

What Do Clients Want From Their Lawyers?

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Working Paper: Last updated October 13, 2009

Part One was initially prepared for the Board of the Signet Accreditation Program, for which the author served as Academic Consultant from 2006 - 2008. The Signet Accreditation Program is an initiative of The Society of Writers to Her Majesty's Signet, an independent professional body headquartered in Edinburgh, Scotland, which is generally considered to be the oldest bar association in the world. More information about the Signet Program is available at <http://law.gsu.edu/Communication/Signet.htm>

Part Two is a very brief summary of the author's presentation at the 2009 Annual Meeting of the Law & Society Association, entitled *What Clients Want From Their Lawyers: Are Big Firm Clients Different?*

Part One: Social Science Findings About Individual Clients ¹

I went to [this solicitor] because of her reputation and expertise – she is a part-time registrar and has a big reputation as a specialist in this area – but she just doesn't listen. She listens for part of what I have to say, and then interrupts, saying something like: 'OK, I've got the picture, what we'll do is ...' and she hasn't really got the picture, she's only got half the picture. I think it's partly because she so busy and also because she's simply not used to giving clients a voice. ... [W]hat's more she has actually made me frightened of expressing my views. I am about to change to another solicitor.²

In 1997-98 the Law Society of England and Wales commissioned a study of solicitors and clients regarding their perspectives on quality service. As part of this research project Hilary Sommerlad, a senior lecturer in law at Leeds Metropolitan University, interviewed 44 clients of 21 different solicitors in the north of England.³ Fifty per cent said that they had previously used a solicitor whom they did not like.⁴ Some, like the client quoted above, were also dissatisfied with their current solicitor.

It has become increasingly common to read in bar journals reports that “communication problems” are an important source of client dissatisfaction,⁵ but the examples given tend to assume that “bad communication” is just a matter of careless or sloppy practice: not putting initial instructions in writing, unreturned phone calls, not keeping clients up to date on their cases, and lack of clarity about fees. In contrast, the communication problems identified in the opening quote above do not arise from carelessness (although the lawyer is described as “busy”) but instead seem to be related to a fundamental way the lawyer interacts with clients. This specialist with a “big reputation”

¹ This section draws upon a number of prior publications: see *Legal Education After Law School: Lessons from Scotland & England*, 33 *FORDHAM URBAN LAW JOURNAL* 193 (2005) (special symposium issue on Professional Challenges in Large Firm Practice); *Speciality Certification as an Incentive for Increased Professionalism: Lessons from Other Disciplines and Countries*, 54 *SOUTH CAROLINA LAW REVIEW* 987-1009 (2003) (co-authored with Adrian Evans); *Evaluating Effective Lawyer-Client Communication: an International Project Moving From Research to Reform*, 67 *FORDHAM LAW REVIEW* 1959-86 (1999); and *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, (co-authored with Karen Barton, Gregory Todd Jones & Paul Maharg), 13 *Clinical Law Review* 1 (2006). All four articles can be downloaded from: <http://law.gsu.edu/ccunningham/> (choose *publications*)

² Hilary Sommerlad, *English Perspectives on Quality: The Client-Led Model of Quality – A Third Way?*, 33 *UNIVERSITY OF BRITISH COLUMBIA LAW REVIEW* 491, 509-10 (2000)

³ *Id.* at 494; Hilary Sommerlad & David Wall, *LEGALLY AIDED CLIENTS AND THEIR SOLICITORS: QUALITATIVE PERSPECTIVES ON QUALITY AND LEGAL AID 2-6* (Research Study No. 34 The Law Society 2000) (hereafter “Law Society”).

⁴ Question 16 in the structured interview conducted in person with each client was: “Have you ever used a solicitor whom you did not like? Was there any particular reason why you did not like them?” Law Society at 21.

