Applying Hostage and Crisis Negotiator Intervention Strategies in Commercial Dispute Resolution

By Jeff Thompson

Crisis intervention involves a collection of skills that law enforcement crisis and hostage negotiators use during a critical situation to contribute to its peaceful resolution. Despite their unique setting, these skills can also be usefully applied elsewhere, including in commercial negotiation and mediation.

During a crisis, a person experiences a situation in which they feel their goals are being blocked by some type of insurmountable obstacle, causing an inability to cope rationally. The person is overwhelmed with an overload of emotions that interferes with rational thinking and actions. A crisis is individually based. A crisis to one person is not necessarily a crisis to others.

One example is multiple lay-offs among office employees. Although this is unwelcome to all, most employees will be able to cope, but one co-worker may be propelled into a crisis and barricade him or herself in the office along with other co-workers and their manager.

This is just one type of incident that a law enforcement crisis negotiator might be called to respond to. Incidents can include hostage taking, though people being held against their will are not necessarily hostages. According to the FBI, a hostage is someone held against his or her will by the hostage taker for the purpose of being traded for something tangible, such as money or a car, in return. A person held without intent to be traded is instead described as a victim. Statistics show that these non-hostage situations account for 96% of the incidents law enforcement negotiators respond to.

The main goal of a law enforcement negotiator is to resolve the incident peacefully. This seemingly obvious goal begins with four initial stages that comprise the crisis intervention strategy:

1. Establishing communication and building rapport;
2. Buying time;
3. Defusing intense emotions; and
4. Gathering information to decide on the best negotiation strategy.

Each stage is explained below with an emphasis on how it can be applied in situations other than a crisis involving a police negotiator. These four strategies also apply to negotiators involved in business negotiations and other forms of dispute resolution. Although these situations are different from the perils ordinarily faced by law enforcement, they often share some of the elements of a crisis, thus the skills law enforcement uses can greatly benefit the process. Crises come in a variety of forms and negative emotions can (continued on page 63)
context of the dispute and potential litigation costs. She asked the other principal to “be the bigger man” and pay the $25,000, so that she could call the client and his wife to recompose the deal. Counsel for the defense defused the situation by saying it should not be viewed as blackmail or yielding to bullying, but simply an economic decision that benefitted the defendant in the short and long term. He pointed out that if the litigation was not resolved that day, both parties would spend many hours together in discovery and at the courthouse. We all allied ourselves behind settlement, and the principal agreed to have opposing counsel call the claimant to finalize a settlement.

The Return of the Frog!
Early in my mediation career there was a conflict between two wealthy neighbors who shared a private driveway. The elderly couple, whose kids were grown and gone, was “old money,” while the other couple was successful in business and had three children. A key focus of the dispute was two battery-operated plastic frogs that croaked in response to any motion near the edge of the younger family’s property. The older couple complained that they scared their dog and that the sound was annoying. There were other issues, such as a fence erected several inches over the set-back line, and the use of floodlights at night.

Initial progress was made when the parties agreed that I take possession of both frogs and hold them pending a final resolution. This was intended to be a sign of good faith and removed a daily irritant during the older couple’s frequent dog walking. After a number of sessions in which I mediated by going back and forth between the two homes for the caucus sessions, it appeared that a resolution was close. The escrow of the frogs was the last deal point; no one wanted to give in and the older couple was prepared to crater the whole deal and resume litigation if the frogs were reintroduced to the driveway’s edge. The younger couple yielded, with the comment that they hoped this made the neighbors feel that they “won,” and that things could get back to normal. And the frogs are still living happily in a box in my garage!

CONCLUSION
Mediators should identify as early as possible Last Words and plan the bargaining model and concession strategy in light of the personalities at the table. There are many effective ways to avoid an impasse on a minor point so patience and perseverance do work.

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derail a seemingly simple, money-based contract negotiation into a downward-spiraling, intractable dispute.

These intervention skills transcend crisis and hostage negotiations and can assist others by reducing (but not ignoring) the negative emotions and bringing the other party to a frame of mind that is more cognitively based. This allows the negotiator to appreciate the process without rushing toward a solution and to listen actively for valuable information in order to achieve the best possible agreement.

