

The Client's Perspective on the Initial Interview: A Social Science Approach

**A Research Program of
The Effective Lawyer-Client Communication (ELCC) Project¹**

For more information about ELCC, see our web site:

**<http://law.gsu.edu/Communication/>
and Cunningham,"Evaluating Effective Lawyer-Client Communication:
An International Project Moving From Research to Reform,"
67 Fordham Law Review 1959 (1999)**

Clark D. Cunningham
Professor of Law
Washington University School of Law
[As of June 1, 2002
W. Lee Burge Professor of Law & Ethics
Georgia State University School of Law
cdcunningham@gsu.edu]

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In Measuring and Managing Patient Satisfaction, published by the American Hospital Association, the authors confidently assert:

Health services providers today are confronted with two principal challenges. The first is to gain insight into what is important to the patients they serve. The second is to "move the needle," or make measurable changes in the patients' experience of the health care encounter.

Krowinski & Steiber 1996: ix.

They link these health care priorities with the evolution of customer-centered service throughout the business world: "customer satisfaction is considered by most to be at the core of good business practices." Id. at 2. Although the American legal profession has been concerned for years with opinion research and anecdotal data indicating client dissatisfaction with lawyers, only recently has the organized bar begun to attribute much of the dissatisfaction to lawyer behavior rather than unrealistic client expectations,

¹ Louise McKinney, Judith Lipton, Bryan Adamson and Kenneth Margolis at Case Western Reserve University School of Law played a major role in the design of the client survey form and other aspects of the pilot project. Valuable advice was also received from Colin Adamson, Melvin Hall, Alan Lambert, Les McCrimmon, Mary Barnard Ray, Lynne Robins, Meredith Ross, Avrom Sherr, and Rodney Uphoff. Support from the Israel Treiman Research Fund is gratefully acknowledged. Earlier versions of this paper were presented at Assessing Quality Legal Services: The Client's Perspective, Clinical Legal Education Association (New York City July 2000) and Performance Critique Workshop, Clinical Legal Education Association (Vermont Law School February 2001).



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according to William Felstiner, former director of the American Bar Foundation. Felstiner 1997: 122. However, in striking contrast to the health care industry (or indeed any other service industry), American lawyers generally do not use even the most rudimentary methods for finding out how their clients experience the services they provide and thus have no way of measuring "how the needle moves" even if they seek to improve client satisfaction. See Cunningham 1999: 1803-4, 1809-10. The failure of the legal profession to gather data about client satisfaction in a systematic way may be attributable to a widespread assumption among lawyers that clients care primarily about outcomes not process, an assumption inconsistent with growing evidence from social science research that the quality of lawyer-client communication is an extremely important determinant of client satisfaction.

In a 1988 article in *Trial* magazine, social psychologist Tom Tyler (then a research fellow at the American Bar Foundation and currently a professor at New York University) asked the following question:

"Imagine a typical civil case for a lawyer--a divorce. Think of three things a client could care about. The first is winning and securing as many assets as possible. The second is getting a fair settlement (i.e., "having things come out right.") The third is having the dispute resolved fairly. This includes being allowed to participate in the process and being allowed to present one's side of the story. Although all of these things matter somewhat, what do clients care about most?" Tyler 1998: 40.

Tyler then reports on how lawyers have answered this question: "[T]he answer is obvious: Clients want to win." *Id.* He goes on to say, "Lawyers typically believe that clients judge them according to the size of the outcome ...[and] do not think that clients are particularly concerned with how the problem is solved." *Id.* He then provides a very different answer, based on the results of extensive interviews and surveys:

"Clients care most about the process by which their problems or disputes are resolved. In particular, they place great weight on having their problems or disputes settled in a way that they view as fair. The second most important issue to clients is achieving a fair or equitable settlement. The least important factor is the number of assets they end up winning." *Id.* (emphasis added).

