant unit developed by a police agency in the United States.

In 1972, New York City Police Detective Harvey Schlossberg, who possesses a Ph. D. in clinical psychology, was assigned to research and develop profiles on hostage takers. The department then formed a hostage negotiation unit from the patrol, detective, and emergency service units. These officers received training in the field of hostage negotiations, but worked full time at their regular assignments. They would be pressed into service whenever the need arose.

January 19, 1973 the unit received its baptism of fire. A sporting goods store in the Williamsburg section of Brooklyn, N.Y. was robbed by four gunmen. Officers responding to the silent holdup alarm were fired upon. In the ensuing gunfight, one police officer was killed and two

wounded. One suspect was also wounded. The suspects then took 12 people in the store and held them hostage. The store contained a variety of firearms and ammunition, setting the stage for a horrifying hostage situation. The incident lasted for 17 hours and became known as “The Siege of Williamsburg.”⁴

The hostage plan called primarily for waiting the suspects out. Previously the police would seek to end the situation as quickly as possible, often resulting in casualties among all participants. In this case, waiting proved its important role in these situations. After 17 hours the suspects surrendered with no further loss of life or injury to anyone. Of course, a simple wait and see posture would have probably worsened the situation. Time was purchased by the trained negotiators who talked almost constantly with the suspects regarding their demands and needs, as well as the needs of the hostages. It was, in the end, time that induced the suspects to *want* to give up.

This incident illustrated the potential for success of a trained negotiation unit, and has since been emulated throughout the nation. Most all police departments today have either a trained negotiation unit, or a working agreement to use another agency’s unit.

HOSTAGE NEGOTIATIONS COMPARED AND CONTRASTED WITH CRISIS INTERVENTION

Every hostage situation involves crisis intervention, but not all crisis intervention incidents are true hostage situations, even though someone may be held against their will. Knowing the differences between the two, and how to properly categorize the incident, will affect how decisions are made. Perhaps simple definitions will help explain the difference. A hostage situation is defined as a “person who is holding someone as security for the fulfillment of certain demands or desires, and who has substantive demands directly related to the reason the person took the hostage.”⁵ A crisis intervention situation is defined as “a person being held when there are no substantive demands, or the demands are not related to the reason the person is being held.”⁶ Of course, many crisis intervention situations occur when no one is being held, but the person has simply barricaded himself.

Crisis Intervention

Interestingly enough, many times the crisis situation is potentially more dangerous than the true hostage situation because of the type individuals most likely to become involved in serious crises. Although all people experience stress and tension in their lives, some people are unable to cope with it. As stress mounts and the individual's coping mechanisms break down, the potential for crisis increases.

Who is the person most likely to be crisis prone? Obviously, those suffering from various mental deficiencies, such as the manic depressive and schizophrenic will sometimes be encountered. However, most likely the individual will be one who has been alienated from lasting and meaningful personal relationships; has had difficulty learning from past experience and continues to make the

same mistakes; has feelings of low self-esteem; has a marginal income and a lack of a fulfilling career; uses drugs or alcohol frequently; and who may have had frequent encounters with the police.⁷ Most any police officer in America can readily identify someone on their beat who may become the next crisis intervention case.

Once the negotiator arrives on a scene, his primary function will be to identify the type of situation he faces. Once he diagnoses it as a crisis intervention situation, his approach will be somewhat different from than that of a true hostage incident. Time will once again play an all-important role. The negotiator will attempt to let time pass, although he will be intensely alert for signs of suicidal behavior or language. The person in crisis presents a tremendous risk of suicide/murder, and the negotiator should immediately screen the individual for indicators of suicidal thoughts. This may be the single reason why the on-scene commander decides to end the situation tactically. Conversely, if there are no definite signs of suicidal thoughts, then the negotiator's role is simply that of crisis intervener.

Although strategies may differ depending upon the type of individual in crisis, the main function of the negotiator will be to deal quickly with the person's immediate problem. This may include providing the individual with an emotional crutch to lean on, but it does not include psychotherapy. The negotiator will not be seeking a long term solution to the problems that precipitated the incident. He will focus instead on resolving the immediate crisis.

The on-scene commander who understands a crisis situation will understand that the actor may make demands that need to be met by the police in order to establish trust. If in the middle of negotiations, the actor says he's hungry and wants a pizza for example, don't make the mistake of demanding something in return. This is *not* a true hostage situation. Giving him the pizza may be

just the thing that builds much needed rapport between the actor and negotiator. In a true hostage situation, the negotiator would continue talking and attempting to gain something in return for the pizza, however, in crisis intervention giving in to some innocuous demands may mean the difference between success and failure. Discussion between the negotiator and on-scene commander is critical in determining which demands will be met unconditionally. However, there are no pre-set guidelines. The particulars of each situation will influence the final decision.

