
ALL BAD NEWS CLIENT COUNSELING

Teaching Note

All the simulations in this folder are aimed at the same thing: delivering bad news to clients without backlash! The major difference is the practice context in which they sit: intellectual property, personal injury, employment, contract, real estate development, or appellate. Most but not all reference pending litigation. In many instances, the “bad news” is an opposition motion likely to succeed (summary judgment!), or a liability defense likely to be successful or not, whichever way is bad news for the client. In others, it’s predicted failure to achieve an agreement term, or an inescapable increase in estimated costs. Most of them are quite short, focused solely on the bad news task. Two of them – Hapless Harvest and Upscale – are somewhat longer. I used these in my Client Counseling course. They were intended to enable students to practice the “bad news” aspect as well as other lessons from the course (psychology of positive and negative framing, overall meaning to the client, recognition of core emotional concerns, etc.)

The award for most whimsical goes to simulation - “Imagining Bad News and Wishing for Magic at Hogwarts.” I have used that in my course, and in CLE workshops (time permitting) as an introductory exercise, before turning to the more realistic bad news settings.

Rather than repeat my central advice for delivering bad news to a client, I refer the reader to Chapter 1 “Bad News and the Fully Informed Client” from my book: *Client Science: Advice for Lawyers on Counseling Clients Through Bad News and Other Legal Realities* (Oxford 2012). A pdf of that chapter is included in this simulation folder.

When introducing the lesson using the Hogwarts exercise, I ask participants to pair up: one reads the doctor’s role and the other the patient role. They are short, and purposely funny. I then ask the doctors to deliver the bad news to their patients in the most terrible, insensitive, awful way possible – just for a couple of minutes. Then debrief: “What was the worst thing your doctor said or did?” “How did that feel?” Comments from the doctors? This generates great buzz, lots of laughs. Sometimes I’ll ask if anyone has known of a doctor who delivered bad news in one of these ways. A bit of discussion.

Then I’ll follow with a brief lecture on giving bad news, points that lay out the content of Chapter 1. I focus on the reason for “prefacing”, piece by piece empathetic delivery without waffling, fudging, or minimizing, and use of voice and gesture. I make sure to highlight the advice to review the client’s side/perspective first, before turning to the reasons the news is bad (why the motion will be decided against us, the contract interpretation won’t go our way, etc.). All of this is in the chapter. Next, participants are charged with re-playing the bad news at Hogwarts – this time, “by the book.” (You can suggest they switch roles and give the new doctors a moment to review their facts. Most should be known by now.)

After Hogwarts comes the real thing: practicing on one or more of the realistic, practice-based scenarios. The debriefing is straightforward: what worked well? What did the lawyers find difficult? Why? How did the clients feel and respond? What phrasings seemed to work? What didn’t succeed? Note that the website created for all my classroom Client Science teaching – ClientScienceCourse.com – contains a more extensive teaching note and two videos of a lawyer counseling a client through bad news in the Upscale Accusations case (longer than the version here)

and two videos of counseling in Hapless Harvest. For both exercises, there's a "by the book" and a "not by the book" version. One of my favorite moments in the course is when students recognize what is not quite right about the "not by the book" video – and why "by the book" works. It's clear to all that they would not have seen it the same way before the course.

In a CLE workshop with limited time, it's perfectly fine to skip the Hogwarts magic, and get right to the chosen legal practice-based scenarios. (I will also invite participants to substitute one of their own, if they'd rather.) I still like sneaking in a warm-up, a two or three minute "do a terrible job" phase. The exercise leads to rich discussion of real clients, their foibles and their charms, and the difficulty of delivering real bad news.