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Tell it like it is

Delivering difficult information with compassion and clarity


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By Miles B. Cooper

The doctor entered the room, said a warm, "Hello," read the room, and then went straight to the point. The doctor knew from experience that those anxiously awaiting potentially life-altering information wouldn't process anything said before delivering the results. "The scans look good," the doctor said, "I don't see anything that concerns me." A collective release could be felt by our lawyer and the lawyer's family.

Setting the stage

Law school doesn't teach us how to tell folks they don't have a case or that a judge's recent decision ended things. Most of us learn this the hard way. We see it or do it poorly and modify over time to improve. Oncologists tend to do this well, and we can take a page from their training. Before delivering difficult news, consider the setting. "We've completed our investigation. We need to discuss important findings with you. We prefer to do that face to face, although video can work." This allows the recipient to mentally prepare for significant news and for the one delivering it to see how the person is doing.

Direct is kind

People sometimes fear being direct by offering platitudes or unrealistic hope. That's not kind. The best approach? A simple greeting, then deliver the information directly. "There are limitations on cases against the government. One is called discretionary immunity. Unfortunately, after investigating, we see that as a complete bar to this claim, meaning we do not think your case can be won." The news comes first, followed by space for emotional reaction. Then any further explanations and question-answering. Clarity honors the recipient's dignity and emotional intelligence. Dancing around difficult information or drowning it in pleasantries creates confusion and extends suffering.

Many professionals were taught to soften difficult messages: start with positives, sandwich criticism between compliments, or begin with extensive context. These approaches feel kinder to the deliverer but often create anxiety for the recipient, who just wants the answer.

Processing time is essential

The silence following difficult news is powerful and necessary. After delivering bad news, pause and allow space to process. This might feel uncomfortable, but filling the void deprives the necessary emotional processing time for the recipient. This pause serves another critical purpose: It gives the recipient dignity. They can compose themselves, formulate questions, or express emotions without being rushed into the conversation's next phase. That next phase can include anger or denial. Rather than becoming defensive or attempting to defuse legitimate emotions, one should acknowledge the responses.

Once the core message is delivered and processed, then – and only then – comes the explanation. For a declined case, this might include specific legal hurdles, causation issues, or evidentiary problems. The explanation should be thorough but accessible. This isn't the time to dazzle in Latin or five-dollar words. Good lawyers explain complex issues in simple terms. The client deserves to understand precisely why their case lacks merit, explained in terms they can comprehend and relay to others who ask.

The path forward

After delivering the information and explanation, the lawyer should acknowledge that it is a lot to take in and can be difficult to process it all. One should make clear that this conversation isn't the only opportunity for questions. "This is a lot of information to absorb all at once. If you or others you speak with have additional questions that arise later, we're happy to have a further conversation."

Law, as we often hear, is a practice, not perfection. When declining a case, there's wisdom in acknowledging other lawyers analyzing the facts might see a different path. When the events are particularly catastrophic and complex, it can be useful to recommend getting a second opinion. This can include giving the names of those with experience in that particular area. Offer to provide the file and answer any questions to others looking at the case.

Don't give false hope to those who have already tread many paths. If one is the second, third, or umpteenth lawyer, and no-one has been direct enough to say it like it is, have the courage to do the right thing. Most legal malpractice lawyers recommend against telling people they do not have a case as far as one is concerned. The result? People who receive vaguely worded rejection letters telling them the case was declined for business reasons and to consult another lawyer immediately or risk blowing the statute of limitations. Let these individuals off the hook. Be direct. Tell them if several firms have said no, then it likely means there's no winnable case.

Outro

Back to our doctor, delivering the news to the lawyer and family nearly a decade ago in darker times. Clear scans meant instant relief in the room. Life would continue normally. For now. Because one never knows what the Fates have in store. And for that reason and so many more, treat those around you as if this time could be the last time. As the Stoics said: *Momento mori*. Yes, it's Latin, but syllable for syllable punches well above its weight.

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