Hostage Situations

In a true hostage situation, the negotiator will typically be dealing with a criminal who has been interrupted in the commission of a crime. Again, time will be the critical element. The passage of time, especially extended periods, often leads the on-scene commander to believe that no progress is being made. To the contrary, time allows basic human needs to increase. They can then become bargaining items in themselves. Also, with the passage of time anxiety decreases and rationality increases, adding to the probability that the actors will realize they have no choice but to surrender.

In the true hostage situation, most every demand will be met with a counter for something in return. The negotiator will attempt to gain something in return for even modest demands or requests from the actor. This keeps the actor busy thinking about his conversation with the negotiator, and hopefully, not thinking about the hostages. Since the on-scene commander will probably have final approval of any exchanges between the police and actor, again clear communication between the on-scene commander and negotiator is crucial. Many commanders like to monitor the negotiations via a remote speaker to keep abreast of the conversation and lessen the need for extended discussions with the negotiator about these exchanges

This then, is the first and foremost mission of the negotiator and on-scene commander. To

assess the incident and determine if it is a true hostage situation, or an episode requiring crisis intervention. Knowing the difference is crucial in subsequent proceedings and decisions.

GENERAL NEGOTIATION CONCEPTS

There are some negotiation concepts or techniques that are used universally. They have been shown by experience to work in the vast majority to cases.⁸ In this section these techniques will be explored in some depth.

First and foremost among successful hostage units- the chief of police will not be at the scene under any circumstances. If the chief is on the scene, the negotiator will be inhibited in the tactic of stalling for time by referring the hostage takers' requests to the chief for final approval. If the chief absolutely must be at the location, he should be situated at a command post within the outer perimeter and out of sight of the target point. Under no circumstances should the chief of police act as a negotiator in any capacity. This precludes the negotiator's being able to confer with the boss and, again, stall for time.⁹

Why then, is time of such importance? As mentioned previously, the passage of time increases basic human needs such as hunger, thirst, sleep, etc. Some departments interrupt power supplies to the location to facilitate these effects. Also, as time passes anxiety decreases, allowing the actor to more realistically assess his predicament. It also allows for the formation of the Stockholm syndrome, a phenomena that can be crucial to the safety of the hostages. As time goes on, the police are better able to gather intelligence about the location, the actor, and hostages, and the formation of rapport between the hostage taker and negotiator is aided. Finally, the expectations of the hostage taker are usually reduced after the initial excitement has subsided and negotiations have gone on for a while.

There are, of course, some negative affects of time. One is exhaustion of both the hostage

taker and negotiators. This may cause some lack of objectivity on the part of the negotiator, as well as precipitating boredom. However, the negative aspects of the passage of time are far out weighed by the potential benefits.

So, now that negotiations have begun, what are some negotiable items, and are there some things that are never negotiable? Yes there are some things that are never negotiable, and there are those that may or may not be, depending on the particulars of the individual actor and other factors.

Never negotiate to provide any type weapons or ammunition, no matter what the actor claims he's willing to give up in return. Acquiring more or better weapons can prove disastrous should the situation go tactical. Likewise, any commander should be suspicious if an actor is willing to give up things that may seem to be to his disadvantage in order to obtain weapons. Intelligence may be lacking or need upgrading to properly assess the situation if such a request is made. Providing a weapon to the actor when he was pretending to be armed would give the actor both a physical and a psychological advantage because he would have fooled the police. This could create a mind-set in the hostage taker that could be difficult to overcome.

Never, ever offer to exchange a police officer for a hostage or any number of hostages. Experience has shown that police hostages are far more likely to be killed, for a number of reasons, than non police hostages. "The level of tension goes up if a policeman is exchanged for a hostage, because the policeman is a greater threat to the hostage taker. There is also more prestige in killing a policeman than a civilian. You may be dealing with an antisocial personality who hates authority figures, and you will be providing him with a symbol of the authority he hates."¹⁰

Alcohol and other drugs are those that fall into the maybe, maybe not categories. As a matter of course they probably will not be negotiable items. However, should there be reliable intelligence

of course they probably will not be negotiable items. However, should there be reliable intelligence that indicates for example, that this hostage taker becomes mellow and passes out after a few drinks, it may be worth considering. All factors known about the particular individuals involved, hostages as well as actors must be considered. Again, the situation is rare where these items will be negotiable, but all factors should be considered before a final decision is made.

Having alluded to the Stockholm syndrome, discussion of this important phenomena should be included at this point. Understanding of what it is and is not, will help the commander make tactical and negotiation tactic decisions. Briefly stated, it occurs when the hostages begin to have positive feelings toward their captors and negative feelings toward the authorities; the hostage takers will begin to develop positive feelings toward their captives. While it may be difficult to imagine, this syndrome has been manifested many times. "The hostages are initially viewed by their captors as a commodity. However, after a period of time the hostage's dependence on the captor frequently leads to identification with him. Hostages often refuse to testify against their captor; several instances have even occurred in which airline stewardesses involved in hijackings have continued to pay weekly visits to their abductors in prison."¹¹

While not all these elements may be present, it can be assumed that at least some of them will occur to different degrees, unless the hostages have been seriously abused or isolated. The presence of this syndrome can have positive as well as negative aspects. On the positive side, the stronger the presence of the Stockholm Syndrome, the less likely it is that the actor will harm the hostages, because the actor will have developed feelings for them. This is obviously a strong point in favor of this syndrome, and the primary reason the negotiators help develop it, often subtly. Calling the hostages by their first names for instance, so that the hostage taker views the hostages as human

beings, not instruments, is one way they may help it develop (this obviously calls for reliable intelligence information).

