Episode 51

Difficult Dialogue: Managing Challenging Conversations

Intro

On today's episode of Risk on Air by Lawcover, dealing with difficult people.

Julian: Welcome to Risk on Air. I'm Julian Morrow, and today we're talking about managing challenging conversations, and we're joined by Robyn Bradey who, among other things, is the author of The Resilient Lawyer, a manual for staying well at work, which is available on the Lawcover site, but also someone with a huge amount of experience, Robyn, in having difficult conversations. Welcome.

Robyn: Thank you, lovely to be here.

Julian: I'm sure this will be a lovely conversation, and you won't have to deploy too many of your skills.

Robyn: I'm sure that is the case. That's what I was expecting.

Julian: Well, let's just see. I wonder if we could start by just hearing how you came to this subject, speaking to lawyers about having difficult conversation.

Robyn: Yeah, that's an interesting history. Reluctantly is the short answer. I started off educating lawyers about their own mental health when a study, the Beyond Blue study, indicated the distress in the legal profession in New South Wales. So I was travelling around for the Law Society and Bar Association helping them identify their own mental health issues, and then, of course it became obvious that the people they were dealing with often had the same concerns.

Julian: And what's your background for this sort of work?

Robyn: I'm a mental health accredited social worker. I've had 44 years experience this year, which means I'm old.

Julian: So you're off your L's.

Robyn: Yep, yep, absolutely. Started my working life as a residential youth worker for the Anglican Church and then I did a lot of trauma stuff - I would spend a lot of time in hospital emergency departments in hospitals and then moved into private practice about 33 years ago and then the law seemed to…

Julian: Was beckoning to you.

Robyn: Yeah well, I tried to run as fast the other way as I could, but they caught up with me and it kind of went from there. So now I do mental health stuff for the judges, I do the community legal centres, I've been working with Lawcover for a long time and the Law Societies and the bar associations and so on.

Julian: And that's interesting because you've obviously approached these issues in a whole range of different contexts then different parts of the health systems, different capacities. Are the skills that you need to develop to have difficult conversations applicable everywhere, or are there particular challenges that you've noticed amongst lawyers that call for a specific response?

Robyn: I think they are applicable everywhere. I think that the issue for the lawyers is the nature of lawyers, largely being perfectionists, and being risk averse themselves and not wanting to fail, and then the adversarial nature of the law tends to make lawyers retreat from the emotional side of things and just try and do the black letter law stuff and even to denigrate the so-called soft skills.

Julian: Yeah, but of course there are risks that come with ignoring those things, aren't there?

Robyn: Yes, yes, yes, and commonly early on I've heard many people tell me that they were told by their older lawyers to kill their empathy in order to be able to deal with this.

Julian: Right, yeah, so we're not recommending killing empathy

Robyn: No, no no, because that will just produce a psychopath by definition, so that's not particularly helpful. So, what we're needing to aim for there is not being afraid of the emotions. But the most useful model I've heard applied to this is through the Mind Potential Group and a guy called Rasmus Hougaard, who talks about turning your empathy into compassion, which is action. So, you listen with empathy to the person so that you understand the meaning of this for them and their distress, and then you put your work hat on and you start making decisions and you go to action and then that way you don't trigger into distress - they can come with you into strategy and that's the nicest model I've seen.

Julian: And there's so much already there. Okay, let's talk about the first element of that, listening with empathy. On the off chance that there might be practitioners out there who actually aren't listening with empathy, what's the difference between ordinary listening or lawyer listening and listening with empathy?

Robyn: Somebody puts it I think Stephen Covey calls it listening to understand. So, rather than sitting there with your legal hat on getting ready to solve the problem, listening with empathy gets you to understand the impact of this event on that person. It's not sympathy so that you're going down there with them, but that you've understood, as you've listened to them, what's happened and how they feel about it. And then you use that information then to turn into the action and the compassion.

