Can we talk?

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Dispute Resolution Processes

Primary-party dispute resolution processes

Avoidance
Run
Do nothing
Control
Safety
Save emotional costs

Negotiation
TALK
Rights
Positions
Interests
Values
Priorities
Mutually beneficial gains

Confrontation
Fight
Power/Position
Aggression
Dominance
Ego-centric behavior
Expend everything
**Point to Ponder**

If I am right about our skill deficiency at talking, then that short-coming may contribute as much to the dilemma of the conflict or impasse as the substance of the dispute itself!!

What do you think?

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**Negotiation style—Default or Design?**

Cooperative; problem-solving

Competitive; adversarial
**Negotiation Overview**

Facilitating the “talk”—finding words that
- provide a frank exchange of information
- promote a productive level of emotional expression
- encourage flexibility
help each party
- feel that his/her views are communicated and understood
- understand the other’s viewpoint AND appreciate its reasonableness—at least from the other person’s perspective
shift the focus—past to the future
shift the focus—conflict to the resolution

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**Four-Phase Negotiation Process**

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<th>ORIENTATION</th>
<th>INFORMATION</th>
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<td>Resolution</td>
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**Four-phase Negotiation Process**

**Orientation—Focus upon Process**

- Introductions
- Ground rules
- Issues
- Agenda
  - Substantive matters
  - Collateral matters
- Rapport—a relationship bridge. Is it strong enough to support the weight of the “heavy” negotiations? When the talk gets difficult?

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**Four-phase Negotiation Process**

**Orientation—Focus upon Process**

Collateral Matters

Would you like to dance [negotiate]?  
- who’s leading?  
- “chit-chat”—“face” issues  
  - shaping face  
  - saving face  
  - lifting face  
  - disfiguring face  
- Hey, you are stepping on my ego!  
- Oh, has the music stopped?
**Four-phase Negotiation Process**

**Orientation—Focus on Substance**

Pre-negotiation preparation
- Case preparation—issues; facts & figures
- Factual arguments / legal arguments
- BATNA—WATNA
- Planned strategies
  - agenda control; who bids first?
  - what information is viewed as confidential?
  - concessions; bottom line
  - adversarial; cooperative—aggressive; conciliatory
- Effective “sound-bites”—ready to deliver
- Opponent’s position; opponent’s interests

**Four-phase Negotiation Process**

**Information**

Communication—enhance it !!
- Speaker’s views are valued—communicated
- Confidentiality is kept intact—communicated
- Desire to help and willingness to allow
  expression of feelings—communicated
- Understanding—communicated
- Verbal and non-verbal judgment is suspended—
  not communicated
Four Keys to Effective Communication

1. Speaker is focused

Four-phase Negotiation Process

Information

Collateral Matters

PARENT EGO STATE
Behaviors, thoughts, and feelings copied from parents or parental figures

ADULT EGO STATE
Behaviors, thoughts, and feelings which are a direct response to the here and now

CHILD EGO STATE
Behaviors, thoughts, and feelings replayed from childhood
**Four-phase Negotiation Process**

**Information**

Collateral Matters

- **PARENT EGO STATE**
  Behaviors, thoughts, and feelings copied from parents or parental figures

- **ADULT EGO STATE**
  Behaviors, thoughts, and feelings which are a direct response to the here and now

- **CHILD EGO STATE**
  Behaviors, thoughts, and feelings replayed from childhood

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Be quiet. You should be ashamed of yourself. You are stupid!!

Hang in there; I will take care of you.

Well, let’s see what we could do about that. Given your interest in “___”, one option might be to . . .

I will not go to bed!

I just can’t; I’m useless; I’m not good enough. I never get anything right.

Wow!! This is fun! I’m so special!

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7% of the message is in the spoken words; 38% the way the words are said; and 55% the body language.
Four Keys to Effective Communication

1. Speaker is focused
2. Listener is attentive

Listener Attentiveness—perception

Did you say what I’m hearing?
seeing?
understanding?

Communicated!!
**Four-phase Negotiation Process**

**Information**

Passive Listening—listener attentiveness
- Posture
- Eye contact
- Nods—facial expressions—gestures
- Silence
- Verbalization
  - “Uh-huh”
  - “Please continue. What else happened?”
  - “Can you tell me more about the . . . ?”

**Four-phase Negotiation Process**

**Information**

Four Keys to Effective Communication
1. Speaker is **focused**
2. Listener is **attentive**
3. Speaker **feels** that the listener **hears** what the speaker is saying
Active Listening—content and feeling

“What I hear you saying is that you are worried that you are being treated unfairly.”

“Sounds like you were very disappointed when your brother agreed to meet with me.”

“If I hear you correctly, your primary concern is that your access to the barn and the back 40 acres never be blocked.”

“So, your main concern about the lease is . . .”

Four Keys to Effective Communication

1. Speaker is focused
2. Listener is attentive
3. Speaker feels that the listener hears what the speaker is saying
4. Speaker feels that the listener understands the speaker’s viewpoint and appreciates its “reasonableness”—at least from the speaker’s perspective
**Four-phase Negotiation Process**

Emerge
Generate—problem-solving; “brainstorming”
Exchange
   Offers
   Demands
   Developed collaboratively
Evaluation—tied directly to interests
Priorities; combination
Optimum solution

**Option**

**Four-phase Negotiation Process**

Full agreement
Partial agreement
Conditional agreement
Memorize—terms of the deal
Progress
   Information exchanged
   Stipulations entered
   Goals set
Impasse—no music; no dance; no talk; no deal; no operation

**Resolution**
**IMPASSE—Negotiations Stalled**

**What barriers prevent a successful negotiation**

- Resolution of a factual and/or legal issue is critical
- Insufficient information and/or incentive
- Position taken—save face—ego
- Ineffective negotiation process—“take it or leave it” approach
- Collateral matters “muddy the water”
- Procrastination—we don’t talk
- Unreasonableness—we won’t talk
- Unskilled—we can’t talk

Other considerations?

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**IMPASSE—Negotiations Stalled**

**Consider a third-party dispute resolution process**

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