ESTABLISHING COMMUNICATION AND DEVELOPING RAPPORT
The first step to engaging a person in crisis is to establish contact and begin communica tion. Because these incidents are tense and stressful, especially in the initial moments, a crisis negotiator tries to initiate contact while also minimizing distractions. The same holds true for other types of negotiators. When deciding on the location for a commercial negotiation to take place, ensuring distractions will be minimal (or ideally prevented) diminishes the potential for interruptions that might derail the conversa tion or create confusion and misunderstandings by preventing messages from being fully received. Fortunately, commercial negotiators have a level of flexibility in the mode of communication (such as face-to-face, phone, or email) as well as the location (conference room, cafe, type of table) that is not available to law enforcement negotiators.

I have experienced challenges to rapport-building first hand when serving as a mediator in a location beyond my choosing. The room where the mediation session was taking place had people repeatedly entering and exiting for various reasons unrelated to the mediation. One person came in to get something from a shelf, another to get something out of the mini-fridge in the corner and another to remove a box. These interruptions created multiple distractions as it frequently broke the conversation. It also did not help that one of the people walked in while I was talking about how mediation is a confidential process!

Active listening is critical when establishing communication with a person during a crisis negotiation and remains so throughout the incident. By establishing communication and letting the person speak, a negotiator is using active listening skills. Active listening allows the person to explain what is happening to them. The “active” part of listening includes displaying empathy by letting the person know you are listening and understand (which does not, however, mean agreeing). This includes subtle responses, both verbal and nonverbal, such as repeating the last few words of what was said, minimal encouragers such as “I understand,” “mmm,” or “okay,” and asking open-ended questions, which allows the person to continue talking.

The value of using active listening in crisis incidents and other situations is that it helps develop rapport between the speaker and listener. Rapport exists when there is mutual attention, positivism and coordination. This contributes to a trusting environment and “liking” between the two people. Remember, any negotiated agreement needs both sides to say yes. Building rapport promotes a positive and collaborative working environment where two “yeses” can be developed. Just as research has displayed the value of rapport-building in crisis and hostage incidents, research into commercial negotiation has also demonstrated how rapport contributes to joint gains and mutually beneficial agreements.

BUYING TIME
Buying time, or not rushing the process,
Mediation Skills

is with good reason often described as a crisis/hostage negotiator’s best ally. Moving too quickly diminishes any rapport that has been developed and can create distrust with the person. Moving too quickly and offering solutions also goes against allowing the process to proceed naturally. Jumping ahead to a “right offer,” or what you might perceive as a great way to resolve the situation, at the wrong time can turn a “right offer,” into a wrong one.

For example, taking as much time as is needed to establish communication and developing the rapport described above creates a solid foundation for the rest of any negotiation. When a negotiator does not rush the process or aim to arrive at a quick solution, it contributes to a collaborative working environment where joint problem solving occurs.

CRISIS NEGOTIATION SKILLS SHEET

This sheet was designed based on research and feedback from law enforcement crisis and hostage negotiators, and is currently in use in a number of states. The same skills can be usefully applied in commercial mediation and negotiation settings.

In negotiations, emotions nearly always play a role, even in incidents that involve “only money.” Not rushing the process allows emotions to be expressed, acknowledged and defused. If a negotiator bypasses acknowledging emotions and attempts to move toward a resolution, emotions can build to an eventual outburst, or a stalemate can occur.

In another mediation I was involved in, two people were trying to resolve a contract dispute. One party insisted, in his opening statement, that he could not negotiate past a certain sum. Not surprising to me, after forty minutes of further discussion, that party made a phone call and was able to secure a deal that was just outside the amount mentioned earlier but that included concessions he had not thought of. Time allowed the metaphorical pie to be expanded by continuing the discussion and exploring more options.

DEFUSING INTENSE EMOTIONS

One of the benefits of effectively using active listening skills and allowing time to pass is that it allows emotions to defuse. Active listening is consistently mentioned as a required skill of all types of negotiators and mediators. This seemingly easy task is not always explained and there can be confusion about what it is, how to do it and how it actually defuses emotions.

Active listening is a collection of actions that when used, often in a gestalt manner, not only allows the person to speak and explain themselves, but it also allows them to know that they have been heard and—more importantly—understood (see “Skills Sheet” graphic for examples).