⁵ See, eg., Charles Sandison, *Communication: The #1 Risk Management Tool?*, 51 *JOURNAL OF THE LAW SOCIETY OF SCOTLAND* No. 4 (April 2006) at pp 36-37.

interrupts the client precisely because she assumes from her expertise that she has heard enough to “get the picture” and decide what needs to be done. This behavior prevents the solicitor from learning what the client considers important information – not only because she cuts off the client at an important moment in the interview but because her attitude makes the client “frightened” of expressing her views throughout the representation.

Other clients in the Law Society study also emphasized that a solicitor needs to be a good listener in order to learn necessary information:

“One client explained that she had sacked her former solicitor because she wouldn’t listen: ‘that is absolutely fundamental; this was our case, only we knew the full circumstances.’”⁶

“They must be able to give you time. If solicitors haven’t got enough time, they can’t get enough out of you. You have to have time to be able to tell your story.”⁷

“It’s very important to be able to have trust and friendship with your solicitor because then you can talk about your case and you remember things.”⁸

“Regular communication is key ... the quality of being able to talk things through is very important. No one knows their problem as well as the plaintiff. ... It’s crucial that they enable you to talk it through. That listening and communication is crucial. So they have to be prepared to give you time, so that you can establish a personal relationship with them.”⁹

The clients wanted not only to be heard but also to understand what the solicitor said to them:

“If they communicate clearly you feel on the same wavelength with each other. It has got to be a mutual rather than a one-way relationship.”¹⁰

“At my first meeting with [my current solicitor] ... I was impressed by his natural ability to talk about technical things with knowledge, but on a level that I could understand. ... we actually talked and he explained in clear language. ... Other people just had a job to do, but [he] took time to clearly explain technical things. ... He explained how the system works.”¹¹

“She speaks of legal matters in a way that is knowledgeable and she explains it well.”¹²

⁶ Id at 509: Law Society at 12.

⁷ Id. at 507.

⁸ Id. at 506.

⁹ Id. at 505 (probate client).

¹⁰ Id. (housing case).

¹¹ Id. at 502.

¹² Id. at 505.

“She communicates clearly. She puts things in layman’s terms.”¹³

The Law Society study showed that effective two-way communication – attentive and patient listening and clear explanations – was valued by clients not only because it improved the exchange of information but also was essential to the development of rapport, trust and mutual respect:

“Just coming here and have someone listen to you, treat you with respect, be on your side ... that’s marvelous.”¹⁴

“She talked to me as a person, with respect.”⁵₁

“I wanted the law to be explained. ... The way the solicitor views the client is important. He has to be interested in our views.”⁶₁

“I felt I couldn’t talk to him. He’d fob you off ...didn’t really sit and explain to you. It was just the lack of communication to me.”

“ I never liked him [describing a former solicitor]. ... we couldn’t have had a solicitor like him for this; I think he was perfectly competent, but there was no sympathy ...”⁷₁

“If you do not have communication you might as well go elsewhere. It was quite hard to get in touch with [my former solicitor] .. he was a bit ‘upppity’ ... But [my current solicitor] is excellent ... we communicate .. I trust her.”⁸₁

“[I like my current solicitor because] I can have a chat with her, I trust her ... [she’s] much better than other solicitors I’ve had. ... The other solicitor — I was just a file for him, but for her I’m a real person and that comes across in court.”⁹₁

“[My current solicitor is] very easy to talk to — some solicitors can be intimidating.”⁰₂

It is not unusual to hear lawyers describe these communication practices – of patient listening and translation of legal issues into terms the client can understand – as “hand-holding” – something to be done to make the client feel good if you have the time and inclination but not really essential to effective legal representation. For example, one of the solicitors interviewed in the Law Society study said:

“Clients cannot assess the quality of the service. What they really need and respond to is

¹³ Id. (child care case).

¹⁴ Sommerlad at 510.

¹⁵ Id. at 503

¹⁶ Law Society at 17.

¹⁷ Id. at 21.

¹⁸ Sommerlad at 505.

¹⁹ Id. at 504.