Julian: And one of the things to be really aware of is that a conversation approached in the suboptimal way could be triggering for someone, and that's going to make communication ineffective. What are the signs that someone's been triggered, if they're not obvious?

Robyn: Well, some of them, actually some of them just phase out, so they kind of they're looking somewhere else in the room and they're kind of glazed over a bit. You know your options when you're triggered is fight, flight, freeze. So some just go into anger and start pushing back at you. Some shut down and avoid eye contact and get distressed and others go into the zoning out to somewhere else kind of thing.

Julian: And do those different scenarios lead to a different suggestion for how to engage with a person in that space?

Robyn: Absolutely. So if we go back a step and talk about the other way to think about this is a trauma-informed approach to having these conversations and seriously assuming that everyone has potential triggers or potential trauma, including the practitioner. The model that I've used with people is one from a trauma survivor who became a psychologist, Marsha Linehan, and it's one I call my customer service model, and she says, the principles of that respect approach everyone with respect, no matter what you think about their behaviour. As soon as you lose respect, this interaction isn't going to go well. Mindfulness to track the conversation carefully and to watch for responses. Very hard to do over the phone, actually, but listening for changes of tone and voice and I'm looking for those eyes looking away, feeling someone tense up and, when that's happening, to adjust so that you're tracking their stuff. The best example of mindfulness in a conversation I've ever seen is Andrew Denton interviewing a young, schizophrenic woman some years ago. It was the money or the gun. First to respect and safety, he took her outside and sat on a park bench because she wasn't good around crowds and he sat beside her, so they weren't too confronted. She'd been allowed to bring her dog, and he sat beside her, so they weren't too confronted. She'd been allowed to bring her dog and a book of her artwork with her. And then she's describing experiences where she has psychotic episodes in public and she described one particularly distressing one and he could see her getting distressed and he just asked her to think about what she needed at the time from other people. And she was able to come to that.

But coming in and out of her distress he would just gently guide her to somewhere safer. And at one point he said have you got any happy pictures in your book here? And there was one of a surfing dog and so on. So he just, just kept noticing what gear she was in and changing the tone of the conversation to keep her safe and by the end of it she's able to tell him her whole story and some very distressing stuff and feel really safe. It's the best example I've ever seen. It was empathy turned into compassion, gold, I reckon, actually.

Julian: Tell us more about the customer service model. What do you mean by that?

Robyn: So this is a therapy model based on the dialectical behavioural therapy model by Marsha Linehan. It starts with respect, then mindfulness and then skills understanding what skills the person has to be able to keep tracking you. So checking for understanding, trying to work out whether language translation is an issue or whether mental illness might be happening today or not. And, my favourite bit challenge that you challenge behaviours that aren't helpful as soon as they happen and try and get a change of that behaviour.

Julian: Now, that's interesting because I mentioned challenging conversations, and so really we're talking about challenging in two different senses, aren't we? The conversation is challenging, we're dealing with a person who might be having a tough time and or a subject that's not pleasant to have to confront, but then you're saying also, a part of that is to challenge the difficult behaviour, tell us about that.

Robyn: So the idea is that as soon as they're doing so maybe they're yelling at you, maybe they're swearing, maybe they're being disrespectful and particularly in a first interview, actually, the first contact with them, you need to actually pull it up and go "*Whoa, you're yelling at me at the moment. I need you to drop your tone down a bit because I can't think straight enough to be able to help you here*". There are other ways to do that which we can talk about later without doing a verbal challenge, but actually to go back a step - she actually recommends an engagement process at the beginning where you lay down the rules of engagement - this is what I can do for you in this situation, What are you expecting from me? And these are the things I need from you to be able to make this relationship work going forward. And you would cover payments and you would cover how you treat each other when you're in interviews and so on, and whatever else you thought might be of concern. And you set that up in the first one, with both parties actually having the opportunity to go actually we're not behaving the way we thought we were going to in this and be able to call the other to account and reset if you need to.