Tyler's claim about what matters most to clients is based on a very large body of social science research about what is termed "procedural justice," going back to the mid 1970s.²

Recent research in Australia has reached similar conclusions about the key determinants of client satisfaction. A survey by the Civil Justice Research Centre of 430 personal injury plaintiffs indicated that perceived control over the case, ability to participate in the legal process, and fairness of the process was more strongly

² See Lind & Tyler 1988 (reviewing theory and research on procedural justice); Casper, Tyler & Fisher 1988 (showing that even for felony defendants procedural justice factors, like the amount of time attorney spent with client, have an independent --and perhaps greater--effect on overall satisfaction than actual outcome, such as no jail time or length of prison sentence).

correlated with plaintiff satisfaction than case outcome, duration or cost. Matruglio 1994: viii Although a majority (65%) were satisfied with the actual case outcome, a larger majority (68%) were not satisfied with the operation of the legal system. In particular, 51% were dissatisfied with the level of information provided by their lawyers, 64% did not think the settlement negotiation process was fair, 67% did not feel that they had control of over the outcome of the case, and 80% would have liked to participate more during settlement negotiations. *Id.* at 16-17. In 1994 a study commissioned by LawCover, Australia's largest indemnity insurer for lawyers, indicated that 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. North & North 1994: 11, 21-26.³

The Effective Lawyer-Client Communication (ELCC) project was initiated in 1998 by Washington University and the Centre for Legal Education in Australia and now includes other participants from Australia, England, India, Israel, Scotland, South Africa, and the United States and from a wide variety of disciplines. (See ELCC Advisory Board, attached.) The long-term goal of the project is to determine whether international and interdisciplinary collaboration on the issue of lawyer-client communication can actually change basic institutional practices and beliefs in the legal profession. We are guided to a significant degree by the example of the medical profession, where a greatly increased emphasis on patient satisfaction is both a cause and an effect of extensive social science research on doctor-patient communication. The analogous experience in the health care field indicates that the critical first step is to develop a practical and cost-effective method to assess the effectiveness of lawyer-client communication that correlates that assessment with the degree of client satisfaction.

We have selected the first meeting between lawyer and client for our pilot study.⁴ The initial interview is, of course, the one unit of service that is constant across all forms of legal service delivery. It is also one of the most critical units of service. The initial interview: (1) shapes client perception of the lawyer; (2) defines the service to be provided in terms of both problem and goal; and (3) is an important opportunity for client education, e.g. confidentiality, substantive legal rights, what the client can do for himself or herself, and the need to preserve evidence. It may be the only contact between client and lawyer, if the service is one-time information or referral to another service provider, or if it results in a decision by either lawyer or client not to enter into a relationship. In many cases the initial interview may in fact be the most significant communication before outcome determinative events such as hearing or settlement. By assessing effectiveness at the outset of the case, this approach provides feedback to the lawyer during provision of service, thus creating possibility for improved service and

³ 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. Handley & Considine 1996: 197-8.

⁴ We have benefitted in designing our pilot from studying two similar experiments, one with English solicitors and trainees and another with U.S. physicians in resident training: see Avrom Sherr 1996 and Robert Smith 1998.

increasing the relevance of the assessment both lawyers and clients.

Our first pilot project site is the Milton A. Kramer Law Clinic at Case Western Reserve University.⁵ We are also looking for additional sites willing to use the client survey questionnaire so that we can both continue improving the form and develop a large data base for comparative purposes.⁶ We would analyze and report questionnaire results for free for such sites also. Volunteers to participate in the pilot programs are solicited from new clients the law school clinic. A consent form explaining the project and their rights as participants has been prepared in accordance with standards both of legal ethics and human subject research.⁷ (Consent is also obtained from the student lawyer participants.) The initial interview is videorecorded. Clients are given the option to stop the recording at any point during the interview and also to decide at the conclusion of the interview (or any subsequent point during representation) to revoke consent and direct that the recording (including copies and transcriptions) be destroyed.

