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In Memos and Letters, Deliver the Good News Up Front

Unless you would look foolish, be a pal first, not a pain

By Kenneth F. Oettle

A classic line of low humor is, “What do you want first — the good news or the bad news?” Assuming you have both good and bad news for a client, deliver the good news first unless the bad so far outweighs the good that you’d look ridiculous delivering the positive message first.

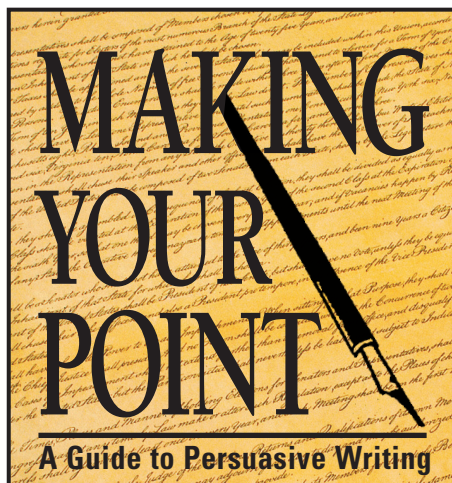
Naturally, you don’t want to look like a Pollyanna or a fool by touting marginally good news if, overall, the news is bad. But the recommended rule of thumb has a rationale. Good news makes clients feel good about their situation and about you. If the good news isn’t substantially outweighed by the bad, then you won’t look foolish for having delivered the good news first.

You must have heard the expression “killing the messenger.” Clients sometimes kill messengers, metaphorically, and so do law firm partners. Be sensitive to that possibility while accomplishing your fundamental task, which is to deliver the truth.

Suppose, for example, that your client wants to sell electronic products such as cameras and display monitors to casinos. You review the gaming laws of a dozen states to determine if the client will have to be licensed as a vendor. The client considers any licensing process to be a burden.

Your research produces both good

news and bad news for the client. The bad news is that in several states, one of the client’s electronic devices would be deemed gaming equipment if used in a



casino and would require the client to undergo an expensive and time-consuming licensing process.

The good news is several-fold: No state deems any of the client’s other products to be gaming equipment; only two states require a license to sell nongaming equipment; and the process for obtaining a license to sell nongaming equipment is inexpensive and short.

Which news would you deliver first — the cautionary note that several states view one of the client’s products as gaming equipment or the upbeat

news that the rest of its products won’t require any licensure or, at worst, will trigger minimal licensing obligations in only two states?

I would begin with the good news, saying, “Most states do not require licensure to sell nongaming equipment, and those that require licensure are satisfied with limited application forms and a relatively nonintrusive investigation.” The good news goes first because it makes the client feel good, and it shows that you have the client’s interests at heart. Having developed helpful information, you will show the client what it can do rather than what it cannot do.

The associate who did the research on this project began his memo to me with the bad news — that one of the items the client wished to sell would be deemed gaming equipment and would require an elaborate licensing process in several states. I asked if he would have begun the memo to the client in the same way. He candidly said yes — he would have begun with the bad news. He figured that the client would want to know its potential inconveniences as soon as possible.

The associate then showed an aptitude for self-analysis — always a good thing in a business where self-deception lurks everywhere. He conceded that his viewpoint regarding the structure of the memo might have been skewed because he did most of his research on the fees and forms required in states that license vendors who sell gaming equipment. Most states don’t license vendors who sell nongaming equipment and therefore have few statutory and regulatory

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references on that subject.

As a consequence, the associate's focus was on the law establishing licensure requirements for vendors of gaming equipment, and he was thinking about those laws when he wrote his memo to me. He allowed his personal focus to dictate the order of presentation.

In considering how to begin the hypothetical memo to the client, the associate did ask the necessary question: "What do I want the client to read first?" In this respect, he was proactive, which is good. But the premise on which he based his conclusion — that the client wants the bad news first — was wrong.

Clients don't like bad news. They would rather know what you've done to enable them rather than restrict them. Some clients say they want to hear bad news first, but usually they don't. They just don't want to be given false hope. Unless you have a reason to slap them in the face, give them the good news first.

In this case, the associate correctly deduced that the client needed to know its limitations. But the client also needed to know its opportunities. So the importance factor was a wash. At that point, client relations takes over. Deliver the

good news early to enhance client relations.

You may be nervous about beginning with good news when you also have bad news, fearing that you will look like a cheerleader and a suck-up. Some lawyers are cheerleaders and suck-ups, and they get away with more of it than I'd ever think possible. But this isn't that situation.

Leading with good news when the bad news is manageable shows you to be a person of judgment. If your judgment seems to be good in matters of communication, a client may think, until proved wrong, that your judgment is good in legal and business matters as well. A good bedside manner goes a long way.

Puzzler

Which sentence has the best placement of "not only" — Version A or Version B?

Version A: ABC Corp. was required to bear not only 50 percent of the restoration costs but also the cost of reviewing the documents once they were restored.

Version B: ABC Corp. was not only required to bear 50 percent of the restoration costs but also the cost of reviewing the documents once they were restored.

Many writers would choose version B because the early appearance of "not only" alerts the reader that an intensification is coming, in other words, that the first thing ABC Corp. was required to bear was only part of the story — that ABC Corp.'s burden was increased, maybe doubled or more, by whatever else it was required to bear.

The trouble with Version B is that it lets the reader down at the phrase "but also," where the reader would expect from the grammatical structure that the sentence would continue as follows: "ABC Corp was not only required to bear...but it was also required to bear..." Expecting another "required to bear," the reader will be disappointed and will have to adjust. The interruption and the work needed for the adjustment will cost you a tempo and a tiny withdrawal from your goodwill account. ■