Through the use of strategic communication skills, including active listening, the negotiator gets two parts of the story from the person, who first shares the substance of what is going on (the importance of which is described in the next section), and second, the accompanying emotions. Validating the emotions through summarizing, reframing and mirroring (“losing your job has really upset you”) contributes to rapport, builds trust and increases actions based on rational thinking while reducing actions dictated by emotions.

When unchecked and unaccounted for, emotions can derail any negotiation and pre-
vented the process from moving forward. This process of allowing the person to tell their story helps defuse their emotions and returns their actions and communication style to one that is rational. Think of it as a scale tipped grossly toward actions dictated by out of control emotions. By using effective negotiation skills, the balance is brought back toward rationality.

In his book on hostage negotiation strategies (see “Further Reading”), Mitchell Hammer points out that it is vital for the negotiator to not only properly identify the person's emotions but also to respond accurately. In order to defuse an emotion, it must be labeled properly. The “Skills Sheet” graphic on page 64 provides examples based on Hammer’s work. Additionally, part of being able to defuse someone’s emotion is being able to use varying words. For example, instead of constantly saying, “You sound mad,” you might use other words, such as “frustrated” or “aggravated.”

**GATHERING INFORMATION/DEVELOPING A NEGOTIATION STRATEGY**

It is important to note that engaging successfully in one stage will have a positive effect on subsequent stages. As previously mentioned, allowing time to pass gives the person experiencing a crisis an opportunity to move from actions dictated by emotions to those grounded in rational thought. Additionally, the passage of time, when used strategically, gives the crisis negotiator the opportunity to ask additional open-ended questions.

Asking open-ended questions also allows the negotiator to gather vital information. Gathering information provides the negotiator with insight into the "why" behind "what" is going on. Specifically, it is the reasons, motivations, and interests of what the person did and wants to do.

An example might be finding out that a person is suicidal because they lost their job. Gathering more information from the person could give insight that the person is perhaps embarrassed that they will not be able to support their family financially. In crisis situations, law enforcement negotiators need to properly identify the emotion in order to formulate an accurate response. Similarly, commercial negotiators need to identify the concerns of their counterpart in order to address them and work collaboratively toward resolution.

Negotiators in commercial settings involving disputes realize that trying to get the information from their counterpart is not always easy, so they must look to other options to complete this task. While preparing for a negotiation, gathering information and gaining the perspective of the other side requires empathy. During negotiations, what seems like asking a simple open-ended question is important as it allows the other person to continue speaking. Also, embracing silence can be beneficial when used appropriately. Research reveals that expert crisis and hostage negotiators listen more than they speak compared to newly trained negotiators. This type of “dynamic inactivity” is powerful and helps any negotiator gather information.

For example, the crisis and hostage negotiators from the Louisiana State Police Department teach the 80/20 rule for their negotiators: a good negotiator should listen 80% of the time while speaking only 20%. A key benefit to employing this rule is that the person speaks and gathers more information.

In a situation where I was helping a client develop a negotiation strategy for a potential real estate purchase, I was happy to see he was well prepared on what he wanted and why he wanted things a certain way. What I also found out was that he had no idea what the other person wanted and why they wanted it. My suggestion to get more information by asking open-ended questions allowed my client to find out exactly the other side’s concerns were. This allowed both to work collaboratively and address their respective needs, ultimately reaching an agreement that made both of them happy.

An effective negotiation strategy is one that maintains a focus on your goal while also addressing the needs, issues, and concerns of the other party. Even in crisis and hostage negotiation settings where a negotiated agreement does not seem feasible, engaging in communication can still be valuable by providing valuable information for the tactical team if they have to make a forced entry.

**CONCLUSION**

A negotiator’s strategy in all settings seeks to work with the other person to explore legitimate options that will be mutually acceptable to both sides. This is grounded in 1) establishing communication and building rapport, 2) not rushing the process, 3) defusing negative emotions, and 4) gathering information: the negotiator then works toward influencing the other person to reappraise their situation.

Additionally, and applicable to all negotiation settings, preserving the person’s sense of self-determination is critical to achieving a jointly agreed-upon resolution. This is the goal of any negotiation. In crisis incidents it is called the “surrender ritual,” while in mediation and negotiation it is simply referred to as a negotiated agreement.

Although commercial negotiation and crisis negotiation may seem to be worlds apart, the strategies used by law enforcement negotiators can bridge the ostensible distance and provide value to commercial mediators and negotiators.

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**FURTHER READING:**


