9 Response to Kidnap: Morality and the Law

CONFLICTING INTERESTS

Many institutions and individuals are involved in the response to a kidnap and their interests will often conflict.

The victim has interests which conflict in themselves: as a potential victim assessing the risk of kidnap, he has to balance cost and inconvenience against how seriously he takes the threat. He may prefer to take the risk rather than prejudice the efficiency of his work or sacrifice the freedom of his life-style; or he may be reluctant to appear scared or to place a burden on his firm or family. Once kidnapped, of course, he will place a far greater burden on them. He will be fighting for survival and may be under extreme coercion, persecution or torture.

His family may be less willing to abandon his life than he is himself. If the victim is a child they will not sacrifice it in any circumstances. The family will, however, be best advised not to negotiate for themselves because emotion would play too big a part, but they will be able to give indispensable information and support to those negotiating for them.

His company will be involved if the victim is kidnapped to extort money from it, and it has to balance its responsibility to the victim against its responsibility to its other employees and stockholders. It has to maintain commercial operations during the crisis or face bankruptcy. It may have a legal responsibility for adequate protection of its personnel (at least one victim and another victim’s wife are known to have sued their firms). It has also to preserve its reputation and the morale and confidence of its staff. It may face a conflict between some of these obligations and observance of the law.

Corporate headquarters – if the company is a subsidiary – may see the problem differently from the people on the ground. The corporation has ultimate financial responsibility, and has to consider not only morale, but the threat to its other subsidiaries if it gives way too easily. A communication problem may arise at vital moments of decision during negotiation.

The negotiator is appointed by the person to whom the extortion or coercion is being applied (e.g. the company or family of the victim).

His duty is to act in the best interests of his client within the law of the land. For that reason a local lawyer is often the best person for this role, as he is also accustomed to negotiating. The selection, briefing and operations of the negotiator are discussed in later chapters. It is preferable that he should be not too closely related to the victim or he may become emotionally involved.

Consultants specializing in kidnap and extortion are often valuable because, with experience of other cases, they can advise a family or firm which has never faced this kind of crisis before. Their role is discussed in more detail in Chapter 12. Once confidence is established they may, with the negotiator, be able to free corporate executives to continue commercial operations with only periodic reference to the incident management team.

The lawyers of the firm or the family (one of whom may, as stated, act as negotiator) must be involved in all important decisions in view of the complex legal liabilities which are discussed later in this chapter and in Chapter 11.

Stockholders’ interests must be protected if decisions on large ransom payments or on suspension of certain commercial activities are involved. Other corporations and joint venture partners may also be concerned and their legal rights must be borne in mind.

The police have a dual responsibility: to the victim and to society. In countries where there is reason to suspect corruption, ways must be found to guard against this as discussed in Chapters 7 and 11, but the police must be involved, both for legal reasons and because the pressure on the kidnappers will be severely reduced if they are not. In some countries several police forces may be involved (e.g. in Italy, the carabinieri, the city police and the finance police). Their primary aim will be detection and conviction, but they can only achieve this if they gain the cooperation of the victim’s family or firm, and this may be hampered by local laws inhibiting negotiation as will be discussed later in this chapter. The police will wish to emerge with their reputation for firmness and efficiency intact, and they should welcome and repay any cooperation which helps them to achieve a successful result.

The army may also be involved and may in some countries take over responsibility for anti-terrorist operations from the police.

Intelligence services will also be involved. Contact with them, however, is unlikely to be direct but is made through the police or other government agencies or, occasionally, in the case of expatriates, through the embassy. If channels for such contacts can be established this can be of great mutual benefit.