Julian: Because I can imagine that in a difficult situation, one impulse, perhaps a natural one might be avoidance, to just sort of let's just get away from this and we can come back to it later but you're saying that's not the way to go.

Robyn: No, that's right. In fact, if there's something particular about the lawyers in this space, lawyers need a brief of evidence and lots of examples of it before they'll act. So they'll get the bad behaviour and then they'll go, "*Did she mean that? I can't believe he's talking to me this way*". And they won't challenge it the first time, and then by the time the fourth or fifth occasion occurs, and they really do need to stop it, then they get, "*What are you bringing that up for now? I've been doing it all along*". And you end up in an argument about the timing of the challenge rather than the validity of the challenge. So lawyers are particularly reluctant to call things up, which is kind of funny given the adversarial nature of lawyers and their love of an argument.

Julian: Might be dipping more into the risk aversion or just the aversion.

Robyn: As with all relationships, beginnings are important, and so the customer service agreement that Linehan suggested was look, we know there's going to be difficulties in this relationship. Let's map out how it's going to look so we both know how we're going to deal with each other and we can both call each other to account if it's getting off track and we don't get into a situation where we've got behaviours happening that are just derailing the whole process.

Julian: So what do you actually do? Like if someone's shouting at you, what do you do?

Robyn: Well, if they're with you, put your hand up literally and go "*Whoop, need you to lower your voice? That's getting kind of loud*", and if they've unconsciously gone there, they'll follow you, actually. But another technique that is controversial from everyone I try and teach it to but absolutely works, is raise your voice to the same level as theirs for just a couple of words and then drop down to the level you want to operate at.

Julian: What's the thinking behind that?

Robyn: That's the mirror neurons in the empathy circuits in their brain, and most of our understanding of each other is nonverbal and we've been kind of reading the other person by the facial expression, tone and voice, smell and all those kinds of things for far longer than we've understood the words coming out of their mouth and they've got a set of kit in their brain that goes oh, he's yelling hasn't gone over me, lowered, I'll come in and we follow. Same if they're talking too fast, you speed up a bit and then slow down. If you get the shut down person who's really quiet, drop your voice right down to a lot lower than you're comfortable with and bring it up a notch and, generally speaking, they'll follow you without realising that that's what they've done, and you don't even have to do the challenge.

Julian: Tell us more about the putting the hand up. What's the thinking behind that?

Robyn: Again, just that visual sign of stop. Something's happened here. Again, the gesture is more powerful to our brains than the words, because we've had the gestures for much longer than we've been speaking and so we learn a whole bunch of verbal matching stuff.

It's one of the reasons why blokes shape up to each other when they're going to have a fight and it works every time, unless one of them is drunk. That's women unfortunately been socialised to shape down and look like a target, so the other brain goes oh and keeps coming. So we've managed what's your intention towards me by body posture and by facial expression for a lot longer than we actually spoke it.

Julian: So you're challenging the behaviour. You're doing it straight away to establish the boundaries. What if it doesn't work?

Robyn: Well, yeah, look, none of these are silver bullets and I've got no solutions for people who don't want to…

Julian: I imagine you'd be much less busy if they were.

Robyn: Absolutely, absolutely, but keep trying something different. One of the other tricks of the trade, if you like, is the modes of operation idea where human beings process the world primarily visually, auditory or kinaesthetic, which is through their body and their senses.

Julian: Now I'd be guessing that most lawyers would probably be in the auditory.

Robyn: Absolutely right. Absolutely right. So if a lawyer keeps thinking they're stating it more and they've got the words in their head and they're very pedantic about words, (God bless them). Then they stay in auditory, and the other person just doesn't get there. So, the idea is if you've been quoting chapter and verse but it's not landing, check for understanding before that perhaps that you don't understand what I'm saying or that you don't like what I'm saying, because sometimes that'll save you a lot of bother. But go into visual, kind of get a flip chart out, go to a whiteboard, get them to look at the file with you so they can see what's happening, and turn your language to where do you see this going and what's coming up in your mind when you're thinking about this, and so on.

