

# What Do Clients Want From Their Lawyers?

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## Part 1

### I. 70% OF BIG FIRM CLIENTS ARE DISSATISFIED

The September 8, 2006, issue of the American Bar Association E-Report published an article with the attention-grabbing headline: “70 Percent of Big Companies Dissatisfied With Primary Outside Counsel.”<sup>1</sup> Because big companies are the most important source of revenue for large law firms, one might have thought those firms would have been doing everything in their power to give those clients what they wanted from their lawyers. This article, however, will show how the research upon which the ABA story was based—as well as substantial research with other clients ranging from large organizations to individuals—indicates that what clients want most from their lawyers is an aspect of legal services given too little attention both in legal education and professional development: effective lawyer-client communication. After reviewing extensive social science research on causes of client dissatisfaction, this article will conclude by suggesting a variety of ways—from easy to ambitious initiatives—that law schools and law firms can provide greater emphasis on the importance of effective communication with clients, teach effective interviewing and counseling, and assess competency in basic skills of listening and explaining.

The ABA E-Report article was based on the results of an extensive survey conducted by a private consulting company, the BTI Consulting Group of Wellesley, Massachusetts.<sup>2</sup> BTI

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<sup>1</sup> Sandra Pruffer, *In-House Counsel Axing Law Firms, Survey: 70 Percent of Big Companies Dissatisfied with Primary Outside Counsel*, ABA JOURNAL EREPORT (Sep 8, 2006)

<sup>2</sup> BTI CONSULTING GROUP, HOW CLIENTS HIRE, FIRE AND SPEND: LANDING THE WORLD'S BEST CLIENTS (2006) (on file with author). BTI's report is designed to encourage law firms to hire BTI to improve their levels of client

surveyed General Counsels at a wide range of large corporations. Twenty-seven percent of those surveyed were employed by Fortune 100 companies; nine percent were employed by one of the Global 500 companies.<sup>3</sup> These companies collectively had a median revenue of \$ 3.4 billion.<sup>4</sup> BTI started with baseline data from over 1000 interviews conducted from 2001 through 2005 and then supplemented this data with more than 200 telephone interviews conducted from July to October 2005.<sup>5</sup>

BTI's 2005 research revealed that "7 out of 10 clients do not recommend their primary law firm."<sup>6</sup> These expressions of dissatisfaction had real world consequences. BTI's 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.<sup>7</sup> This 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.<sup>8</sup> 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.<sup>9</sup>

The survey results reported by BTI indicate 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 summarily categorized as poor communication:<sup>10</sup>

- 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%<sup>11</sup>

BTI provided a number of illustrative quotes:

- "Responsiveness is a must, or we wouldn't hire them." (Fortune 500 Transportation Company);<sup>12</sup>
- "Being responsive and listening to your clients." (National Real Estate Developer);<sup>13</sup>
- "When they put themselves in our shoes." (Major Hospitality Provider);<sup>14</sup>

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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.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2, 5.

<sup>6</sup> *Id.* at 16.

<sup>7</sup> *Id.* at 12.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> *Id.* at 10.

<sup>10</sup> *Id.* at 42 - 45.

<sup>11</sup> *Id.* at 42. Other answers were categorized by BTI as (a) inefficient service delivery (21%), (b) billing practices (15%), and (c) "other" (12%). *Id.*

<sup>12</sup> *Id.* at 29.

<sup>13</sup> *Id.*

- “Sensitivity to client guidelines for rules of conduct, anticipation of what the client’s needs are.” (Global 100 Pharmaceutical Company);<sup>15</sup>  
“Provides services in a manner that makes business sense to the client.” (Major Telecommunications Provider);<sup>16</sup>
- “Being keenly aware of the goals and objectives of your client and aligning your practice accordingly.” (Financial Services Provider);<sup>17</sup>  
“Paying attention to the overall philosophy and goals of the client.” (Fortune 500 Insurance Company).<sup>18</sup>

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.”<sup>19</sup> 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 marketplace.”<sup>20</sup>

