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From the First Amendment to Safety First: Working with the Media in Crisis Situations

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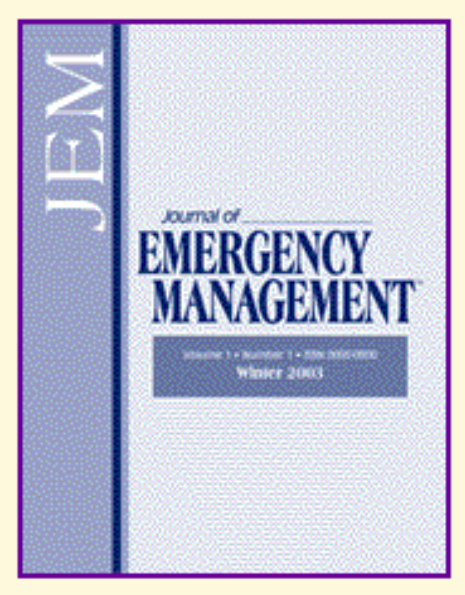
Working with the Media In Crisis Situations

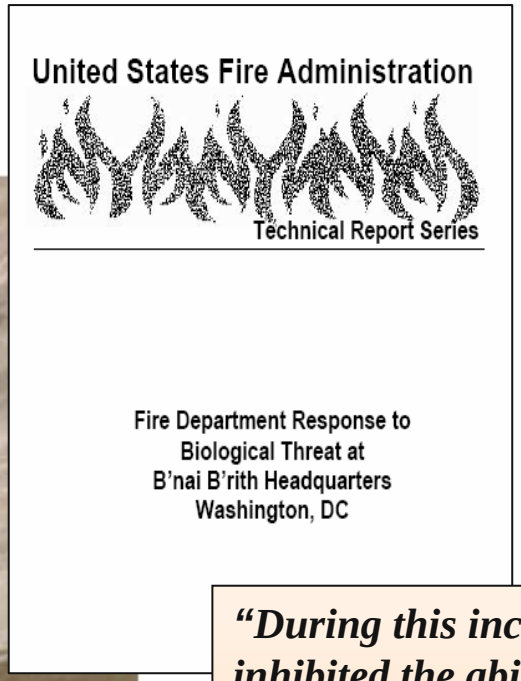
- Talk adapted from article in Sep/Oct 2006 *Journal of Emergency Management. See* http://www.emergencyjournal.com/pn06001.html.
- Derived from work sponsored by DHS/FEMA, U.S. Army, and the Technical Support Working Group (TSWG).
- What it's about – what authorities legally can and can't do by way of controlling what the media does in reporting about an emergency situation.



Working with the Media In Crisis Situations

Introduction

- Dealing with the media is one factor among many that emergency managers have to deal with.
- Expect the media to show persistence and ingenuity.


United States Fire Administration

Technical Report Series

Fire Department Response to
Biological Threat at
B'nai B'rith Headquarters
Washington, DC

"During this incident, the live broadcasts inhibited the ability of hazmat crews to decontaminate people whose concerns about personal modesty appeared to outweigh their perception of life-threatening risk."

Working with the Media In Crisis Situations

Controlling Access – who can access the incident scene?

- The general constitutional rule, based on the First Amendment, is that media have same right of access as public.
- Cases involving emergencies or disasters have established that access can be restricted by controlling access to a government installation (e.g., an airport) or by cordoning off a public area.
- Media can photograph from public areas or permitted private vantage point.
- Some states have enacted statutory protection for news media access.

Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .

Working with the Media In Crisis Situations

Controlling Dissemination – can your prevent publication of information the media already has?

- The First Amendment and Supreme Court strongly protect the right of the press to publish the information they have. They dislike "prior restraint."
- The US Supreme Court has stated that the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society." *Associated Press v. US, 326 US 1, at 20 (1945).*
- So generally there is no legal way to forcibly prevent publication of information once the media have it.
- It is possible that you could get a restraining order to delay (delay, not prevent) specific tactical information from being published if you can show specific, immediate harm might result. (Deitch, LN: *Breaking news: Proposing a pooling requirement for media coverage of live hostage situations*. UCLA Law Rev. 1999; 47: 243.)