At the conclusion of the interview the client is given a questionnaire to be filled out privately before leaving.⁸ The questionnaire uses specific, simple questions to record the client's impressions of communicative effectiveness and to assess client satisfaction. Our current version (attached) has been designed with input from experts in the health care and customer satisfaction fields, as well as lawyers and social scientists.⁹ We are using "Likert-type" questions, which ask the client to indicate agreement or disagreement with various statements on a variable scale reflecting degree of agreement or disagreement. To guard against the risk of the client "agreeing" with everything, and as a cross-check on question comprehension, we insert a number

⁵ Professor Louise McKinney, Case Western Reserve School of Law, is the pilot site co-ordinator. Law teachers in Australia, England and South Africa have also indicated interest in involving their clinics in the pilot project.

⁶ This form can be downloaded in either Microsoft Word or WordPerfect format from the ELCC website: <http://law.gsu.edu/Communication/>

⁷ The pilot project has been approved by both Human Subject Committee of Washington University and Institutional Review Board for Human Research, Case Western Reserve University. Our Human Subjects research application and consent forms are available on the ELCC web site.

⁸ Case Western offers clients the option of being assisted by a support staff person, who could, for example, explain the format and read questions for persons having difficulty with written English. So far no client has asked for such assistance. Case Western also added two sample questions to the top of the form: (A) The Cleveland Indians are the best team in baseball (B) Nobody would want to live in Cleveland. (The client should learn from these samples that a positive opinion sometimes requires agreeing and sometimes disagreeing with the proposed statement.)

⁹ We also relied considerably on Chapter Eight, "Quantitative Research," in Krowinski & Steiber: 1996

of questions that require disagreement to produce a positive evaluation of the interviewer, e.g. the interviewer "said things I didn't understand" or "asked confusing questions." The form is designed to be applicable to any interview, regardless of subject matter. It only takes up one side of a sheet of paper, giving the option of additional questions on the back, particularly questions designed to test whether specific information a particular clinic wants to convey in initial interviews has been in fact been communicated and comprehended by the client.¹⁰

The form contains thirteen short statements to which the client is asked to agree or disagree.

Five items pertain to how the client generally felt about the intern¹¹: (1) made me feel comfortable, (2) treated me with respect, (3) listened to me, (4) was interested in me as a person, and (5) was someone I could trust. Six items pertain to the quality of communication: (1) I didn't say everything that I wanted to say and the intern (2) said things I didn't understand, (3) didn't understand what was most important to me, (4) didn't explain what the intern would do next, (5) asked confusing questions, and (6) understood why I needed legal help. One item asks whether the client knows "what I need to do next," and the final item seeks a general satisfaction judgment, "If I came back to this clinic with a different need for legal help, I would want the same intern to help me." The client questionnaire is identified only with codes for the client and interviewer identities (corresponding to the label on the recording) and contains boxes to check to indicate if the client is willing to have the supervising lawyer and/or the interviewer see the responses.¹²

We have also prepared a second questionnaire (attached), also identified with matching code numbers, to be filled out by the interviewer, "Assessment of Client Interview," which generally parallels the client survey by asking the interviewer to guess how the client will respond to each item.¹³ The assessment has four additional items: the client (1) seemed confused, (2) told me the whole story, (3) had unrealistic goals,

¹⁰ For example, in a criminal defense clinic, questions might check whether the client understands the extent of confidentiality, has been warned about discussing the case with others, knows what and when the next court action will be, and knows how to contact the clinic. Other useful information, particularly for monitoring quality of public defender services, could be gathered, e.g. a report from the client about the location, privacy and duration of the interview.

¹¹ The generic form is based on the specific form used by Case Western, which decided to use the term "intern" to refer the law clinic student who conducts the interview. Other clinics might choose to use the term "interviewer" or "student attorney" and obviously "lawyer" can be substituted if the form is used in a legal aid, public defender or private practice setting.

¹² A coding sheet that matches the code numbers with the client and interviewer names is maintained in a separate locked file by Professor McKinney at Case Western Reserve University.