Even though there are positive aspects of this syndrome, one must be aware of the negative points also. Some things to consider include: Information from hostages may be unreliable if they have developed a bond with the actor. This could include withholding information about weapons, number of actors, descriptions of the actors, or layout of the building, etc. After several hours have passed, any information received from hostages should be verified by outside sources if possible. If the situation must go tactical, commanders should realize that the hostages may actually attempt to interfere with the rescue attempt. Although this is a consideration mainly for the tactical team, they need to be made aware that this could happen as plans are made for the tactical resolution of the incident.

While there may be a rapport and trust developed between the negotiator and the actor, the fact that the actor has no control of the negotiator as he does the hostages really negates the formation of the Stockholm Syndrome between them, according to training received by the author.¹² The commander who must use a negotiator to distract or otherwise maneuver the actor into position for a tactical strategy should not worry that the negotiator might attempt to warn or otherwise help the actor. After all, the negotiator is a police officer, and he can be relied upon to properly perform his duty.

Remember that hostages who have been isolated, and then are able to make contact with the police may tend to exaggerate the situation, hoping for quick action by the police.

Personality Types:

Discussion of negotiation concepts or techniques would be incomplete without an examination of the common personality types found in hostage takers, and the specific techniques used with each. One of the very first tasks of the negotiator is to determine the personality type with which he is dealing. There are five basic types that tend to take hostages: Psychotic disorders, including schizophrenia and manic depressive; inadequate personality; anti-social personality (sociopath); and criminal. The criminal personality (as well as persons in crisis) may include those who are drug dependent or having reactive depression. There are specific negotiation techniques used with each personality type.

Schizophrenic: This individual may have hallucinations or delusions. They may have unrealistic concerns about autonomy or sexual identity, and they may feel they are controlled by an external force.

Negotiation Guidelines:

- 1) Consider using opposite sex negotiator.
- 2) Try to indicate that you believe his hallucinations without sounding insincere.
- 3) Avoid using family members or doctors, as they are often part of the delusional system.
- 4) Allow them to vent, let them talk but try to stay with concrete topics.
- 5) Don't indicate that you see or hear the hallucinations they may be experiencing.¹³

Manic Depressive: This person will display unrealistic sadness, hopelessness, or guilt, and may have feelings of inadequacy or worthlessness. They are slowed in thinking and speech, and are indecisive. They often have suicidal thinking ranging from passive to active.

Negotiation Guidelines:

- 1) Because response times are slow, you may have to wait longer for things to occur.
- 2) Friends and relatives may provoke or escalate his feelings of worthlessness and guilt.
- 3) Once rapport is established, it may be appropriate to be explicitly directive.
- 4) Will usually be honest and straight forward with the negotiator.
- 5) Be careful of a sudden improvement unrelated to your negotiations; this often indicates that he has decided to commit suicide.¹⁴

Inadequate Personality: Persons with an inadequate personality have ineffectual responses to emotional, social, intellectual, and physical demands. They demonstrate ineptness and poor judgement. They often are socially unstable, and consider themselves a failure. They often have a poor employment history, and poor family relationships. They are often calm, cool, and polite during negotiations, and may negotiate through others. Many times they have exorbitant demands of the police, but can develop a strong Stockholm Syndrome with their hostages.

Negotiation Guidelines:

- 1) Do not introduce non-police negotiators to observe his failure (family members, etc.)
- 2) Because of all the attention he is receiving, he may not want the situation to end.
- 3) The negotiator should build his self-esteem, but after rapport is established, try being more authoritative.
- 4) Exorbitant demands will probably become more realistic with the passage of time.¹⁵

Anti-Social (Psychopath): This individual is the most dangerous to hostages of all personality types. They are amoral, asocial, and total hedonists. They are oriented to the present and totally out

for themselves. They often have high verbal skills and end up interrogating the negotiator. Their failure to accept social norms are often indicated by long criminal records and an inability to maintain an enduring attachment to a sexual partner. They usually have history of inability to function as a responsible parent, and have a poor work record.

Negotiation Guidelines:

- 1) Ego stimulation and ego threat are prime motivators, but he must be convinced that the safe release of the hostages is to *his* advantage.
- 2) Negotiations should remain reality oriented.
- 3) This individual is a tough nut to crack; a tactical resolution may be best.
- 4) Consider the use of more than one primary negotiator¹⁶

Criminal personality: This individual is the person who has simply been interrupted in the commission of a crime. They may exhibit some of the other personality types, but actually do not fit within a particular category. As previously stated, they are often drug dependent and may be a reactive depressive type.