A July 2012 publication of the International Bar Association reported data from Western Europe that is consistent with the 2005 study of American law firms by BTI, citing a survey of 219 senior corporate counsel by Martindale-Hubbell that indicated “poor communication was one of the top reasons for ceasing to instruct [i.e. employ] a law firm.”<sup>21</sup> Like the companies surveyed by BTI, many of these clients stopped using law firms without telling them the causes of dissatisfaction.<sup>22</sup>

## II. WHAT CLIENTS WANT: THE SOCIAL SCIENCE EVIDENCE

The survey results reported by BTI and the IBA reveal striking correspondences with extensive social science research on causes of client dissatisfaction. Many lawyers equate client satisfaction with the outcome achieved; however, studies over the past three decades in three different countries 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.”<sup>23</sup> Tyler’s research findings are consistent with two important studies conducted in

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<sup>14</sup> *Id.* at 30.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 31.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 29.

<sup>20</sup> *Id.* at 58.

<sup>21</sup> Mary Heaney, *Communication breakdown*, 8 IN-HOUSE PERSPECTIVE: THE MAGAZINE OF THE IBA CORPORATE COUNSEL FORUM no. 3, 13 (July 2012), available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=0265198D-B02C-4F5D-B1E4-E1E827A872AA>

<sup>22</sup> *Id.*

<sup>23</sup> Tom Tyler, *Client Perceptions of Litigation – What Counts: Process or Result?*, TRIAL 40 (July 1988).

Australia. Australia's largest indemnity insurer for lawyers, LawCover,<sup>24</sup> commissioned a Risk Management Project to study a representative sample from over two thousand professional liability claims.<sup>25</sup> The researchers interviewed each lawyer in the sample against whom a claim had been filed; these interviews were extensive and confidential.<sup>26</sup> The researchers in most cases also interviewed the lawyer retained by LawCover to defend the claim.<sup>27</sup>

The results of this unusually in-depth study were "clearly disturbing,"<sup>28</sup> showing how easy it was for the average lawyer—one whom other lawyers might choose and trust—to become entangled in the events that inexorably lead to a professional negligence claim. The lawyers did not seem to understand the dynamics of the claims against them. The researchers concluded most lawyers "need help to see the patterns and to understand how they should act differently in the future to reduce their inherent exposure."<sup>29</sup> 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, failure to ask appropriate questions, and failure to explain relevant aspects of the matter.<sup>30</sup>

A different empirical study in Australia, an evaluation of specialist accreditation that included client focus groups and surveys, found "practitioners and their clients [we]re selecting divergent indicators of performance with which to assess satisfaction with service."<sup>31</sup> 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."<sup>32</sup> 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 respect . . . .<sup>33</sup>

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,

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<sup>24</sup> RONWYN NORTH & PETER NORTH, MANAGING CLIENT EXPECTATIONS AND PROFESSIONAL RISK: A UNIQUE INSIGHT INTO PROFESSIONAL NEGLIGENCE EXPOSURE IN THE AUSTRALIAN LEGAL PROFESSION, at ix (1994), available at <http://law.gsu.edu/ccunningham/PR/North&North.htm>.

<sup>25</sup> *Id.* at xi.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at xii.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 11, 21-26. LawCover was so concerned 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. no. 2, at 197-98 (1996).

<sup>31</sup> 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).

<sup>32</sup> *Id.* at 357.

<sup>33</sup> *Id.* at 365.

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.<sup>34</sup>

A qualitative study commissioned by the Law Society of England and Wales, of solicitors<sup>35</sup> and clients regarding their perspectives on quality service, provides very useful concrete examples of how “poor communication” leads to client dissatisfaction. As part of this study, Hilary Sommerlad interviewed 44 clients of 21 solicitors in the north of England.<sup>36</sup> Fifty percent said they had previously used a solicitor whom they did not like; these clients were then asked an open-ended follow-up question about why they were disappointed with the prior legal services.<sup>37</sup> Some persons interviewed by Sommerlad, like the following client, were also dissatisfied with their current solicitor:

I went to [this solicitor] because of her reputation and expertise – she is a part-time registrar– 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.<sup>38</sup>

The communication problems identified in the 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” interrupts the client precisely because she assumes from her expertise that she has heard enough to “get the picture” and to 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 a solicitor needs to be a good listener in order to learn necessary information:

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<sup>34</sup> *Id.* at 366 (emphasis in original).

