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LIFE INSIDE

# The Hardest Phone Call a Prosecutor Has to Make

Law school doesn't prepare you for delivering bad news to victims and their families.

By JEAN PETERS BAKER

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"This is Jean," I say. "I'm from the prosecutor's office. I would like to talk with you regarding a case in which you were the victim. Could we meet in person?"

"No, just tell me why you're calling," replies Sue\*, a sexual assault victim.

"I would rather speak in person."

"Just tell me now."

"I believe this may be news that you would like to hear face-to-face," I say, softly. "I'd like to meet with you to discuss."

"No. I need you to tell me now."

There's a pause as I decide what to say.

“The case was overturned by the Court of Appeals.” I just say it straight-out.

“What does that mean?”

“It means that we will need to start over.”

I hear the sound of her throwing up. Then the call is disconnected.

There is no training for this in law school. It’s a part of the criminal justice system that is seldom seen or even portrayed in pop culture. But like a doctor who must inform a patient of some terrible illness, a prosecutor like me often has to deliver tough news to victims, or — when a victim has died — to their families.

I first learned about Sue more than six years after her original trial. There, she had testified that on an evening in the late 1990s in Jackson County, Missouri, she was driving to her cousin’s house when she ended up on a dead-end street. Realizing she was lost, she asked some men on the street for help. One approached her.

Suddenly, he pulled out a butcher knife and ordered her to let him into her car. He forced her at knifepoint to drive to a remote location and raped her.

Sue quickly reported the crime to police. Thanks to DNA testing, a semen stain on her clothing led them to her attacker.

A jury convicted the man. But then an appeals court found errors, including potential juror misconduct. (During the trial, one juror had driven to the area where Sue got lost and reported to the other jurors that it was, in fact, easy to get lost there.)

That’s where I came in, as an assistant prosecutor in the sex crimes unit. When the appellate decision came down, I was randomly assigned the task of telling the victim the bad news.

I first tried to find her contact information in our files. I sent a letter, but it was returned unopened.

Then I found what I believed was Sue’s mother’s phone number. When I called it, to my surprise, the victim herself answered. I learned later that due to the rape, she often used her mother’s name to hide from the outside world.

Delivering the worst kind of news is never easy. Still, my policy is to tell a victim's family as much as they want to know.

In homicide cases, families often ask: "Did my son suffer?" I prepare for that question by imagining myself having lost a loved one. How would I want a prosecutor to convey that information?

If the autopsy report is not clear on the question of pain and suffering, I interview the medical examiner prior to meeting with the victim's family. I am grateful when I can convey a quick death — the bullet penetrated the heart, for example. The mothers, eager, strained, bracing themselves for the worst, are often particularly relieved to hear this.



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When it is undeniable that a loved one suffered, I try to find the right time and the best way for the family to hear it. But sooner or later, I have to tell them. They weep. They say, "No." They stand up and move around the room because they can't sit still.

Then there are the situations when the evidence is insufficient to file a criminal charge against the individual we believe snuffed out the loved one's life. Sometimes the "streets are talking," but no witnesses are willing to speak with police. These families are left to see their son or daughter's reputed killer around the neighborhood. All we can say to them is that we'll keep trying to build a case, that murder has no statute of limitations, that they should not try to seek their own revenge. Sometimes they stay silent when they hear that.

There are times when we meet the family at a crime scene before we even know them. Desperate for information, they linger, waiting for word of whose body might be under a police tarp. They look for clues. What did their loved one wear that morning?

I've been asked to check the victim's shoes or to look for other identifying markers. I've watched the family member furiously dialing their cell phone, hoping the victim will answer and put their fears to rest — until they hear the phone ring from the body on the ground.

Victims and their families do not ask to be thrust into the criminal justice system. They have little voice in the direction of the case beyond asking questions. Justice will turn on the evidence and on the skill of the prosecutors who must convincingly present it.

All the while, they are given a crash course on the law. They must struggle with concepts like admissible evidence, reasonable doubt, hearsay, and the constitutional safeguards that protect a criminal defendant.

A few days after I called Sue, the sexual assault victim, we met in person. Her husband accompanied her.

"Lady, you kicked up a lot of dust in my home," he said, even before crossing the threshold into my office.

I thought to myself: *I'm sure that's right*. I exacted the worst day of her life on her all over again.

We sat down. Sue told me how she had testified at her trial only days before delivering her first child. The judge had refused to grant a continuance, even though the defense received them earlier in the trial for arguably lesser reasons.

Over time, I gained Sue's trust and convinced her to continue to pursue justice by testifying at a new trial.

The case ended in a courtroom hallway. The defendant's attorney, nearly breathless, caught me to say his client was willing to take an offer of 18 years in exchange for pleading guilty. (The prosecution had originally been seeking 22.)

I picked up a phone.

“He’ll take 18 years,” I told Sue. “And it will be done.” I began to go into more detail about the terms of the deal, but she quickly interrupted.

“Take it,” she said. “Take it.”

The deal ensured that the defendant would remain registered as a sex offender. And the family, finally, would win some peace.

Before she hung up, Sue said, “Make me one promise.”

“Yes.”

“Never call me again.”

*Jean Peters Baker is the elected prosecuting attorney in Jackson County, Mo. (which includes parts of Kansas City), as well as the vice-chair of the national board of the Association of Prosecuting Attorneys.*

*\*Not her real name. lll*