

COLLAB ORATE
Peacemakers #10
Difficult Conversations

Lawyers conduct difficult conversations for a living. It might help legal practitioners if client secrets and duties of confidentiality did not preclude us from recounting with great specificity our clients' struggles and conflicts. I suspect that, decades ago, three scotches into an end-of-day yammer at the local watering hole provided context for telling such stories with low risk of client injury. Those lingering alcohol-drenched huddles now seldom occur, at least in my world. The need to tell these stories drives some lawyers to writing novels. Fictionalizing attorneys portray client dilemmas, but invent a world to do so ethically. I fictionalize now. But, of course, this story "happened."

Helen's mind was failing. She could feel herself losing bits: a grandniece's name, her summer slippers, where one buys that excellent granola. Helen needed a bit of help, and knew it. She seized the bull by the horns. Helen invited her thirty year old, recently-divorced granddaughter, Clarice, to live in Helen's too-big house. In exchange, Helen hoped for companionship, shared meal duty, and the occasional memory jolt. Their arrangement worked wonderfully. Clarice saved a bit of money and was getting back on her feet financially. Helen's dementia progressed, but she was happier with a roommate. Rumbling began. Grandson Robert griped that grandmother Helen favored Clarice. Helen's son, Raymond, and daughter, Zellie, had never been intimately involved in Helen's decline; Boeing demanded too much of them. Both worried that Clarice might be horning in on their maternal inheritance. And not without cause did they stew. Helen pondered why she would leave her estate to two distant children when beloved Clarice provided care daily. As Helen declined, contention bubbled, then boiled. Clarice cut back her hours at work to be more available for Helen. Ray and Zellie howled. Helen grew disgusted. Helen called my office, wanting to revise her Will. After telling her story, Helen asked my advice. I told her that reducing her children's share of her estate in favor of Clarice invited a will contest after Helen passed. We spoke frankly about Helen's eventual death and the internecine bloodbaths that so frequently follow the passing of a well-heeled matriarch. I asked Helen if she might want to attempt to address the underlying problem directly, rather than just speak from the grave through her Will. Helen was skeptical. Two days later, she called. She wanted to try.

Douglas Stone, Bruce Patton, and Sheila Heen ("SPH") wrote *Difficult Conversations: How to Discuss What Matters Most*, a fruit of their labors in the Harvard Negotiation Project. Difficult conversations are those that make you gulp in contemplation. SPH argue that every such discussion is really three: talk about facts, talk about emotions, and talk about meaning. The fatal temptation lies in defending positions. When parties advocate positions, difficult conversations arrive stillborn. SPH advocate a different approach. One must adopt a learning, not asserting, posture. What do others think? Why do they think those things? Stand in that person's shoes. Inquire. Paraphrase; it will keep them talking. Reframe ugly verbiage as "strong feeling" talk. Summarize to make sure you got their view right. Acknowledge others' feelings and contributions. What would you be feeling? Step up alongside. Experience their experience. Quash feelings of offense. Share how others' actions impacted you. But don't accuse. Assume others well-intentioned, but ignorant of your needs. Identify how each player contributed to the problem. Own your piece of the problem and say so. Describe your own feelings. Don't demand people not feel what they feel. Though feelings change, no one can change their feelings at will. Acknowledge feelings. Apologize, if necessary. SPH advocate exploring how the difficulty is affecting your identity. Avoid denial and hyperbole. Know there is more to you than the criticisms of others. Find a revised, but balanced, view of yourself that includes new information emerging from the difficult conversation. That can be painful. It is not, however, fatal. When you understand all the players, suggest solutions. Hear proposals. Compromise, if appropriate. Adopt a plan of action, if possible. If no common approach is workable, frankly acknowledge that fact. Agree to keep thinking about the problem. Thank people for talking openly.

Helen's family gathered at my big gray conference table. Tea and cookies waited. The family shared, sometimes well, sometimes irritably. An hour, then two passed. Tears splashed. Grudging admissions met thanks. Helen did not revise her Will. Ray and Zellie would inherit. All agreed Clarice should be paid the market value of her services to Helen. And Helen made a standing lunch date with Robert every Wednesday at Scott's Bar and Grill. A good day of mediation. A difficult conversation.

(Brad Lancaster mediates and collaborates family, elder, and probate issues. He works with his spouse/paralegal, Kim, and little dog, Sofie, in Shoreline as Lancaster Law Office. Email: brad@lancasterlawoffice.com).