Negotiation Guidelines:

- 1) The guidelines for this person are nebulous at best. The negotiator may have to “play it by ear” and use guidelines from each personality type.
- 2) This person does not fit any particular category.
- 3) They may or may not develop a strong Stockholm Syndrome. The negotiator may help it occur by repeatedly referring to hostages by their first names.
- 4) If drugs or alcohol are on the premises, negotiations may be difficult, especially if the person is drug dependent.¹⁷

These are the major personality types likely to be encountered by the police in a hostage or crisis situation. While individuals cannot always be made to fit a mold, these general descriptions of the personalities and their respective negotiation guidelines will help the commander properly assess a situation.

After the individual has been assessed as to the personality type, commanders would also benefit from knowledge of certain aspects of negotiations that are often misinterpreted by those unfamiliar with negotiation techniques. Next we will focus on these areas and discuss some common misconceptions.

Demands:

Anyone who has ever watched television cop shows realizes that in a true hostage situation, there are going to be demands. As demonstrated by the personality types, those individuals most likely to have demands would be the criminal, the sociopath, and the inadequate personality, and their demands will probably be as diverse as the personality types.

However, the demands will be focused most probably on a means of escape, perhaps coupled with a demand for money, the amount probably epitomized by the personality type. Demands are limited only by the human mind, however, so be prepared for anything.

So, how best are demands handled? There are guidelines here too. Make sure to leave yourself as much room as possible for negotiating, ask him to give up all the hostages first, and then work backwards from there. Of course the actor will more than likely turn that request down, but get the bargaining process started in some way, even if it has to be something small at first. One important rule of thumb is to make him work for everything he gets. If he wants a car, ask him the make, model, number of doors he prefers, engine size, color, hatchback, whitewalls? The message

should be clear; ask him in depth questions about everything reasonably possible to keep him working and thinking.

Next, always make sure you get something in return for any concessions made, even if it's not tangible. (This applies *only* to true hostage situations. As noted earlier in a crisis situation some demands are met unconditionally). One caveat is due at this point. The negotiator should not be so eager to get bargaining started that too much is asked for too fast, and don't offer anything, let him come up with the ideas. In a true hostage situation negotiators must be careful about good faith offers. Likewise, don't raise aspirations or expectations by giving too much too fast. With demands, the best idea is to exercise common sense, and think things through before proceeding. The negotiator can (and should) always fall back on the old standby "I have to clear it with the boss first." This buys time to think for both the negotiator and the commander.

Negotiating (talking):

One common misconception usually made by commanders as well as rookie negotiators is the idea that the police negotiator must be continually talking to the actor. Sometimes it's better not to be talking with him, how else would the primary negotiator ever get any rest? Also, there will be times when the commander and negotiators need to confer to review strategy and tactics or to review what's been discussed or heard. Also, the negotiators may simply need to talk among themselves about things they have learned or to think of questions to ask. There may have been a sudden change in demands, behavior or attitude, or you may need to forestall demands or change the subject. Always remember that it's alright to tell him that you have to go, and that you'll get back with him later.

Deadlines:

Since mentioning television cop shows in the previous category, perhaps they, as well as

movies, should be alluded to again. We have all seen the hostage scenario unfold to the point where the bad guy says “You’ve got thirty more minutes, and then we start throwing out bodies!” Then the cops start falling all over themselves and the swat team prepares for action. In real life that could happen, but it probably won’t. Especially when you consider that in most cases, people don’t seem to carry out deadlines in this country.¹⁸

Nevertheless, take all deadlines seriously, but don’t outright fear them. The key idea is to be on the phone when the deadline passes. Never be off the phone when it passes. This is the one time when the negotiator must be talking. And one last caveat, never ever set deadlines for yourself. Other than these few guidelines, deadlines don’t usually need to be given the emergency attention they receive in Hollywood.

Measuring Negotiation Progress:

All police commanders are concerned about whether negotiations are going well; how progress can be measured. There is no perfect way to measure progress, but there are some indicators of success, and some indicators of when things may be taking a turn for the worse.

It is always a good sign if there have been no injuries to the hostages. [A word of warning is due here; if a hostage is shot or seriously injured, all negotiations are off. The situation should go tactical at that point.] Accordingly, if the hostage taker is more willing to talk and the content of the conversations are becoming less violent it may indicate that he is wearing down, particularly if the speech becomes calmer and slower. An increased willingness to talk about personal things is also a good indication that things are progressing well.

On the other hand, there are some things that should signal an immediate reassessment of the situation. It should be a warning sign if the subject sets a deadline for his own suicide. This could

be an indication that he has decided to end it. Likewise, if he insists on face to face negotiations it may indicate that he wants to push the police into killing him by placing a police officer in danger.

Another indication that the subject is thinking of suicide is the verbal last testament. If they begin to ask that specific relative get certain items or otherwise specify the disposition of their belongings, the red flag should go up.