²⁰ Id. at 505.

reassurance. ... They want to feel you care.”¹²

Sommerlad, though, reports that “for many clients, their engagement with the law was not simply about achieving a result; their responses indicated that *the process itself was important* ... [From the clients’ perspective] the realization of their legal goals depended upon the establishment of an individualized relationship of trust with the practitioner. Thus clients tended to view the subjective aspects of quality, such as empathy and respect, *not as luxury items but as fundamental to the service so that their absence would limit the solicitor’s effectiveness even within the narrowest definition of his responsibilities as a legal adviser.*”²² Sommerlad’s point is illustrated by the following pointed conclusion by one client about a former solicitor:

“She was efficient but a total waste of space ... I could not communicate with her.”²³

Many lawyers equate client satisfaction with the outcome achieved, an assumption that might cause them to puzzle over a client’s conclusion that a lawyer was “efficient” but nonetheless “a total waste of space.” However, social science research over the past two decades has produced impressive evidence that clients evaluate their lawyers’ competence more in terms of the process experienced by them in the representation than the outcome. Indeed the leading researcher in this area, the American social psychologist Tom Tyler, has made the following bold statement:

“Clients care most about the process -- having their problems or disputes settled in a way that they view as fair, second most important is achieving a fair settlement, the least important factor is the number of assets they end up winning.”⁴²

Tyler’s research findings are consistent with two important studies conducted in Australia. Australia’s largest indemnity insurer for lawyers, LawCover,²⁵ commissioned a Risk Management Project to study a representative sample from over two thousand professional liability claims.²⁶ The researchers interviewed each lawyer in the sample against whom a claim had been filed; these interviews were extensive and confidential. The researchers in most cases also interviewed the lawyer retained by LawCover to defend the claim.

²¹ Id. 496 n. 13.

²² Law Society at 22 (emphasis added).

²³ Sommerlad at 507.

²⁴ Tom Tyler, *Client Perceptions of Litigation – What Counts: Process or Result?*, TRIAL MAGAZINE (July 1988) p. 40.

²⁵ RONWYN NORTH & PETER NORTH, MANAGING CLIENT EXPECTATIONS AND PROFESSIONAL RISK: A UNIQUE INSIGHT INTO PROFESSIONAL NEGLIGENCE EXPOSURE IN THE AUSTRALIAN LEGAL PROFESSION IX (1994) (relevant excerpts are available at <http://law.gsu.edu/ccunningham/PR/North&North.htm>) The full name of LawCover is “the Solicitors Mutual Indemnity Fund Pty Ltd.” Id. (title page).

²⁶ Id. at xi. <http://law.gsu.edu/ccunningham/PR/North&North.htm>

The results of this unusually in-depth study were “clearly disturbing,”²⁷ showing how easy it was for the average lawyer - even a lawyer other lawyers would choose and trust - to become entangled in the events that often lead inexorably to a claim. The lawyers did not seem to understand the dynamics of the claims. The researchers concluded that most lawyers need help to see the patterns and to understand how they should act differently in future to reduce their inherent exposure.²⁸ By far the most significant cause of professional negligence claims was *not* dissatisfaction with outcome but instead related to the handling of the client relationship; the most frequent problems were failure to listen to the client, ask appropriate questions and explain relevant aspects of the matter.²⁹

A different empirical study in Australia, an evaluation of specialist accreditation that included client focus groups and surveys, found that practitioners and their clients were selecting divergent indicators of performance with which to assess satisfaction with service.³⁰ Although there was widespread client satisfaction with the specialists’ legal knowledge and skills, the evaluators also found “consistent evidence of client dissatisfaction with the provision of services, and the quality of the service-delivery process.”³¹ According to this study:

Practitioners are concentrating on developing their knowledge and skills to deliver better outcomes; but their clients, expecting both technical competence and results, are being disappointed by the process of getting there. Clients complained about the quality of their lawyers’ services in terms of inaccessibility, lack of communication, lack of empathy and understanding, and lack of respect²³

The evaluators concluded that

consideration should be given by the profession to introducing additional training to redress identified performance deficits in the related areas of *inter-personal skills* and *client management techniques*. This training should be client focused, rather than transaction focused; it should train practitioners to recognise that client needs are not confined to attaining objective outcomes; and it should help lawyers to listen to clients more attentively, diagnose their various levels of needs and demonstrate empathy.³³

²⁷ *Id.* at xii.

