
IMAGINING BAD NEWS & WISHING FOR MAGIC AT HOGWARTS

CLIENT COUNSELING

Teaching Note

This client counseling exercise serves as a light-hearted introduction to the challenge of delivering bad news to a client while keeping the client's trust and confidence). I have used it for many years in my Client Counseling workshop and professional CLE workshops on giving bad news to clients. (I had initially developed a somewhat shorter version of it before writing my book: *Client Science: Advice for Lawyers on Counseling Clients through Bad News and Other Legal Realities* (Oxford 2012). It was first used in a presentation on the topic of bad news for Procter & Gamble's legal department. I mention that to alleviate any concerns that a professional audience might find it "too silly.")

Please note also that much of the teaching note is drawn from the enormous THE CLIENT SCIENCE COURSE INSTRUCTOR'S GUIDE, Second Edition, 2017, available at ClientScienceCourse.com. The shorter version of this simulation is found on that website.

On teaching with IMAGINING BAD NEWS & WISHING FOR MAGIC AT HOGWARTS

I emphasize the importance of delivering bad news particularly when the client still has a choice or a decision to make that will influence his fate. "You lost the motion" is bad news, but there's no decision to be made. I note that clients sometimes resist the bad news because they don't believe it's true, they think the lawyer exaggerates, or their egos, emotions, etc., don't want to face realities. Thus, the clients reject the lawyer's advice (not believing the bad news) or try to change it.

It's important to reiterate that our goal is not to FORCE a client to follow our advice. It is, however, our responsibility to make every effort to deliver it so that our clients eventually have the same picture of reality in their heads. The problem arises when the client doesn't accept that bad news picture as real.

Within the class context and, time permitting, in a CLE workshop, I often begin with a question about why it's difficult to deliver bad news to a client, and how NOT to do it. Sometimes, after introducing the topic, and even before discussing how not to do it, I ask the students to do the Hogwarts exercise in the WORST way possible – just for fun. Lots of laughter and hubbub follow. I just give them a couple of minutes to read their roles and then a couple of minutes to do an "absolutely terrible job." This is followed by a quick debriefing: ask the students to nominate the worst terrible ways they delivered the bad news. And then ask the clients how they felt about it. This should be light and brief, not heavy-handed.

Whether or not we've tried it the "terrible way" first, I always leave room for two short movie clips: one from the BBC series "Doc Martin", and one from Larry David's "Curb Your Enthusiasm." (I have those as mp4 files; they should be available with the simulation materials. Just in case: The Doc Martin clip is from Season 3 Episode 7, titled "In Sickness



and In Health.” It should be at the following link: ” It should be at the following YouTube link: <https://www.youtube.com/watch?v=OsiSDmIrMAA&list=ELmoaK3ejNj8k&index=7>)
The Curb Your Enthusiasm clip is at <http://www.youtube.com/watch?v=IqGN6aWKYUI>
These links and/or the video clips should also be on the Client Science Course website.

- About the “Doc Martin” clip:

You may have to introduce the premise of the Doc Martin series: Doc Martin was a brilliant vascular surgeon in London when he developed a sort of allergic response or aversion to blood. So, the British health service reassigned him to Portwenn, a small town in Cornwall. The Doc Martin character is brilliant but completely lacking in social or emotional intelligence. In the video clip, Doc Martin has just finished examining a patient who turns out to have Klinefelter’s syndrome. The Doc is sitting at his desk to give the patient the bad news. First, the Doc takes a phone call from his fiancée that is a genuine medical emergency (never mind that the wedding is scheduled for later that day). I think the Doc can be forgiven for taking the call, but he might have apologized or provided an explanation to the patient. Most important is the way he delivers the bad news: bluntly, and without any feeling or empathy. No need to belabor this on the debrief. The audience gets it.

The result is that the client feels the lawyer is “not on his side” and may become suspicious of the lawyer. Depending on the circumstances, the client may be less candid in the future. (A patient won’t tell her doctor about new symptoms. A defense client in an age discrimination case might not mention that he has since hired someone younger into a position much like the plaintiff’s, etc.)

- The “Curb Your Enthusiasm” clip:

I introduce the next clip from the Larry David show, Curb Your Enthusiasm, noting that some people have the opposite problem. They just can’t get the bad news out because don’t want to face the sad reaction.

In the clip, Larry David has just flown in from California. It starts as he is in a cab going to his parent’s apartment in New York. His father opens the door, surprised to see him. At first, there’s some natural chatter, but when Larry starts asking, “Where’s Mom?” and “How’s Mom?”, his father evades the question. It eventually comes out that his mother died a week or so ago. It gets worse when Larry learns the funeral has already taken place because his father “didn’t want to bother him” ...He just didn’t want to convey the bad news. The clip is terrific – the acting is phenomenal - and a reflection of just how much we hate to tell someone bad news even if they will learn it sooner or later.

I follow these segments and discuss with a quick presentation what I call “A Doctor’s prescription for giving bad news, consistent with Chapter 1 in Client Science. At the risk of being self-serving, if you are using this in a classroom context, I strongly recommend assigning this chapter as reading beforehand. Perhaps ask if any students have had the



experience of hearing really bad news, or watching someone else in that position, does the idea that we become disoriented ring true to them?

Here's the doctors' bad news prescription:

- 1) Provide a gentle preface before bad news: "I do have some real concerns that I want to talk about with you.... it's important that we discuss these concerns together, so that you can decide what will be best." In general, the word "concern" works well here, though of course, it's not the only word to be used. "Concern" does indicate bad news is coming. The point is to use language that conveys that the information to follow also matters to the lawyer, who is thinking about and feeling for the client.
- 2) After the preface, the advice is to provide STRAIGHT CLEAR information- NO WAFFLING, SOFTENING, FUDGING, WIGGLING, FALSE HOPE. I will emphasize to the students that all the skills learned in this course must be brought to bear here. They should remember to speak slowly, with lots of time for pausing for the client to absorb the information and come to terms with it emotionally.
- 3) I highlight the advice that the order of presentation matters (learned from actors in 700+ sessions of the Final Counseling Skills exercise and outlined in Chapter 1 of the Client Science book). When explaining WHY your prediction about the case or the motion is less optimistic than you would like, present your client's arguments FIRST! Make the presentation articulate - lawyerly - so that the client can imagine you arguing with the judge or the jury in this way. (You are a great lawyer, and you really do understand his case!) THEN and only then, present the other side's arguments, and explain why they are problematic. In practice, lawyers often don't do it this way, they just relate the negative arguments - the other side's arguments, opting not to reinforce his client's belief in his arguments. But in fact, while the lawyer is "playing devil's advocate" for the other side, there's a little voice in the client's head, objecting, thinking of the counterargument, and perhaps thinking this lawyer isn't so smart or loyal after all. That's why it's more powerful for the lawyer to articulate his client's side first. The client knows the lawyer is smart and on his side. When the client then learns that his lawyer can hold the two sets of arguments or evidence and reach the conclusion that the other side is more likely to win, it's powerful, sobering, and difficult for the client to ignore.

Now, have the students deliver the Hogwarts bad news well to each other, consistent with the prescription. This should take about 7-10 minutes. If a group finishes early, you can suggest they give each other feedback. Follow this with a debriefing discussion.

Whether in a class or a CLE, follow this exercise with a "real" bad news lawyer-client counseling simulation. In my course, I have followed it with the *Upscale Accusations* case and, later, the Final Counseling Skills Exercise (both available in this simulation collection and on ClientScienceCourse.com. I've also created a few more "bad news" prompts for law firm CLEs. These should also be available within this simulation collection.