

Courageous Conversations:

How to say everything you wish you didn't have to

Part 2 of a 3 part series: *Practice, Preparing with Intention, Partnering Language, and Pausing*

by **Susan Ann Koenig**

In this series we explore why even lawyers sometimes have difficulty saying what needs to be said in a way that others can hear. In Part 1 we covered the basics of identifying the conversation you've been postponing, what that's costing you, and how to see clearly what's at stake. We looked at the importance of taking the time to ensure the "who, what, when, where, and why" of the conversation were each in keeping with our intentions.

In Part 2, we get to the heart of what needs to be said. We'll look at why the words you use may not be the most important part of the conversation. We'll look at the qualities that you want to demonstrate during your conversation and the intentions for the conversation.

The Words We Dread Saying

The practice of law is a profession which demands that we have uncomfortable conversations. We are routinely messengers of news clients don't want to hear.

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"You have no legal basis for a claim."

"They have ended negotiations and filed suit."

"For these types of matters, the firm requires a \$10,000 retainer."

"I predict that if this matter proceeds to trial that we will lose."

"It will cost more to litigate this case than the amount in dispute."

"The verdict was not in our favor."

Whether it is about fees, the state of the law, the position being taking by opposing party, or an unfavorable court ruling, lawyers are often called upon to have courageous conversations with clients.

Then there are the conversations with opposing counsel. These can be as straightforward as turning down a settlement offer or as delicate as inviting a member of the bar to reflect on the ethics of their behavior in the courtroom.

Apart from clients and lawyers outside of our office, there are those conversations that need to take place just down the hall. Many a lawyer has put off talking to an associate about ignoring client development or speaking to a partner about coming to the office hung over from drinking.

My most dreaded dialogues arose during my days of practicing juvenile law.

"You will not be able to see your children."

"Your parental rights were terminated."

"Our appeal was denied."

I discovered that no matter how difficult the topic, the worst of it usually boiled down to a handful of words.

COACHES' CORNER

When I realized that I was capable of getting the toughest sentence out my mouth, I knew that I could figure out the rest. Today I recognize the value in getting clear about what I am most afraid of saying. When I see it is often just a few words, it doesn't seem quite as scary.

For lawyers who (dare I say?) can be at risk for large egos, being vulnerable and making apologies may be the last type of conversation they want to have. These, in fact, are often the simplest: I was wrong. I'm sorry. What can I do?

Still dreading saying those few words? Try writing them down and saying them out loud.

"I'd like to revisit how my compensation is determined."

"I'm withdrawing from your case."

"Your performance is not meeting expectations."

The words that we have never spoken before are likely to be the ones that make us most anxious. If you are a seasoned litigator, certain client conversations are old hat. If you are new to managing or supervising others, personnel talks can be tough.

Have compassion for yourself if you notice that conversations which are easy for others are a challenge for you. It's often simply a matter of practice.

Avoiding "I'm Right/You're Wrong" Conversation

When you prepare to have a conversation that really matters, consider your intentions. Lawyers very naturally go the place they know best: Being an advocate for their position.

If your intention is to be a zealous advocate, you'll want to study up on negotiation and litigation tactics. However, if what you seek is a meaningful dialogue, keep reading.

Like any other lawyer, I like to be right. Even better, I like other people to agree that I'm right. Being lawyers, we can always build an impressive case for why we are right. (Just ask your friends.) What I have learned, however, is that in that the harder I try to convince someone else that I'm right, the less they are listening and the more they are defending. Instead of being my client's ally or my paralegal's supportive boss, suddenly I become the enemy.

To have an authentic conversation, it is necessary to remove your lawyer hat of "I'm right/You're wrong." The minute you launch in that familiar direction of arguing your point you have ceased to have a conversation and have begun your oral argument. Save your brilliant advocacy for the courtroom.

The minute you begin making the other person wrong you have put them on the defensive. You are no longer on the same team. You are the offense. They are the defense. You keep attacking, they get protective and defend. It becomes a battle,

not a conversation.

We all know that the "I'm right/You're wrong" conversations can go on for an eternity. Most of us have heard ourselves say, "I've had this conversation with them a thousand times!"

Get clear on your intention for the conversation, and make it something other than proving that you are right and the other person is wrong.

What Matters More Than Words

All of us can remember the words of some painful conversation from our past. There were those cruel words spoken to us as a child, and those thoughtless angry words that escaped our lips only to be regretted the moment they were uttered.

While the words we speak in a high stakes conversation are important, the reality is that how we are being is more important than the words themselves. Before launching into an important talk, reflect on the qualities you are willing to demonstrate in order for you to be your best.

Are you willing to be respectful, regardless of the behavior of the other person? Are you willing to be courageous, even if the conversation makes you anxious?

Are you willing to be compassionate, notwithstanding your judgments?

If you stay true to your intentions, you will speak with integrity no matter what happens on the other side of the conversation. The more you stay true to your best values and highest intentions, the greater the prospects that the other person will, too.

Partnering Language

So by now you have decided to have the conversation. You have decided the "Who, What, When, Where, and Why." You have practiced the dreaded words at the heart of the conversation. You have set your intention and chosen the qualities you are willing to demonstrate. Still not sure how to begin?

Knowing how to start these conversations is a hurdle that can easily be overcome with the use of partnering language. Inviting the other person to partner with you in the conversation allows you to start slowly.

Imagine how it feels to hear someone say, "We need to talk." Don't you immediately feel like you are in trouble of some sort? Compare this to, "Would you have time to help me look at something that's been on my mind?"

Notice that the latter invites the person to talk with you, rather than suggesting that you are going to talk at them. Rather than putting the other person on the defensive from the start, you send a message that you are open to listening to what they have to say.

COACHES' CORNER

Other partnering phrases can sound like this:

“Could we put our heads together and explore ways to make this easier?”

“Would you be willing to sit down with me and visit about our marketing?”

“Can we look together at how the Miller case is going?”

Remember, the other person is likely to be as anxious about the conversation as you. Starting with partnering language will make it easier for you both.

Pause

Don't rush important conversations.


Be spacious. You may have been thinking about this conversation for a long time. However, the other person may be surprised and need space to take in what you are inviting them to look at.

Pause to allow moments of silence. It is tempting to judge a statement made by the other person and to respond with disagreement or advice.

Pause to observe yourself and the sensations in your body. Is your voice getting loud? Is your speech getting rapid? Have you folded your arms across your chest? Is your heart beating fast?

Take a few deep breaths. Resist the urge to make the other person wrong. Revisit your intention for the conversation and the qualities you promised yourself you were willing to demonstrate.

Most importantly, pause to listen. As Stephen R. Covey said, seek first to understand, then to be understood. We constantly urge our witnesses to listen to the question before responding. These conversations are a great opportunity for us to practice what we preach about the power and importance of listening first.

If you feel ready to have that conversation you've been putting off, I hope you do. If you'd like to learn more, stay tuned for Part 3. We'll look at more tools and techniques for ensuring the conversation goes well once it is underway. Until then, do try this at home! 

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