²⁸ *Id.*

²⁹ *Id.* at 11, 21-26. LawCover was so impressed by these findings that it began to offer premium reductions to lawyers who participate in a series of workshops on lawyer-client communication. Robin Handley & Damien Considine, *Introducing a Client-Centred Focus into the Law School Curriculum*, 7 LEGAL EDUC. REV. (Australia) 193, 197-8 (1996).

³⁰ Livingston Armytage, *Client Satisfaction with Specialists’ Services: Lessons for Legal Educators*, in 1 SKILLS DEVELOPMENT FOR TOMORROW’S LAWYERS: NEEDS AND STRATEGIES 355, 365 (1996).

³¹ *Id.* at 357.

³² *Id.* at 365.

³³ *Id.* at 366.

Part Two: Are Big Firm Clients Different?

The findings summarized in Part One have been presented to many very different audiences including:

- ❑ The 2006 Annual Roundtable of the American Bar Association Standing Committee on Specialization
- ❑ The 2006 Annual Partners Meeting of Dundas & Wilson (Scotland's largest law firm)
- ❑ The 2007 Annual Meeting of the Professional Development Consortium (www.pdclegal.org)
- ❑ The 2007 Newly Qualified Solicitors Training Day for Dundas & Wilson
- ❑ The 2009 Annual Meeting of the Law & Society Association

A recurrent question raised at these presentations has been whether research on what are sometimes referred to as “personal plight” individual clients sheds any light on what the clients of large law firms – typically representatives of corporate entities – also “want” from their lawyers.³⁴ Although there continues to be a dearth of rigorous empirical research on this question, in 2005 the author obtained the results of an extensive survey conducted by a private consulting company, the BTI Consulting Group of Wellesley, Massachusetts.³⁵

BTI surveyed General Counsels at a wide range of large corporations. Twenty-seven per cent of those surveyed were employed by Fortune 500 companies; nine per cent were employed by one of the Global 500 companies. These companies collectively had a median revenue of \$ 3.4 billion. BTI started with baseline data from 1000+ interviews conducted from 2001 through 2005 and then supplemented this data with 200+ telephone interviews conducted from July - October 2005.

BTI’s 2005 research revealed that “7 out of 10 corporations are so unsatisfied with their

³⁴ The 2005 edition of LEGAL 500 - UK (www.legal500.com) contained some evidence that even the sophisticated business and institutional clients of major law firms value the ability to translate legal issues into terms a lay person can understand. In its rating of top Scottish lawyers and their law firms, Legal 500 made a point of reporting the following client comments: “He has the knack of being able to present very complex situations comprehensibly to commercial managers” (Legal 500 at 467, ranking corporate and commercial practices) and “[Their entire legal team is able to] provide a clear explanation to the layperson on sometimes complex legal issues” (Id. at 480, ranking energy and natural resources practices). According to this publication’s website, “The Legal 500 provides a detailed qualitative review of each firm in over 100 specialist practice areas ... [In compiling these reviews] independent experienced researchers interviewed over 1,500 lawyers and 3,000 clients. ... Recommendations from clients provide a first-hand report on service quality ...”