When negotiations become more verbally volatile, everyone should become more alert. “In the few situations where violence erupted late in the siege, negotiators reported that after some initial progress toward tranquility, subjects became more aggressive. This was evident during a prison siege in Tennessee where an inmate took a female correctional counselor hostage with a knife. After hours of negotiations, and progress toward a peaceful solution, his behavior changed. It became clear that the subject, who had a history of violence toward females, was enjoying the terror he was creating for his hostage.”¹⁹ This incident was resolved by an assault.

For almost all of the personality types, it is advisable not to bring a non-police negotiator into the situation, whether professional or family member. When a hostage taker insists that a specific person be brought to the scene, he may be planning on attempting to kill that person and/or himself. Or, he may want someone significant in his life to witness his suicide as a sort of revenge. This should include those with whom the person has previously worked, especially employers. “In December 1987, a recently fired employee of Pacific Southwest Air, David A. Burke, commandeered PSA 1771. The man who had just fired him was a passenger. Burke forced the plane into the ground near Paso Robles, CA., killing himself and 43 people.”²⁰

Likewise, the hostage taker who continually refers to people as “the guy” or “the girl”, or who otherwise dehumanizes his victims may be trying to avoid the formation of the Stockholm

Syndrome, or may be a sociopath. In these situations, if the negotiator is never able to get the actor to humanize people under his control, it may be time to consider a tactical resolution.

Finally, for the commander who wants a bottom line indicator, remember the word rapport. “After a few hours, negotiators should develop a sense of rapport with the subject who should make a transition from talking about money, or other material demands to more personal points. If transition has not been made, the chance of a surrender is less likely.”²¹

Remember also, that if there are drugs or alcohol involved, the actor’s behavior can change dramatically with time. Although partaking of these substances may enhance rapport, they may have the opposite affect. The bottom line though is the development of rapport. If it is present, things will probably progress favorably. If it is not, then assessment of the total situation and preparation for tactical deployment may be the commanders only option.

TERRORISTS

Thus far we have discussed those persons who take hostages who are either in a crisis situation, or who fit the true hostage taker profile. However, perhaps the most feared hostage takers (correctly, or not) are those described as terrorists. The word conjures up images of hooded, black clad men carrying sub-machine guns who can never be convinced to surrender. Make no mistake, terrorists can pose a severe problem, but the commander must not automatically fall into the ideology often thought by many to be that of the United States Government; “we don’t negotiate with terrorists.” In fact, research indicates that “...an open policy of non negotiation will not act as a deterrent to political hostage taking; tactics used in hostage and barricade situations with felons can succeed in situations involving political terrorists if the terrorists are primarily interested in making a symbolic statement and obtaining publicity...”²²

If the terrorists are truly interested in obtaining publicity, and more importantly, have a will to live, then negotiation is an option. Those terrorists, however, who believe that the most publicity will be gained by a spectacular firefight and the deaths of many hostages will probably not be willing to negotiate for long. In this situation, it would be best to request assistance from federal agencies such as the FBI’s Hostage Rescue Team, who have specialized training in dealing with political terrorists. The good news is that terrorist incidents in the United States are extremely rare, with the exception of the largest cities. Even there, terrorists seem to like to engage in bombings rather than hostage taking. “There were only 11 terrorist incidents in the US between 1982-1992 involving kidnapping, assaults, alleged assassinations, and assassinations. There were only 5 terrorist incidents in the US between 1982-1992 involving robbery or attempted robbery. During this same period, only

4 terrorist incidents nationwide were designated as 'hostile takeover'.²³ The commander of the average hostage/SWAT unit in America will probably never have to deal with political terrorism.

THE NEGOTIATION UNIT

Personnel Issues:

While many administrators of smaller departments will rely on assistance from larger agencies, a brief discussion of the organization and training of the hostage negotiation unit will help police administrators who may be considering establishing their own unit. Obviously, the size of the unit will depend upon the size of the department. However, if the unit cannot consist of at least two or more negotiators, consider consolidating with another agency, or seek a working agreement with a larger agency. Two is the minimum number of personnel who should be on a scene in order to avoid fatigue, to ensure that all the conversation is heard and analyzed, and for accurate record keeping.

Accordingly, one negotiator should be assigned as the primary, and the other as the secondary. In larger departments additional personnel should be added to the unit. They should all be trained negotiators, but should be further assigned as follows; third officer should be the intelligence officer who is responsible for coordinating with SWAT and patrol personnel to develop as well as relay intelligence to appropriate individuals; fourth and fifth officers should be assigned as technical assistance and “think tank” personnel who monitor the conversation and additionally keep track of records and events.

Acknowledging that many commanders will not be able to commit as many as five officers to a team, we will examine the roles of the primary and secondary negotiators with the understanding that intelligence information must be fed to as well as received from them; hence the need for an intelligence officer even though he may not be assigned to the negotiation team.

