

Crisis Negotiations: Is Recording the Answer?

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Abstract

This study will look at the history of how Special Responds Teams and Crisis Negotiation Teams were developed, some of their current uses and some possible future ways these unique units can serve the law enforcement community.

This study will focus on the way different agencies use written, audio and video recordings that are generated from Critical Incidents in which these teams are forced to respond to in order to protect the lives of the citizens they are entrusted to serve and protect. Overall this study will look at the pros and cons of retaining these negotiations from a budget, training and legal standpoint of information gathered from Florida law enforcement agencies with sworn personal of 150-500.

Introduction / Literature Review

This study will explore the advantages and disadvantages of recording crisis negotiations, the history of crisis negotiations and the possible future of where recording such negotiations could lead.

In the mid to late 1960's several high profile shootings caught the attention of the national media. This era was also birth to the Watts Riots and the rise of several diversified groups wanting the government to recognize who they were and what they stood for. As a response to these shootings, and terrorist groups, the Los Angeles Police Department initiated a new tactic to deal with these potentially lethal force incidents. The LAPD started training a specialized unit of their department who could respond to unique circumstances. This unit was trained in the urban military style that gave teams the advantage of stealth movement or dynamic entries depending on the situation. The term SWAT was coined by one of the founding members of the group Special Weapons Assault Team; this term was toned down and changed to Special Weapons and Tactics to better describe the true function of the unit. This new acronym did not sound so militaristic and was more widely accepted by the general public. The LAPD SWAT team has grown to the size of an entire command element handling an average of 100 barricaded suspect incidents a year and over 120 high risk warrant services. While this term has been changed by agencies over the years the function has remained the same. (Bennett, 2010)

SWAT team members were tasked with talking or negotiating with hostage takers or barricaded subjects and were operating by the seat of their pants, not having any formal training in hostage or crisis negotiations. (Charlés, 2007)

This identified yet another area of training needed to help resolve these standoffs in order to preserve the lives of not only the suspect but those of the officers involved. (Regini, 2002)

Crisis Negotiation Teams were integrated into the SWAT teams with the specific task of making contact with a suspect and beginning negotiations that could gather information and intelligence that would give the SWAT team every tactical advantage possible should the incident require an entry.

(VanHasselt, V., Flood, J., Romano, S., Vecchi, G., Fabrique, N., & Dalfonzo, V. 2005)

This interaction with the suspect could also give some insight and background into what brought about this behavior and possibly key elements for the negotiator to pursue that might calm the suspect or make them realize that there is a future past this incident. (Charlés, 2007)

A written record of these negotiations became necessary in order to recall facts and key phrases that can be used for both a peaceful resolution to the crisis and also later when the case would be presented to the courts for a finding of facts.

(Regini, 2002)

Scribes began to be used to record these negotiations and note a time line of when and where things happened. Situation boards helped the negotiators and intelligence gatherers stay focused on what was happening and when it happened. For many years these written records were the only means of documenting the actual events and the team members had to rely upon each other and their memories in order to recall the facts. (Regini, 2002)

As technology progressed, the ability to record these negotiations became available and many agencies took advantage of this technology by beginning to capture these recordings on cassette tape. (Richardson, 2008)

There appears to be limited information available as to the overall use of recording devices in crisis negotiations and this topic is still very debated among many law enforcement agencies across the nation.

The digital era brought about a more effective ability to hear what was said by the suspect, observe the suspect without their knowledge, and see traps or ambushes created by the suspect. Assessing the health and welfare of any hostages can be one of the most important elements that video recordings provide. Video coverage will also help identify entry and exit points for any possible assaults or rescues. Video surveillance of a crisis incident is paramount to overall officer safety. (Richardson, 2008)

The versatility of recording negotiations allows them to be viewed and monitored over secure networks by command staff or mental health advisers remotely. This allows instant communication up the command hierarchy so on scene officers can make more informed and critical decisions. (Richardson, 2008)

In the past the delivery of any communication equipment fell on the shoulders of a SWAT team member which placed them in harm's way. New equipment and technology has allowed the delivery of such items to be made by small remote control ground vehicles, thus virtually eliminating any potential loss of human life. (Weiss, 2007)

Training is at the forefront of this debate. This recorded documentation will help identify strengths and weaknesses in each negotiator, Swat team member, and command staff member, thus creating a mechanism for change and constant improvement on tactical issues and possible policy changes in dealing with different situations. (Richardson, 2008)

The legal consequences and vicarious liability of retaining these recordings will be pivotal points that each agency will have to examine prior to implementing this procedure. It will be imperative that each agency find the correct balance when integrating this particular tool of law enforcement into their policy. The financial costs could be devastating to any agency if agency training and procedures are not strictly followed. (Richardson, 2008)

This study will also show the direction in which local agencies are going and how other agencies globally are coping with the issue of capturing audio, video and written negotiations.

Methods

This study will analyze and identify the different aspects of Crisis Negotiation documentation methods utilized by Law Enforcement agencies in Florida and abroad. These methods will help identify what agencies retain written, audio and video documentation of Hostage/Crisis negotiations. Also how these agencies use this documentation, whether it be for training purposes or for official entry into incident reports.

The targeted agencies within the State of Florida will be those who meet the following criteria:

- 500 sworn officers or less
- Agencies with established Hostage/ Crisis Negotiation Teams

A target survey was sent to these agencies that asked the following questions:

- Does your agency record Hostage/Crisis Negotiations in any form? i.e.; written documentation, audio or video capturing.
- If so in what manner?
- Is this documentation retained for use in an official report or for training purposes only?
- What is your agencies policy on recording such negotiations?
- What advantages and disadvantages have you found to only retaining written documentation gathered through scribes or note takers?
- What advantages and disadvantages have you found from retaining captured audio and or video negotiation documentation?