³⁵ I learned of this report from the September 8, 2006 issue of the American Bar Association E-Report, which carried an article entitled: IN-HOUSE COUNSEL AXING LAW FIRMS – Survey: 70 Percent of Big Companies Dissatisfied With Primary Outside Counsel. I then contacted BTI which agreed to provide me a free copy of the complete report with the understanding that I could cite selected findings in academic presentations. The report, entitled, *How Clients Hire, Fire and Spend: Landing the World's Best Clients*, is not in the public domain but can be purchased through the BTI web site: www.bticonsulting.com.

primary law firms that they would not recommend the firm to others.” These expressions of dissatisfaction had real world consequences. Their research indicated that while in 2004 corporations typically used two primary law firms and seven secondary law firms, in 2005 many of these corporations had added four additional secondary law firms (an increase from seven to eleven). This unprecedented increase in the use of secondary firms appeared to be linked to the fact that 53% of these corporations had replaced or demoted at least one primary law firm in the past 18 months. These clients generally did not tell the demoted primary law firm of the changes in status; they just spent less and less money with the primary law firm --- and more with another secondary law firm – until the law firms' roles reversed. According to BTI, most primary law firms did not recognize dwindling annual billings as a red flag until it was too late.

The survey results reported by BTI reveal striking correspondences with the findings regarding individual clients summarized in Part One. Neither outcome nor cost of services were the most frequently mentioned causes of dissatisfaction. Instead, when asked "What is the one thing your outside counsel does that just drives you crazy?" more than half of the General Counsels gave answers that can be categorized as poor communication:

- 21% Failure to keep client adequately informed
- 15% Lack of client focus: failure to listen, non-responsiveness, arrogance
- 10% Making decisions without client authorization or awareness
- 7% Failure to give clear, direct advice
- 53%³⁶

BTI provided a number of illustrative quotes:

"Responsiveness is a must, or we wouldn't hire them." (Fortune 500 Transportation Company)
 "Being responsive and listening to your clients." (National Real Estate Developer)
 "When they put themselves in our shoes." (Major Hospitality Provider)
 "Sensitivity to client guidelines for rules of conduct, anticipation of what the client's needs are." (Global 100 Pharmaceutical Company)
 "Provides services in a manner that makes business sense to the client." (Major Telecommunications Provider)
 "Being keenly aware of the goals and objectives of your client and aligning your practice accordingly." (Financial Services Provider)
 "Paying attention to the overall philosophy and goals of the client." (Fortune 500 Insurance Company)

According to BTI: "Responsiveness to clients goes beyond returning phone calls and replying to e-mails. Clients expect law firms to be responsive not just to their phone calls, but also to their needs. Successful law firms verify client expectations frequently, both formally and informally, to ensure this result." BTI reports that "[w]e find that fewer than 15% of the self-perceptions held by a firm's attorneys are actually shared by the

³⁶ Other answers were categorized by BTI as (a) inefficient service delivery (21%) (b) billing practices (15%) and (c) "other" (11%).

marketplace."³⁷

When the well-authenticated empirical findings of Part One are read together with the very suggestive report from BTI, one would hope that attorneys at firms both large and small will be motivated to conduct more extensive and rigorous research on “what clients want.” An excellent starting point would be the very elegant research question used by Sommerlad. When meeting a new client for the first time, ask “Have you been disappointed in the past by the services provided by a lawyer?” If the answer is yes, then say, “Without identifying the lawyer (or any confidential information), can you describe what caused you to be disappointed?”³⁸

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³⁷ Obviously BTI’s report is designed to encourage law firms to hire BTI to improve their levels of client satisfaction and so the findings they report – which are not based on data that can be subjected to academic scrutiny – should not be regarded as the equivalent of scholarly research.

³⁸ Several years ago I was in fact commissioned by a large law firm to interview a small sample of its current clients using this approach. I conducted each interview without any lawyer from the firm present. At my request, none of the clients were themselves lawyers. All the clients readily identified past disappointments (none relating to the firm that had commissioned the research) and agreed for me to provide summaries to the leadership of the firm after reviewing these summaries. (All the clients asked, however, that they not be identified by name in my report to the firm.) All the clients said they would welcome having such a conversation with a lawyer who was representing him or her for the first time and indeed said that such a conversation would start them off with a favorable impression of the lawyer as sensitive to client concerns.