The role of the primary negotiator, as the title suggests, is that of the officer who will make

contact with the actor and conduct most, if not all of the negotiations. Ideally, this officer will conduct all negotiations in order to develop rapport. The secondary may act as relief, but this hopefully will not be necessary since most domestic incidents last from one to forty hours, with the average duration being twelve hours.²⁴ As noted earlier in this work, development of rapport is crucial to a successful outcome, and if negotiators are frequently interchanged obviously rapport will be inhibited. The primary can simply tell the actor that he will call him back later if he finds that he needs some rest. In this way any rapport that has developed can be maintained.

The secondary negotiator exists to support the primary. He will be monitoring the conversation, and in this capacity may hear something important that the primary could miss as he concentrates on the conversation. Also, all technical and logistical responsibilities will fall to the secondary negotiator. This officer will keep a chronological listing of events such as time of contact, times and list of demands/concessions made, etc. He will also profile the personality type, get descriptions of the hostages, keep and relay intelligence information, and generally act in a total support role to the primary. As one can see, the title secondary negotiator certainly does not imply a less important role.

Procedures and rules promulgated for the negotiation unit should be tailored to meet the needs of the individual department. Personnel who receive training as negotiators will be able to assist commanders in developing policy commensurate with their training and the goals of their department.

Wiretap Considerations:

“Why does my department need a negotiation unit anyway?”, some may ask. If the negotiators are to act effectively, they will need to block all communications to and from the actor’s

location. The local telephone company can do this by changing the phone number and altering his phone to ring at the negotiator's location whenever he picks up his phone. Some special telephones designed for use in hostage situations also have a microphone in the unit for monitoring conversation while the phone is hung up (the phone is delivered to the actor by tactical personnel). The Texas Penal Code provides criminal penalties for the interception of nonconsensual interception of wire, electronic, or oral communication unless it is done in conformity with the code. Therefore, in order to be able to legally do any of these things, a unit trained in accordance with the law is necessary.

Training Requirements:

Law enforcement personnel responding to a life threatening situation are allowed to alter and monitor telephone lines during a life-threatening situation by the following law: “ ‘Member of a law enforcement unit specially trained to respond to and deal with life threatening situations’ means a peace officer who has received a minimum of 40 hours a year of training in hostage and barricade suspect situations. This training must be evidenced by the submission of appropriate documentation to the Commission on Law Enforcement Officer Standards and Education.”²⁵

In accordance with the foregoing, most hostage units receive basic training of forty hours, and then train as individual units each year to obtain or exceed the basic requirement. Formation and organization of a unit within a small department could be done at a relatively modest cost, however, those commanders with severely restricted budgets may find that relying on larger agencies can eliminate a lot of headaches with regard to training and properly equipping their own personnel. Those who have not already done so may want to enter into a legal mutual aid agreement with the nearest agency having a qualified unit.

MEDIA RELATIONS

The news media is often today perceived as law enforcement's biggest single headache. Omnipresent at any serious event, one can expect normal media coverage to double in scope. Television cameras from areas not normally concerned with news in a particular area will swamp the area with reporters and camera crews during a hostage event. How the on scene commander deals with them can have far reaching consequences.

One aspect that drives the media to converge on such a scene is competition. "This competition creates problems for law enforcement personnel at the scene. Such was the situation in Cleveland, Ohio. A reporter for a local television station called the news producer and told him that the situation appeared to be ending. The producer, wanting to be first with the story, went live via mini-cam with pictures of police snipers readying their defensive positions on the surrounding rooftops. The hostage taker, who had access to a television, saw the positioning of snipers and balked. He shouted, 'Everything is off, right now!' ”²⁶ Of course, this could have possibly been avoided had the electricity been shut off to the premises, but this isn't always feasible, and there are battery operated televisions. The commander who knows how to balance the public's need to know with the needs of the police, and conveys a willingness to work with the press, will have much more success with them, both from a professional standpoint as well as avoiding bad press for the sake of retaliation.

The very first step in dealing with the media in this type situation is to have a working relationship with local television, radio, and print media representatives long before the hostage event occurs. If there is a relationship between the police and media built on trust, openness, and

understanding, the media likely will not present a problem on this type scene or any other.

Have a press staging area established at the same time the SWAT and headquarters command posts are set. This conveys to the press that the police are willing to work with them, and helps develop a mutual trust. However, make sure the press area is not so far away from the scene that it encourages some of them to stray away to freelance.

Accordingly, a public information officer assigned to stay with or near the press area will help them feel like they are being kept abreast of things, and again, help keep them from straying. Sometimes short interviews with SWAT and/or negotiators are helpful, although if there is a public information officer it is often understood that all interviews will be with him. Also, a public information officer will free the commander to focus his attention on unfolding events rather than trying to balance these duties with talking to the press. Rare today is the department without such a person, often specially trained in handling the media.

Remember, cooperation will work, but lack of cooperation will most likely backfire for the commander. Attempts to thwart news coverage will almost guarantee an “every man for himself” mentality on the part of media personnel. “When the Brooklyn incident broke, the police wanted a news blackout and went so far as to shut off the electric power to the entire area. The media countered by setting up portable generators and floodlights, which inadvertently served to silhouette the police and leave the perpetrators in the shadows.”²⁷

The New York City Police Department learned from this incident, and now have on-scene liaison with the press at many events, especially hostage incidents.