The target of this study globally will focus primarily on research from the United Kingdom, as they implement new technology rapidly upon development.

Results

40 surveys were sent to the identified target agencies, 10 surveys were completed and returned. This equates to a 25% return rate. The following are the results of these surveys:

1. Does your agency document HRT/ CNU negotiations?

- 90% agencies indicated **yes**
- 10% agency indicated **no**.

2. If yes, in what form? Mark all that apply.

- 8 agencies indicated they use written documentation.
- 6 agencies indicate they use audio documentation.
- 2 agencies indicate they use video documentation.
- 1 agency indicated not applicable

3. If you do not use audio and or video, please explain why?

The following explanations were provided from the target agencies.

- Audio recordings are inconsistent
- Audio recordings impede the ability of the negotiator to be free of undue scrutiny from command staff or civilians.
- Expense of audio and video recording equipment is not affordable for some agencies.
- Florida public records laws are very broad, thus creating possible legal issues.

4. Is this documentation retained for use in an official report?

- 70% agencies indicated **yes**
- 30% agencies indicated **no**

5. Do you use any documentation of HRT/ CNU negotiations situations for training purposes?

- 100% participating agencies indicated they did use these reports to improve their training.

Discussion

There are many interesting points that are identified as a Result of this subject matter. I think an important issue is that most if not all agencies use the information gathered from critical incidents to critique their units and improve their negotiation skills, even if the information is not retained. This indicates that no matter what the policies or procedures exist within each individual agency, the negotiators in the field use every bit of information and technology to their advantage in order to hone their skills and save as many lives as possible.

There are many different and legitimate reasons that many agencies do not retain negotiation documentations, some of them are:

- The inconsistency of audio or video recordings themselves create problems, if there is a technical problem and a break or gap exists in the recording, that gap could lead to an integrity issue for the legitimacy of that recording.
- Defense teams would possibly be able to discredit the entire situation should these technical problems become a part of the official court records.
- The cost of equipment and maintaining such equipment is often outside budget restraints of some agencies thus they are unable to afford it.
- Some agencies do not record the negotiations so as to not put additional stress and pressure on the negotiator from command staff and undue criticism from the courts.

As any Florida law enforcement agency knows firsthand, Florida public records laws are among the broadest in the nation. This fact can make prosecution of a case with audio and video very difficult or almost impossible should the case take an extended time to prosecute.

All of the above are very valid and plausible reasons for not maintaining these recordings, however it appears to come down to one primary reason, that being vicarious liability.

One need only look at headlines of any major news paper to see that law enforcement professionals are being sued in civil court daily.

Our nation as a whole is becoming more and more liberal, therefore the criminals are using the legal system to justify their criminal activity and the courts are allowing this course of action to continue.

This liberal thinking by the courts has forced the law enforcement agencies across the nation to reevaluate how they do business, thus creating a sense of caution whenever video or audio recordings are used in conjunction with an active investigation.

The use of in car video of traffic stops and controlled recorded interviews are critical in many criminal investigations, however the recording of any crisis situation where a suspect has the opportunity to do and say anything basically opens the flood gates of public scrutiny.

This public scrutiny often will be what defense attorneys use to fuel their cases against law enforcement agencies, especially if their client committed a criminal act connected to this critical incident.

Bottom line, the liability cost often is just too high for agency heads to justify capturing these recordings for anything other than training purposes.

In contrast, some European law enforcement agencies attempt to capture any and all audio and video evidence to enhance their cases against the criminals, by developing state of the art equipment that can send live feeds to command posts and health care professionals without having to actually be on scene.

This helps the negotiators and command staffs make more informed and accurate assessments of the situation, and hopefully ensure the safety of all parties involved.

In conclusion, US law enforcement appears to be satisfied with written documentation and live non recorded video and audio feeds at crime scenes.

With the increasing pressure of transparency in all aspects of law enforcement, it may only be a matter of time before these recordings are maintained as evidence as a requirement either statutorily within the jurisdiction or per policy through individual agencies.

This change will require a stronger support element from the courts towards law enforcement in allowing these professionals to do their job without the fear of civil suits and unjust criticism.

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Appendix A

This questionnaire is part of a research paper for the leadership program, Executive Futures Study Program through FDLE.

My study focus is to determine how many agencies in the State of Florida, retain written or recorded Hostage Rescue Team / Crisis Negotiations Unit negotiations.

Target agencies will be those who total 100-500 sworn LEO's excluding corrections.

A copy of this study will be available to all participating agencies, please indicate at the end of the questionnaire if you want a copy.

I respectfully request that this questionnaire be completed and returned by April 9, 2010.

1. Does your agency document HRT/ CNU negotiations?

Yes _____ No _____

2. If yes, in what form? Mark all that apply.

Written _____

Audio _____

Video _____

Not applicable _____

3. If you do not use audio and or video, please explain why?

4. Is this documentation retained for use in an official report?

Yes _____ No _____

5. Do you use any documentation of HRT/ CNU negotiations situations for training purposes?

6. How many persons are on your HRT/CNU team?

7. Are you a member of your HRT/CNU team?

Yes _____ No _____

If yes what is your position?

8. Do you want a copy of this completed study?

Name of person completing questionnaire _____

Contact phone number _____