¹³ The assessment form is also on the ELCC web site.

and (4) didn't tell me the truth.

The client and the interviewer will each place their completed forms in sealed envelopes, which are forwarded directly to Washington University for data compilation and analysis.¹⁴

Copies of the videorecording are also sent to Washington University. Selected recordings are transcribed by a court reporting firm and analyzed by a sociolinguist.¹⁵ Our legal research indicates that client consent to the transcription and linguistic analysis of the interview would not prevent the attorney-client privilege from arising (or waive the privilege) as long as all persons transcribing and analyzing the interview are acting as agents of the lawyer in order to assist that lawyer to represent the client well, just as the privilege is not lost if a lawyer uses an interpreter or shows client communications to a consulting expert such as a psychologist, accountant or engineer.¹⁶ For the initial pilot sites, Professor Cunningham has agreed to serve as a consulting attorney for each client for the limited purpose of assisting clinic students and attorneys to improve communication with clients during the course of representation, thus subjecting himself to professional discipline and malpractice liability if he violated the confidentiality rights of the clients. He requires the court reporting firm and the linguist assisting him in providing this consulting service to be bound by the same privilege and duty. The linguist has agreed to review the taped interview upon receipt, even before transcription, and to provide preliminary analysis and suggestions for the clinic within seven working days. A more detailed analysis by the linguist and Cunningham follows, making use of the court reporter's transcription, to identify specific linguistic features that correspond to the desired objectives of effective initial interviewing. For example, the goal of obtaining a full narrative account from the client could be correlated with interruptions, change of topic, form of question, length and complexity of sentences, use of past and present tense, pauses and silence. Topics that might arise in such an analysis might include:

-How does the form of a lawyer's opening question (e.g. "What brings you here today?" or "What can I do for you?") affect the way a client tells her story?

¹⁴ Professor Alan Lambert from the Washington University Psychology Department has helped to design the questionnaire and to compile and analyze the answers; Professor Tom Tyler (New York University Psychology Department) has also consulted on questionnaire design.

¹⁵ Lynne Robins, a nationally recognized expert on professional discourse currently on the faculty of the University of Washington Department of Medical Education, is providing the linguistic analysis. Although most of Robins' work has been on doctor-patient communication, she participated in a study of client interviewing at one of the clinics of the District of Columbia School of Law. Gellhorn, Roth & Robins (1994). Robins plans to work with ELCC to develop a major long-term funding proposal to apply this methodology to both legal and medical professional discourse.

¹⁶ Cunningham & McElhinny 1995:294-96.

-If a client pauses during her narrative, how does the lawyer's response (e.g. silence, repetition of the client's last words, or a prompting follow-up question) affect resumption of the narrative?

The analysis will also identify potential communication problems specific to each interview, such as apparently incomplete or evasive answers and client questions and concerns that did not receive full responses from the interviewer.

If the client has checked the "show to the person who interviewed" box on the questionnaire, the results of the questionnaire are shared with the interviewer and supervisor and correlated with the interview analysis, thus augmenting the feedback to improve ongoing representation. If the client has not checked the box, the questionnaire data will be used only as part of the larger data set, where anonymity will be preserved, for three purposes: (1) to provide cumulative information to a clinic about client satisfaction (that eventually can be compared both over time and against other clinics) (2) to test hypotheses developed from the transcript analysis, and (3) to prioritize issues to be addressed in future transcript analysis. In turn the transcript analysis will serve to test hypotheses arising from the questionnaire data and to guide future questionnaire design.

Unlike prior social science studies of lawyer-client communication, the purpose of this project is to actively intervene in the way lawyers communicate with their clients by creating a feedback loop between lawyers and social scientists. The hypothesis to be tested is that lawyers will value this feedback and use it to experiment with their methods of communication. Thus the validity of both the linguistic analysis and questionnaire data must be assessed not only in terms of the respective social science disciplines but also from the perspective of the lawyers. We believe that such social science research can affect the behavior of lawyers if designed, implemented and explained in ways that lawyers themselves find relevant in terms of client satisfaction and more effective representation. Since law school clinics are explicitly designed to shape future legal practice by allowing students to represent clients under controlled conditions that combine external critique with self reflection, they should be particularly receptive settings for developing the methodology to test this hypothesis.