As most people have seen on news coverage of these incidents, the news media can even be an active ally in solving these situations. There have been many situations where hostage takers have

surrendered after a negotiated interview or statement on the local television. Obviously, any such interview will be closely coordinated with the police, and will *never* involve a face to face meeting. Any interviews should be conducted over the radio, or by telephone, perhaps with a remote camera if necessary. Never allow the actor to get anywhere near a reporter because of the potential for the actors to acquire a more important hostage, and create even more media interest.

Conversely, a problem can develop quickly should members of the press decide to become freelance negotiators and contact the hostage taker directly. There should be a previously negotiated understanding between the local media and the police that they will be kept informed in a timely manner about events, and should the need arise, their services may be used to help resolve the situation. However, they should clearly understand that any breach of security will be treated as interfering with the police and will not be tolerated.

Communication will be the positive link between the commander and the press. As stated above, open, honest communication built on mutual trust (hopefully established long before the critical need arises) will be the difference between the media being a necessary part of the commander's preparation and handling of the episode, or a headache of monumental proportions.

LIABILITY ISSUES

In this section civil liability as it relates to hostage negotiations will be discussed. In a hostage incident, there will be two areas of liability. One will be the tactical or SWAT arena (normally involving issues of the use of force) and the other the area of the negotiator's liability should an incident be unsuccessfully resolved through negotiations. We will deal only with the negotiator's and commander's liability issues.

When negotiations fail, and a hostage is injured during the tactical resolution of the incident, are the police responsible for that failed negotiation? Legal research has revealed that there has been no court case to date dealing with that specific question. Most case law deals with issues concerning the use of force *after* negotiations have failed, but none dealing specifically with law enforcement's responsibility toward providing adequate negotiations.

There is, however, case law regarding the general responsibilities of law enforcement (or government) in rescuing a person who is in danger. These are federal court cases; no Texas court cases regarding this issue have been discovered.

The Federal Civil Rights Act of 1983, often referred to in case law as §1983, provided citizens with protection from violation of their civil rights by government officials. Does one have a civil or constitutional right to be protected by the government? The Federal Courts have ruled a resounding "NO" to this question. In 1987, one federal court ruled on this issue, and cited two other courts in reaching its decision. In this case a gunman was holding a woman hostage in a restaurant. The police attempted negotiation, but ultimately stormed the building during which the female was shot and killed by the actor. The family filed suit against the police and the city under §1983, and the finding

of the court is interesting and significant.

“Having found no genuine issues of material fact, the Court finds that plaintiffs fail to state a claim upon which relief may be granted. This matter presents a novel question in the history of constitutional torts. No other hostage situations have resulted in 42 U.S.C. §1983 actions which have been reported. The Court is troubled by the suggestion that the police may be liable in tort every time they are unable to rescue a person from a dangerous situation. It is in the nature of police work that the pressure becomes intense and decisions must be made quickly. Decisions of policemen on the scene may be questioned and pondered after the fact, but the decisions made on the spot do not permit such reflection. Inevitably, policemen make mistakes. Such mistakes made in the best judgment of the trained police officer should not be the province of constitutional tort suits. The Supreme Court recently supported this idea in *Daniels v Williams*, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d. 662 (1986). In *Daniels* the Supreme Court traced the history of §1983 and concluded that the purpose of the statute was not to provide a tort remedy for every person injured by the government. The Court held that a mere lack of due care by an official could never constitute a deprivation under §1983. It declined to indicate whether any act short of an act intended to harm could present a constitutional tort. The Court finds the *Daniels* opinion provides some guidance in the instant case. This matter presents no evidence that the police acted with an intent to harm Ms. Taylor or that they acted in reckless disregard for her safety. Whether the police chose the best or even a good course of action does not matter. Mere negligence is not sufficient to create liability. The Court also relies upon two lines of cases which are in some ways analogous to the instant case. The first of these are cases where public officials were sued for failing to rescue a person from danger. The second are cases where individuals allege the government is liable for the malpractice of government employed doctors. In both cases the courts have found that no deprivation without due process of law occurred.

In *Jackson v City of Joliet*, 715 F.2d 1200 (7th Cir. 1983) and *Jackson v Byrne*, 738 F.2d 1443 (7th Cir. 1984) the plaintiffs allege that the constitutional rights of their deceased were violated when police or fire officials failed to save them. In *Jackson v City of Joliet* a policeman negligently failed to assist two injured persons in a wrecked car. Plaintiffs alleged that the decedents could have been saved if medical assistance had been given sooner. The Court reviewed the history of §1983 and concluded that no right to be rescued existed under the Fourteenth Amendment and that failure to rescue a person did not comprise a constitutional tort. Similarly, in *Jackson v Byrne*, the Seventh Circuit found that failure of city firefighters to rescue two children from a fire did not give rise to a successful §1983 claim. These cases are very similar to the instant case. Here the police acted to rescue Taylor but did not succeed. The Court finds that failure to successfully rescue an endangered person does not constitute a deprivation of a liberty interest.