Julian: So that's interesting. So what you're saying there is that you're actually using words your lawyer skills, your auditory skills but you're using words that will evoke the other person's style of communication.

Robyn: Yeah, you're going for their mode. And in fact perpetrators have known about this for years. This is what guys in pubs wanting to pick people up and do harm to them do - they stand off and watch for a while and they work out what the primary mode is and they come in on that mode and then they say things like, we get each other and it feels like empathy. So your visual person describes things in colours and describes people's facial expressions and so on. So if you turn your language to that, you'll get a click. If that's what they are, your kinaesthetic person's, your vibey person, and they get the world through their body and their vibes first and they'll say things like "*This is making me sick to my stomach, you're doing my head in, this is creepy*". Again, if you change the language to that, then that'll be recognised by their brain and then you just stay in that mode. You've only got two to change and once you get the right one, then you might be out of your comfort zone, but you're communicating. The empathy comes in.

Julian: And then I suppose something that's going to be really critical to the lawyer is I have advice that I want to give. Not only do I want to convey that advice in a way that's going to work for my client. I want to check, I want to know they've heard it. Have you got some tips for how to do that?

Robyn: Yep. Well, so there's a couple of things I'll say about that. One is going back to that idea of Stephen Covey's of listening to understand. So just put the hold on the advice, giving part of your brain while you hear the client's view of what the situation is, and then put your pitch and put what you think should be happening and then check for understanding. And, if I back up a little bit before that, not long sentences, not the whole brief, alarmed, disturbed, shutting down, brains have short concentration spans, even in the brightest of people, so the lawyer needs to make sure they're pitching it, not in legalese, but in very easy to understand, concrete language, and then get them to say back to you what you just said to them in their own words. And then you'll hear what filter it's gone through in their brain and you can correct the misunderstanding at that point, or they've got it and you're fine and you can keep going.

Julian: And I suppose lawyers will always be thinking in terms of confirm in writing - take a note now and then confirm in writing. But it would be a mistake, I imagine, to assume that because you've put it in writing, you've communicated it.

Robyn: Yes, exactly, exactly. So, you need at the end of each verbal interaction with someone to know at the end of it that they've been able to express back to you what they've understood has happened and you're both on the same page about that, and then you can put it in writing. But if you assume they've heard it because they're nodding in all the right places, but you haven't noticed that they've drifted off and they've done some completely other filter in their brain. I used to see this all the time in medical settings where doctors were giving bad information to relatives, and I was present one day when the information the doctor gave a dad was that basically, his daughter who had drowned in the backyard pool and been resuscitated, was not going to survive but wasn't dying at the moment, basically. And the man got on the phone and rang his wife, who was still at home, and said it's all right, she's going to be all right, and there was nothing of what the doctor said that meant that, but his brain was listening for she's dead and he didn't hear anything else. And the social workers want to blame the doctors in these situations. If I hadn't watched the interview happen, I wouldn't have seen what people's own agenda does in distress. That makes them hear something completely different to what you actually said.

Julian: If you are in that situation where someone's in distress and you're trying the techniques, is it safe to assume that if they're successful, you can actually go ahead with the conversation now or are there times where you've just got to go, actually, we can't have this conversation.

Robyn: Yeah, sometimes you need to shut down. So, again, you just keep checking if people are with you and how they're travelling. There's a thing that sits alongside it, though, which is the invitation to tears. If you see that people are tearing up and you actually just say to them it's okay if you cry. 9 times out of 10, that'll make them kind of suck it back in and they'll be fine, or they will cry, which brings the relief that they need. But yes, in that point, are you okay to go today, do we need to do this another day? Just follow your own kindness but not being afraid of the emotions. The other thing that lawyers as a large group are frightened of tears and there's also a basic human instinct where none of us like to be the bad guys. Only the psychopaths enjoy inflicting pain. So most of the rest of us will try and do anything to stop the client from crying and delay giving the bad news and so on, and then feel guilty about the crying. So that's where having the work hat on firmly, knowing that you've got your law right in the decision and what you're conveying but keeping the distress of the person in mind so that you can keep them safe in the conversation.