The pilot project is not expected to generate sufficient data to form generally applicable benchmarks for quality lawyer-client communication. The pilot will, however, develop a research methodology that can be transferred to a wide range of legal practice settings. The pilot project will define linguistic features that can be readily identified by lawyers who can review interview tapes themselves for quality control and learning goals. Further, the client questionnaire, when refined through correlations with linguistic analysis in the pilot, can be a valuable and very cost-effective assessment method even when used alone. If a standard client questionnaire becomes adopted widely, then lawyers will be able to compare both individual interviewer and program wide data with a large data set from a number of other lawyers, thus receiving guidance about the levels of client comprehension and satisfaction that can reasonably be attained. (The American health care system is being transformed by the use of such comparative data

bases on patient satisfaction.¹⁷) Such standardized assessment could be particularly useful for high volume providers of legal services, such as legal aid and public defender programs, by creating an empirical data base for making cost-benefit decisions when experimenting with modes of service delivery. This pilot project will also lay the groundwork to test current interviewing practices for effects of gender, age, education, class, ethnicity and language and to develop new and more appropriate methods of communication across cultural lines.

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¹⁷ Attached is an excerpt from marketing materials distributed by Press, Ganey Associates, a major firm in the patient satisfaction field, that shows how a hypothetical hospital, "Central General" can compare its patient satisfaction scores on various items: (1) among its own departments, (2) against the previous year, and (3) against the mean score of 172 health care providers using Press Ganey's services. The report also gives "Central General" its percentile rank on each item among the 172 health care providers. It is more difficult to ignore negative satisfaction responses if comparable service providers get much better responses. Likewise, even relatively high satisfaction scores do not result in complacency if competing providers are getting even higher scores. Data such as provided by Press Ganey is routinely used by health care providers to evaluate staff, including doctors (see Cunningham 1999: 1959-60), and to award staff bonuses (conversation with Dr. Melvin Hall, Chief Operating Officer of Press Ganey).

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APPENDIX

Confidential Client Survey Form
Assessment of Client Interview Form
Biographies of Director and Advisory Board of the Effective Lawyer-Client Communication Project
Sample Patient Satisfaction Report (Press Ganey Associates)



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PROJECT DIRECTOR

CLARK D. CUNNINGHAM. Professor of Law, Washington University, St. Louis, Missouri, U.S.A. In 1986, while working as a legal aid attorney in Detroit, he was awarded an Indo-American Fellow to do research at the Indian Law Institute, New Delhi, comparing public interest litigation in the U.S. and India. In 1987 he joined the faculty of the University of Michigan Law School, teaching in its general clinic. He moved to Washington University in 1989 where he has directed both the Urban Law Clinic and the Criminal Justice Clinic and currently teaches legal ethics, comparative constitutional law, and interdisciplinary courses on law and the social sciences. His publications include articles in the Yale Law Journal, Harvard Law Review, Cornell Law Review and Michigan Law Review on attorney-client communications, law and linguistics, and public interest practice. He has been a visiting scholar at the National Law School of India to consult on its clinical curriculum, to teach a 3 week course on clinical teaching methods for S. Asian law professors, and to participate in a national conference on constitutional law. He has also been a visiting scholar at the University of Sichuan, China; the University of Sydney, Australia; and the University of Palermo, Argentina. He directed a three year Ford Foundation project to support the development of human rights clinics in Indian law schools and has served on the steering committee of the Global Alliance for Justice Education.