A second line of analogous cases are those which consider whether a government employed physician can be held to have committed a constitutional tort by committing malpractice. In *Bowers v DeVito*, 686 F.2d 616 (1982), the Seventh Circuit 807 considered a case where a woman was murdered by a man who was released from a state mental hospital. The former patient had a history of assault and had killed a young woman with a knife in 1971. He was committed to the Madden Mental Health Center. He was released in 1975 and a year later he murdered Bowers with a knife. This suit was brought by her estate claiming that the defendants knew that the patient was dangerous

when they released him and had acted recklessly in letting him go. The Court found that there is no constitutional right to be protected by the state against being murdered by criminals or madmen. The Court further found that malpractice is not actionable under §1983. Consequently, the dismissal of the §1983 claim was affirmed. Bowers is closely analogous to the instant case. Plaintiffs allege that the Ferndale Police both collectively and through the actions of individual officers failed to protect Taylor from Alvin Freeman. However, no duty to protect her from Freeman existed. In the absence of such a duty, the court finds that this further supports the conclusion that plaintiffs have failed to state a claim under §1983.

Finally, the Court takes into consideration the policy implications of a finding of liability in this case. The police in this instance responded to an emergency call which could have presented a tremendous variety of hazards and decisions. The police responded to the call and those persons on the scene appear, from the facts presented to the Court by both plaintiffs and defendants, to have acted in their best judgement. That the results of this situation was a tragedy does not reflect upon the good faith efforts or judgement of the officers involved. Had the officers waited longer and attempted further negotiation the result might also have been tragic. An example of the results of waiting and negotiating is the result of the recent hostage situation on Rodeo drive in Beverly Hills, California. There the police negotiated overnight with the barricaded hostage taker and two hostages were killed before the gunman attempted to leave the building. Los Angeles Times, June 25, 1986, Part 1, Page 1, Column 2. This situation could easily lead to a lawsuit alleging that the police erred by not storming the building early on. This type of litigation poses a no-win situation for the police, and does nothing to encourage effective law enforcement or a respect for constitutional rights. Since the fundamental purpose of §1983 is to provide a vehicle to enforce constitutional rights, no action under §1983 ought to be recognized under these circumstances.

The Court holds that upon the facts and the related authority plaintiffs have failed to create a genuine issue of fact as to whether defendant's conduct is shocking to the conscience of the Court, and summary judgement shall be granted as to her substantive due process claim."²⁸

This case is cited in some detail because it encompasses many of the areas of concern of police administrators. This case also cites other federal court cases, including the Supreme Court, in rendering its decision. As one can see, there is no civil duty placed on the police to rescue a person held hostage.

The administrator who uses (or has access to) negotiators trained in accordance with Texas law, and who act conscientiously and in good faith according to their training, will probably not have to worry about losing a civil suit should the negotiations turn out badly.

Of course, these days anyone can be sued by anyone for anything, but a judgement in your favor is likely when the above conditions are met.

Again, lawsuits may result from the use of force during an assault or other tactical resolution, but federal law is specific that the police have no civil duty to rescue someone. Therefore, if the negotiators have put forth a good faith effort, but nonetheless fail, civil liability from their standpoint should not be a concern.

CONCLUSION

The purpose of this paper was to acquaint police administrators with the function of a negotiating team, thereby enabling him or her to make informed decisions while acting as the on-scene commander at a hostage situation.

The on-scene commander plays a vital role in the success of the negotiation effort, since he or she will have final approval of all exchanges between the police and actors. The on-scene commander must be able to distinguish between a crisis intervention situation, and a genuine hostage incident. Then he or she will know when to unequivocally concede to demands of the actors, and when to demand something in return for an offer by the actors. This can mean the difference between successful negotiations, or having to end the situation tactically.

Therefore, knowledge of the common personality types encountered in hostage situations, and an understanding of negotiation guidelines for each personality type is critical. The on-scene commander should also be aware of guidelines for dealing with deadlines and demands, and have some method of determining whether the negotiations are going well.

It is helpful if the police administrator is knowledgeable about the formation of negotiation units, and what the alternatives may be for those who cannot afford their own unit. This work explored these issues and explained wiretap considerations and training requirements.

Media relations are always important to the police administrator. How media relations affect the administrator who is the on-scene commander at a hostage incident were examined, and some suggestions offered about how to successfully manage the media at a hostage incident.

Finally, the administrator who is concerned about civil liability resulting from failed

negotiations should be more aware of his position in this arena.

The police administrator, faced with a hostage situation, should be able to review this document and have a basic foundation of knowledge upon which to base his decisions. Hopefully, of course, this document will have been reviewed long before the need arises. Prior preparation is vital when the administrator becomes the on-scene commander in what may be the most delicate decision-making role of his law enforcement career.

ENDNOTES

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