Julian: Sometimes it can come out of the blue, take you by surprise, but other times you'll go into the conversation knowing that you're heading to a difficult place. You know you've got to deliver that challenging message. What advice would you give to solicitors, lawyers, preparing for that sort of conversation?

Robyn: Prepare your opening line and prepare your closing line. Turn up ready to be present. So this is again that mind potential stuff from Rasmus Hougaard, which is just an elegantly beautiful model about how to communicate bad news. So, he says A: license yourself to have the conversation because that's your job, you're not being mean. Turn up, be present with the person when you get there and be aware of how they're in your space and then have your first line, have your last line, and the last line is toward a plan and a strategy as to what's happening next as a result of that conversation. And don't do it off the cuff and don't do it you know, think about the timing of the day, think about where they're doing it, think about privacy and obviously all those other things. There's a few other ridiculous things that come in, like wearing red and black when you're giving bad news is a really bad idea.

Julian: Right okay.

Robyn: Alarmed brains don't respond well to red and black, so just have a think. And then I look at all the young lawyers out and around in Sydney…

Julian: A lot of bad news going out today.

Robyn: And people throwing out their whole work costumes and ditch the compliment sandwich. Don't start with a waffle or something nice. Put the nasty bit in the middle and then try and say something nice at the end, which most people have been taught is the way to deliver bad news. Apparently, emotionally, what happens is the waffle, especially if the client's expecting bad news or has a history of getting bad news. So they're alarmed at the beginning, the nice thing comes from the other person, and it relaxes and then when you put the bad news in, it feels like a complete attack. So they emotionally then respond to how you told them rather than what you told them.

Julian: What if it doesn't go well? And you're reflecting on it, and you feel like maybe that's on me, like I really didn't handle that very well.

Robyn: Yeah, well, I would take a very quick opportunity to have that reflection with another person, whether it's with a supervisor or a partner or EAP from the firm or someone. Have a think in that context whether you need to contact the client again and actually own up and apologise for the interaction or take responsibility for the thing going pear-shaped however it did. There's a little debriefing model by a guy called Adam Fraser, called the Third Space, where he says reflect after the interaction. What just happened? What am I telling myself happened? What's my evidence for this? (Lawyers will like that bit). Rest for a minute, just do a breathing exercise, make a cup of coffee, get up and stretch or do whatever, and then reset. What do I need to do now? Do I need to do something about that? Do I need to do a file note about it? Do I need to tell the supervisor, or do I need to call the client back? And then finish it with it there, rather than mulling over it overnight or leaving it to five o'clock on Friday afternoon.

Julian: These sorts of situations obviously can be distressing for the client, but they can be really stressful for the lawyer as well. What would your advice be about how to treat yourself well after going through a difficult conversation?

Robyn: There's a few things I'll say about that. One is actually be proud of doing this work and back your skills. And there's research coming through now from Martin Seligman and others about post-traumatic growth rather than post-traumatic stress disorder. His studies were with the military, I'm not sure where the others were, but he noticed that soldiers deployed to the same engagement who signed up for the cause, wanted to be there, were able to concentrate on deploying their skills under fire and did so as best they could, didn't concentrate on the terrible content, and they not only didn't get PTSD, they actually got post-traumatic growth and they got a boost in their life skills and in their life as well.

And certainly that sits with the Judith Herman stuff one of the great grandmother of the whole trauma area, with her book *Trauma and Recovery*, where she said that where a person who's been through something terrible gets a process where someone else has borne witness to what's happened to them, then that in and of itself is helpful to them, regardless of any legal or financial outcome. So being proud of being the person that gives the person the best shot at the process and doing your job as best you can on their behalf.