ADVISORY BOARD

FRANK BLOCH. Professor of Law and Director of Clinical Education, Vanderbilt Law School, Nashville, Tennessee, U.S.A. Frank Bloch was a senior Fulbright Lecturer to the University of Delhi and has played an active role in promoting international clinical education on committees of both the Association of American Law Schools and the American Bar Association. He has both a law degree, from Columbia University, and a Ph.D. in political science from Brandeis University. Before entering law teaching, he worked as a legal services attorney with California Rural Legal Assistance, primarily representing migrant farm workers. He is a co-editor of Clinical Anthology: Readings for Live-Client Clinics (1997).

BRYNA BOGOCH. Lecturer, Department of Interdisciplinary Social Science Studies, Bar Ilan University, Israel. Bryna Bogoch received her Ph.D. from the Communications Institute at the Hebrew University. She has conducted extensive research in the area of language and law, in particular the sociolinguistic analysis of lawyer-client interviews and courtroom interaction. She has directed a Ford Foundation funded project on gender bias in the criminal and rabbinic courts in Israel and was a visiting fellow of the Centre for Socio-Legal Studies, Oxford University.

ALLAN CHAY. Senior Lecturer and Assistant Dean, Law Faculty, Queensland University of Technology, Brisbane, Australia. Allan Chay directs the legal practice



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program at the Queensland University of Technology and is co-author of Legal Interviewing in Practice (1996).

NIGEL DUNCAN. Principal Lecturer, Inns of Court School of Law, London, England. Nigel Duncan received his law degree from Southampton University in 1970 and holds a post-graduate certification in education and an LL.M. from London University. He has been a full-time teacher for over 20 years. He has held his current position since 1989; he teaches negotiation, conference skills, casework, remedies, criminal litigation, unemployment law, and co-ordinates a live client clinic. He is Editor of The Law Teacher, Chair of the Association of Law Teachers, and a founding member of both the Clinical Legal Education Organisation and the Practice, Profession and Ethics section of the Society of Public Teachers of Law. He designed and established the first Access Course in Law in the UK and is a member of both the Executive and Advisory Committees of the Minority Access to the Legal Profession Project.

MARC GALANTER. John & Rylla Bosshard Professor of Law, University of Wisconsin-Madison, U.S.A.. Marc Galanter is past president of the Law and Society Association, a former editor of Law & Society Review, and past chair of the Association of American Law Schools' Section on Law and Social Science. He is a member of the Co-ordinating Committee on Legal Education, American Bar Association; the American Law Institute; the Executive Committee, Section on Professional Responsibility, Association of American Law Schools; and the Editorial Board of the International Journal of the Legal Profession. He has also served as a consultant to the American Bar Association Commission on Access to Justice 2000. His publications include Competing Equalities: Law and the Backward Classes in India (1984), Law and Society in Modern India (1989), and Tournament of Lawyers: The Growth and Transformation of the Big Law Firm (1991) (with Thomas M. Palay).

MELVIN F. HALL. Chief Executive Officer, Press Ganey Associates, South Bend, Indiana, U.S.A. Press Ganey is the leading company in the United States for measuring patient satisfaction, with over 1,000 clients in the health care industry. Melvin Hall, who has a Ph.D. in sociology, designed many of the company's survey instruments and methods, having previously served as director of research for Press Ganey.

MARLENE LE BRUN. Associate Professor of Law, Griffith University, Australia. Marlene Le Brun has worked as an attorney in the United States, and as a legal academic and consultant in Botswana, Papua New Guinea, and Australia. In Papua New Guinea she ran the Faculty of Law clinical legal education program and was director of the Legal Education and Assistance to the Provinces Program (LEAP). She has been active in the professionalization of law teaching since 1988. She worked for seven years as a co-ordinator and teacher for the Australasian Law Teachers Association (ALTA) Law Teaching Workshop. Her publications include Lauchland and Le Brun, Legal Interviewing: Theory, Tactics, and Techniques (1996) and Le Brun and Johnstone, The Quiet Revolution: Improving Student Learning in Law (1994). She has published extensively on legal education, and has been invited to participate in workshops in legal education in Hong Kong, India, and Viet Nam. In 1992 she introduced client interviewing into the Griffith law curriculum.