<sup>35</sup> The legal profession in England and Wales consists of two branches: (1) solicitors, who are the first contact for any client and who take responsibility for most matters apart from litigation, and (2) barristers, who specialize in trial advocacy and only represent clients on referral from solicitors. See Nigel Duncan, *Gatekeepers Training Hurdles: The Training and Accreditation of Lawyers in England and Wales*, 20 GA. ST. U. L. REV. 911, 911 (2004). At the time of Sommerlad’s research, the Law Society of England and Wales was the regulatory authority for the solicitors’ branch of the profession. *Id.* at 912.

<sup>36</sup> Hilary Sommerlad & David Wall, *Legally Aided Clients and Their Solicitors: Qualitative Perspectives on Quality and Legal Aid*, The Law Society, Research Study No. 34, at 2-6 (1999) [hereinafter Law Society].

<sup>37</sup> 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?” *Id.* at 21.

<sup>38</sup> Hilary Sommerlad, *English Perspectives on Quality: The Client-Led Model of Quality – A Third Way?*, 33 U.B.C. L. REV. 491, 509-10 (2000).

- “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’;<sup>39</sup>
- “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’;<sup>40</sup>
- “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’; <sup>41</sup>
- “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 [the solicitor] enable [the plaintiff] 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.’<sup>42</sup>

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’;<sup>43</sup>
- “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’;<sup>44</sup>
- “She speaks of legal matters in a way that is knowledgeable and she explains it well’;<sup>45</sup>
- “She communicates clearly. She puts things in layman’s terms.’<sup>46</sup>

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 because it 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 marvellous’;<sup>47</sup>
- “She talked to me, as a person, with respect’;<sup>48</sup>

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<sup>39</sup> *Id.* at 509; Law Society, *supra* note 36, at 12.

<sup>40</sup> Sommerlad, *supra* note 38, at 507.

<sup>41</sup> *Id.* at 506.

<sup>42</sup> *Id.* at 505.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 502.

<sup>45</sup> *Id.* at 505.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 510.

<sup>48</sup> *Id.* at 503

- “I wanted the law to be explained. . . . The way the solicitor views the client is important. He has to be interested in our views”;<sup>49</sup>
- “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”;<sup>50</sup>
- “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 . . .”<sup>51</sup>
- “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 ‘uppity’ . . . . But [my current solicitor] is excellent . . . we communicate . . . I trust her.”<sup>52</sup>
- “[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.”<sup>53</sup>
- “[My current solicitor is] very easy to talk to—some solicitors can be intimidating.”<sup>54</sup>

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 reassurance. . . . They want to feel you care.”<sup>55</sup>

Sommerlad, though, reports “for many clients, their engagement with the law was not simply about achieving a result; their responses indicated that the process itself was important.” According to her research:

[from the clients’ perspective] the realisation of their legal goals depended upon the establishment of an individualised 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.’<sup>56</sup>

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<sup>49</sup> Law Society, *supra* note 36, at 17.

<sup>50</sup> *Id.* at 14.

<sup>51</sup> *Id.* at 21.

<sup>52</sup> Sommerlad, *supra* note 38, at 505.

<sup>53</sup> *Id.* at 504.

<sup>54</sup> *Id.* at 505.

<sup>55</sup> *Id.* at 496 n.13.

<sup>56</sup> Law Society, *supra* note 36, at 22 (citing Gwynn Davis, PARTISANS AND MEDIATORS: THE RESOLUTION OF DIVORCE DISPUTES at 91 (1988)).

Sommerlad's point is illustrated by the following scathing conclusion by one client about a former solicitor: "[s]he was efficient but a total waste of space . . . . I could not communicate with her."<sup>57</sup>

III. COMMUNICATIVE COMPETENCE AS A GOAL FOR LAW SCHOOLS AND LAW FIRMS  
[Part 2 – Omitted]

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<sup>57</sup> Sommerlad, *supra* note 38, at 507.