

Difficult Conversations—Applying the principles from the best-selling book to the practice of law

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The practice of law is filled with difficult conversations: telling someone who has been severely injured that their case is worth less than they think; explaining child custody rules to a divorcing spouse; and explaining to the senior partner who hired you why you have decided to leave your law firm. These are just a few of the tough conversations many of us face in our practice. The best selling book *Difficult Conversations* put out by participants in the Harvard Negotiation Project several years ago lays out useful ideas and practices for making uncomfortable conversations less painful. Here are a few of the authors' ideas you may find helpful during your next difficult conversation. Decide what is making this conversation difficult. Usually it is one of three causes: a. there is confusion over "What Happened;" b. someone's feelings are hurt or ignored; or c. the conversation conflicts with the speaker's personal "identity." With respect to the "What Happened" conversation, be sure you suspend your belief that you know exactly what happened. You know your perspective only. Stop speaking and listen. Assume good intentions or perhaps no intention on the part of the actor, but while listening suppress your natural tendency

to assume bad intentions. After listening to all of the stories of what happened embrace what you heard even the parts that conflict. For example, in employment cases, the disgruntled employee is angry she was terminated but may also be embarrassed about the error, no matter how small, that led to the firing. Your summary of the story will be something like this: "Jane, it seems you are angry that you were let go by ABC Corporation for being 10 minutes tardy AND you are frustrated with yourself for being unable to shorten your morning routine and arrive to work on time." It is okay for these "What Happened" statements to conflict. We human beings are complex and to recognize that inconsistencies and outright contrary positions may exist within our stories is the first step to understanding the "What Happened" story. The authors refer to this practice as the "And Stance." Keep adding to the summary with "And Stances" to make sure you are capturing the full story.

In many difficult conversations, feelings run strong and unexpressed. Begin by recognizing feelings always exist and many times must be put out on the table to digest. A difficult conversation which ignores feelings is like watching a rock concert without music.



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You can see what is going on, but you have missed the point of the concert. Good people can have really bad feelings like jealousy, anger and sadness. However, Try negotiating with feelings. Feelings are based on our perceptions, but watch what happens when you shift your perspective to that of the other person in the conversation. For example, you are telling the law partner who hired you that you are leaving the firm. You feel sad and anxious to be leaving the position but at the same time you feel excited about the new job. How will the partner respond? He may be angry, but he may also feel relief because you have seemed distracted lately. He may be considering retirement and worried about your future rainmaking abilities. The point is that you do not know what complicated bundle of emotions he will feel and you cannot control how he will feel. You can make the departure as friendly as possible but let go of the idea that you can control his response.

However, my favorite concept from *Difficult Conversations* is the conversation which conflicts with the speaker's identity. We all find it terrible difficult to admit to an act which conflicts with our self-identity. Suppose that I believe I am a competent attorney and in the midst of a mediation, I learn that my opponent is arguing that I missed the filing date for the claim. If my opponent's position has merit, I have ahead of me a tough conversation with my client, but perhaps I need to have an even tougher conversation with myself. This mediation challenges my identity; I feel the earth quake and I put up impenetrable barricades to protect my identity. Ultimately, I may have to recognize that I can be both a competent attorney and one who missed a deadline. There are a few things we all need to accept about ourselves: we will make

mistakes; and rather than finding someone else to blame, how did I contribute to the problem. My former boss used to say the only people who don't make mistakes are those who don't do anything. Keep this mind when dealing with clients whose identities are being questioned. You may have a client whose role as a loving spouse is central to her identity and when her spouse asks for a divorce, that identity is dramatically challenged. The client needs to talk about her identity. The road to changing an identity to better reflect reality is long and hard. The passage of time can change that identity; many times counseling is helpful and a difficult conversation may also help. As long as the difficult conversation comes with the intent to help, not hurt, it can assist in creating a new identity aligned with reality. *Difficult Conversations* is

chock full of good suggestions for easing the pain of a tough conversation and these are just a few. Your local library's collection will include *Difficult Conversations*. Check it out!

1. By Douglas Stone, Bruce Patton and Sheila Heen - Viking Books 1999 (Hardcover) Penguin Books 2000 (Paperback).

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