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LYNN MATHER. Nelson A. Rockefeller Professor of Government, Dartmouth College, U.S.A. Lynn Mather is President-Elect of the Law and Society Association and a former Chair of the Law and Courts Section of the American Political Science Association. Her research has focused on decision making by lawyers, legal professionalism, the nature and impact of litigation against tobacco, trial courts and policymaking, women in the legal profession, plea bargaining, and the transformation of disputes. She is co-author of Divorce Lawyers at Work: Varieties of Professionalism in Practice (Oxford, forthcoming). She also co-edited a Special Issue of Law and Social Inquiry (1998), co-edited Empirical Theories about Courts (1983), and wrote Plea Bargaining or Trial? The Process of Criminal Case Disposition (1979). Her research has been published in Legal Ethics, International Journal of Law and the Family, Law and Social Inquiry, Law and Society Review, and various books and law journals.

LES MCCRIMMON. Senior Lecturer and Director of Clinical Programs, University of Sydney Faculty of Law, Australia. Les McCrimmon received his law degree from the University of Alberta, Canada, in 1982 and practiced law in Canada and Australia from 1982-89. In 1988 he received an LL.M. from the University of Queensland. In 1989 he joined the faculty at Bond University School of Law, Brisbane, and was promoted to Associate Professor in 1995. He was appointed to his current position on January 1, 1996; he is responsible for overseeing the implementation and development of the school's clinical legal education program and teaches in the areas of advocacy, legal education and law. He is an instructor with the Australian Advocacy Institute, a member of the New South Wales Bar Association Practice Course sub-committee, and co-author of the Australian edition of Mauet & McCrimmon, Fundamentals of Trial Techniques.

DAVID McQUOID-MASON, Professor of Law, University of Natal-Durban, South Africa. David McQuoid-Mason is the current President of the Commonwealth Legal Education Association, as well as the Society of University Teachers of Law, South Africa. The former Dean of the University of Natal Law School, he is the South African representative to the International Client Counseling Competition.

N.R. MADHAVA MENON. Vice-Chancellor, National University of Juridical Sciences, Calcutta, and Member, Law Commission of India. Madhava Menon is the former Dean of the National Law School of India, the immediate past-President of the Commonwealth Legal Education Association, and the Indian representative to the International Client Counselling Competition. He has previously been Head of the Department of Law, Delhi University; Principal of the Government Law College, Pondicherry (India); a Fellow of the American Council of Learned Societies; Editor of the Indian Bar Review; and Secretary of the Bar Council of India Trust. In 1994 the International Bar Association conferred on him its Living Legend of Law Award. His publications include Handbook of Clinical Legal Education (1997), Social Justice and Legal Process (1985), The Legal Profession in India (1983), and Legal Education in India (1982).

LYNNE S. ROBINS. Associate Professor, Department of Medical Education, University of Washington, U.S.A. Lynne Robins received her Ph.D. in anthropology from the University of Michigan and specializes in the sociolinguistics of professional discourse.



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She served as the social scientist member of the Professional Discourse Project studying client interviewing at the District of Columbia School of Law and has designed curriculum and evaluation methods for doctor-patient interviewing in medical schools.

CHRISTOPHER J. ROPER. Consultant, the College of Law, Sydney, Australia. Christopher Roper has previously served as director of the Centre for Legal Education, the College of Law, Sydney, and the Leo Cussen Institute for Continuing Legal Education, Melbourne. He has also served as chair of the Legal Education Standing Committee of LAWASIA; the Secretariat of the Committee of Australian Law Deans; the former chair of the Australasian Professional Legal Education Conference; and the founding editor of the Journal of Professional Legal Education. He has consulted on legal education in Malaysia, the Peoples Republic of China, Hong Kong, Cambodia, Fiji, Singapore, the Philippines, Sri Lanka, New Zealand, Vietnam, and Papua New Guinea. He was one of the 1998 Inns of Court Fellows at the Institute for Advanced Legal Studies, University of London and received the Order of Australia in 1999 for his contributions to legal education.