Working with the Media In Crisis Situations

Media Ethics Guidelines

- The Poynter Institute has published guidelines that are widely referenced (e.g., by the Radio-Television News Directors Association and Foundation, and the International Association of Chiefs of Police).
- The guidelines say the media should not:
  - Endanger law enforcement personnel (e.g., by revealing their positions);
  - Become players in an ongoing situation;
  - Increase the tension level, either for the suspect(s) or any hostages;
  - Otherwise make resolution of the situation more difficult.

Working with the Media In Crisis Situations

A Cooperative Approach

- Some communities have proactively reached out to the media with voluntary agreements.
- The agreements trade access for voluntary restraint:
  - Media promise to follow the Poynter guidelines; in return they get access if feasible, and maybe a PIO to work with.
  - May allow helicopter overflight if not dangerous.
  - Media also agree to pooling arrangement by which they designate one reporter to gather information, which is shared.

"All television and radio stations agree that during barricaded suspect or hostage situations they *will not in any way possible* interfere with the negotiation process. This includes contacting *by any means* suspects, or other persons involved in the situation without the guidance of the Chief Hostage Negotiator."

Working with the Media In Crisis Situations - EXERCISE

SITUATION REPORT

You are at a DOE research laboratory. The laboratory compound encompasses many buildings and there is a fence around it. The laboratory is open to the public once a year on open house day, but otherwise all visitors must obtain a gate pass from security and be authorized by a laboratory staff person.

An explosion occurs in one of the lab buildings and there is a fire. News media arrive as responders are still trying to put the fire out, assess the damage, measure any radioactive contamination, and determine whether the origin was accidental or deliberate.

Working with the Media In Crisis Situations - EXERCISE

(1) News media personnel approach the gate and demand to be let in to cover the event, saying that they have a constitutional right to access the scene of the disaster.

You can say no. Access to the facility may be controlled the same way it is for members of the public. Since the facility is normally closed to the public, it is not considered a public forum.

Working with the Media In Crisis Situations - EXERCISE

(2) News media personnel start taking photographs of the scene through the chain-link fence.

You may not prevent this if they are on open public property (such as a road or park) or on private property with the owner's permission. You could put tarps up on the fence to block the view, if you want.

Working with the Media In Crisis Situations - EXERCISE

(3) After you put the tarps up, news media personnel scale a tree in the forest preserve next to the site to get a vantage point from above the fence for their telephoto lenses.

No you may not cut down the tree.

Working with the Media In Crisis Situations - EXERCISE

(4) You find out that a local station is about to air a report that the explosion was due to sabotage, that there might be terrorist implications, and that it released dangerous levels of radioactivity. You are concerned that this will hamper your investigation, encourage similar acts at other sites, and panic the neighbors unnecessarily since the radioactivity release was really very minor. Besides, you really don't need this bad publicity right now as you are trying to get permits in place to build a new BSL-4 facility on the site to study anthrax and ebola virus.

You can try to get a restraining order from a local court, but you are unlikely to succeed unless you can show a very specific, likely, immediate danger, analogous to revealing the positions of hidden officers during a stand-off.

Questions?

For further information:

- Journal of Emergency Management, http://www.emergencyjournal.com/pn06001.html
- U.S. Fire Administration, *Fire Department Response to Biological Threat at B'nai B'rith Headquarters*, Washington, DC, www.interfire.org/res_file/pdf/Tr-114.pdf
- *Poynter Institute,* www.poynter.org
- Article on agreements with local media: www.pbs.org/newshour/bb/media/jan-june99/boston_4-29.html
- California First Amendment Coalition, www.cafc.org
- Congressional Research Service (CRS) Issue Brief: Terrorism, the media, and the government: Perspectives, trends, and options for policymakers. www.fas.org/irp/crs/crs-terror.htm
- Article on 'public forum' status on the Reporters Committee for Freedom of the Press website: http://www.rcfp.org/places/notallpublicpropertyisapublicforum.html
- Article on press access from firstamendmentcenter.org: http://www.firstamendmentcenter.org/Press/topic.aspx?topic=journalist_access