And then we have a little mantra with my refugee lawyers, which is turn your losses into data. Don't just beat yourself up about it going badly or not turning out the way you had hoped but work out what happened and then do it differently next time. And then you just keep getting better at what you do, which, for the legal profession, brings up the other issue of challenging perfectionism.

Julian: Because I was going to say I imagine many lawyers would think, "*If I just work harder it'll happen*".

Robyn: Yeah. Yep, and when you're in that fight, flight, fright stuff that's exactly what they think. And they also think I shouldn't have made a mistake. I can't make mistakes, and I can't tell anybody, I made a mistake. When the UK Bar surveyed their membership back in 2014, 69% of them said that when they made a mistake or when they were not travelling well mentally, they didn't tell anybody. They kept it alone inside their own head because they were afraid of being seen as imperfect and not up for the job. And that wasn't an unreasonable fear. The way the professional treats itself, so isolated inside their own head, with these worries, not working out the learning from it, not working out how to proceed and not getting the support is a diabolical place to progress your career. And we also know there's plenty of research that suggests the more collaboratively we work with others and the more we work on work that we're proud of. So thinking about you know what good is happening for the client and the community from the work that you're doing and being proud of it. The other one is just you have to be physically well. You have to be paying attention to all of the wellbeing stuff. My favourite reference for that best book title and author combination I've ever heard of, *Everything you Need to Know to Feel Good* by Candice Pert. It's a sad fact that Candice Pert died of a heart attack at 69, possibly diminishing her complications in the well-being space. But she was a pharmacologist who actually identified the opiate receptors in our brain and she did the science on exercise, sleeping, mindfulness, even aromatherapy, stretching and all sorts of stuff. Her technical book is called the *Molecules of Emotion*, which has got the science, and the practical application book is everything you need to know to feel good or my other best titled book was, *Why Zebras Don't Get Ulcers* by Robert Sapolsky.

Julian: Why Zebras Don't Get Ulcers.

Robyn: And the answer is they don't think. Once the traumatic situation's over, they're onto the next thing. But this bigger cortex thing that we've got and the bigger well-developed, problem-solving, risk-averse cortex that lawyers have got make you ruminate. And then the ruminating we now know the thought is the same as the activity to the brain. So even though the conversation is long over or the event is long over, you keep bringing it up in your mind and going over it all the time. You're doing what the neuroscientists call neural kindling. You're just burning that bad memory into your brain further and further, making it hard for you to get rid of it. When you actually need to be deploying your brain away from it, which is why I recommend the whole profession and we're getting the judges to do this now, do mindfulness, where you just learn to get your own mind back and when you realise that you're worrying about that thing you had last week with that client or you're waking up thinking about it, you quickly notice that that's what it is and you go why has that come up? Do I need to do anything about it now? If so, do it. If not, okay, what would I rather be thinking about? And manually deploy your brain to either some nice music or a breathing technique or your exercise or ring a friend that'll make you laugh or whatever, so you don't stay on it. You know the brain's going to throw that stuff up anyway, that's not a problem. But the ruminating that lawyers do, they continue to do their own heads in for years after the first upsetting thing, and there's a high attrition rate in the law.

Julian: Robyn, it's been a fantastic conversation. You've been working in this space for a long time. Do you reckon lawyers are getting better at this?

Robyn: Yes, I think so. Various sectors are ahead of others I think. New Zealand's way ahead of the rest of us, I have to say. But yeah, there's certainly, since those wellbeing stuff in 2007, 2008, and various other studies that have happened since, certainly they're onto it. But there's still a fair bit of resistance from the old guard and from partners in the big firms and that kind of thing. But even the judges now are moving to proactive wellbeing sessions and thinking about how they treat the chamber staff and how they deal with people in their courts.

Julian: Sounds like there's a few difficult conversations that still need to be had.

Robyn: Oh, absolutely. I don't know if I've got the lifespan, but we'll give it a go.

Julian: Robyn Bradey. Thank you so much for joining us on Risk on Air.

Robyn: My pleasure. Thank you very much for having me.

Outro

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