AUSTIN SARAT. William Nelson Cromwell Professor of Jurisprudence & Political Science, Amherst College, U.S.A. Austin Sarat is a former President of the Law & Society Association, and Chair of the Working Group on Law, Culture and the Humanities. He is author or editor of more than twenty books including Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process, (with William Felstiner), Law's Violence, Law in Everyday Life, The Rhetoric of Law, Identities, Politics, and Rights, (all co-edited with Thomas Kearns), Race, Law, and Culture: Reflections on Brown v. Board of Education, and When the State Kills: Capital Punishment in Law, Politics, and Culture. He was the co-recipient of the 1997 Harry Kalven Award given by the Law & Society Association for "distinguished research on law and society."

AVROM SHERR. Woolf Professor of Legal Education, Institute of Advanced Legal Studies, University of London. Avrom Sherr is a member of the Lord Chancellor's Advisory Committee on Legal Education and Conduct, the Law Society Equal Opportunities Committee, and The Funding of Litigation sub-committee of the Civil Justice Council. He has also been a member of the Judicial Studies Board Ethnic Minorities Advisory Committee, the International Client Counselling Organizing Committee and the Law Centres Federation Executive Committee. He previously was Director of Legal Practice at the University of Warwick and Director of the Centre for Business and Professional Law at Liverpool University. He is the author of Lawyer Client Interviewing (1996), Advocacy (1994), and Lawyers-The Quality Agenda (with Richard Moorhead and Alan Patterson) (1994), as well as a number of other books and journal articles. He is the editor of the International Journal of the Legal Profession.

JOHN STURROCK. Director of Training and Education, Faculty of Advocates, Scotland. John Sturrock holds a first class honours LL.B degree from the University of Edinburgh (1980) and an LL.M. from the University of Pennsylvania (1985). He held a Harkness Fellowship to study in the United States in 1984-85. Since 1986, he has practiced as an advocate (barrister) at the Scottish Bar. In 1994, he was appointed the first Director of Training and Education at the Faculty of Advocates in Scotland. Since then, he has designed and delivered advocacy skills and continuing education



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programmes for the Scottish Bar, for which the Faculty received a national award for the Best Use of Training in the legal profession in the UK. He has taught widely in the field of advocacy skills and teacher training, including in the United States, South Africa and England. He is a trained mediator and negotiator and the only non-judge member of the Judicial Studies Committee in Scotland. He advises a number of institutions on course design and delivery.

NINA W. TARR. Professor of Law and Clinical Director, University of Illinois College of Law, U.S.A. Nina Tarr is a past president of the Clinical Legal Education Association (U.S.A.); a former member of the Standing Committee on Clinical Education, Association of American Law Schools; and a former member of the Board of Editors, Clinical Law Review. She is currently conducting research on ethical issues raised by empirical research in clinical legal education and was a 1999 Inns of Court Fellowship at the Institute for Advanced Legal Studies, University of London, where she conducted comparative research on legal education in England and the United States.

RODNEY UPHOFF. Professor of Law, University of Missouri-Columbia, U.S.A. Rodney Uphoff was the Chief Staff Attorney, State Public Defender Office, Milwaukee, Wisconsin for five years, Director of the Legal Defense Project at the University of Wisconsin School of Law for four years, and Director of Clinical Education at the University of Oklahoma. He has served as Vice Chair of the Defense Services Committee of the American Bar Association Criminal Justice Section and as Vice Chair of the Public Defender Committee of the Oklahoma Bar Association. He is on the Board of Editors of the Clinical Law Review. He has published extensively on the subject of legal ethics and criminal defense, including Ethical Problems Facing the Criminal Defense Lawyer (American Bar Association 1995). He is currently conducting extensive empirical research on attorney-client relations in the public defender setting.



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