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Evaluating Effective Lawyer-Client Communication: An International Project Moving from Research to Reform

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EVALUATING EFFECTIVE LAWYER-CLIENT COMMUNICATION: AN INTERNATIONAL PROJECT MOVING FROM RESEARCH TO REFORM

*Clark D. Cunningham**

An international group of legal educators and social scientists has begun work to develop a standard method for evaluating the effectiveness of lawyer-client communications by combining sociolinguistic analysis of recorded interviews with client satisfaction surveying, an approach that has won widespread acceptance in the medical field.[1]

INTRODUCTION

THE Park Nicollet Clinic in Minneapolis measures patient satisfaction on an annual basis for all of its first-year physicians.[2] A one-page questionnaire is mailed to one hundred randomly selected patients who have received health care from the physician during the previous four-to-six-week period.[3] Nineteen questions ask for disagreement or agreement (on a scale of one to five) with statements including "[this doctor] spends enough time with me," "answers my questions," "listens to what I'm saying," "explains my condition or diagnosis to my satisfaction," "provides information so that I can make decisions in my own care," "is concerned for me as a person as well as a patient," "is sensitive to my needs," as well as "I am generally satisfied with the care I have received from this doctor" and "I would recommend this doctor to a friend."[4] The patient is also asked to rate the doctor's overall quality of care from "Poor [1]" to "Excellent [5]" and is invited to note any additional comments (continuing on the back of the form if necessary).[5]

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1. For more information about the project described in this Article, see Washington University School of Law, *Effective Lawyer Client Communication: An International Project to Move From Research to Reform* (visited Feb. 16, 1999) <http://ls.wustl.edu/Communication/>. The bibliography attached in the appendix to this Article at 1973 will be continuously updated on this Web Site. Valuable comments and suggestions on this Article have been received from Bryna Bogoch, Nigel Duncan, Diana Eades, Melvin Hall, John Holtaway, Alan Houseman, Christopher Roper, and Avrom Sherr.

2. *See* Jeanne McGee et al., Collecting Information from Health Care Consumers: A Resource Manual of Tested Questionnaires and Practical Advice 11:29–11:45 (1997).

3. *See id.* at 11:29. Response rates average 48%. *See id.* at 11:31.

4. *Id.* at 11:35.

5. *See id.* A sample of this questionnaire is attached in the appendix to this Article at 1971.

The questionnaire was originally developed in 1986 to evaluate new physicians and has been used since then.[6] As of 1997, the clinic had a first-year physician data base for 160 physicians representing twenty-five specialty areas.[7] Individual physicians receive the survey results in a report that compares them with other physicians in the same department.[8] The clinic's medical director and each department chair also receive the report which they review with each new first-year physician as part of a comprehensive assessment process.[9]

According to a 1995 survey, virtually all hospitals in the United States have some kind of patient satisfaction measurement system in place.[10] In 1994, the United States Joint Commission on Accreditation of Healthcare Organizations ("Joint Commission") included in its standards a requirement to ensure that an organization "gathers, assesses, and takes appropriate action on information that relates to the patient's satisfaction with the services provided."[11] In 1995, the National Committee for Quality Assurance completed a one-year pilot project among twenty-one health insurers to test its standardized Health Plan Employer Data and Information Set ("HEDIS"), which includes measures of patient satisfaction.[12] A substantial private industry has developed to conduct patient satisfaction surveys for health care providers; some firms have more than 300 physician groups as clients.[13]

Doctor-patient communication is treated as an important subject for both pedagogy and empirical research in medical education. One recent review of the literature on doctor-patient communication cited 112 publications.[14] According to a 1993 survey of the 142 allopathic medical schools in the United States and Canada, 111 schools teach and evaluate communication skills through the use of lay persons, called "standardized patients," trained to simulate realistic clinical presentations. Thirty-nine schools actually require students to pass an

6. *See id.* at 11:30.

7. *See id.* at 11:29. The clinic previously experimented with patient telephone interviews. The initial form developed in 1986 was three pages long with three open-ended questions. *See id.* at 11:30.

8. *See id.* at 11:33.

9. *See id.*

10. *See* William J. Krowinski & Steven R. Steiber, Measuring and Managing Patient Satisfaction 25 (2d ed. 1996).

11. *Id.* at 23.

12. *See id.*

13. *See* Neil Chesanow, *Hire a Pro to Survey Your Patients*, Med. Econ., Oct. 13, 1997, at 141, 148, 150; *see also, e.g.*, Press, Ganey Associates, Inc., About Press, Ganey (1994) [hereinafter About Press, Ganey] (on file with author) (outlining the services of one company specializing in patient satisfaction surveys).

14. *See* L.M.L. Ong et al., *Doctor-Patient Communication: A Review of the Literature*, 40 Soc. Sci. & Med. 903 (1995).

examination using standardized patients before graduation.[15] The growing use of standardized patients follows extensive research showing that neither supervising medical faculty nor examining students can reliably assess whether patients are satisfied.[16] In contrast, standardized patient tests generally do reliably predict the degree of patient satisfaction a student will generate with real patients.[17]

Evaluation of the quality of lawyer-client relations in general, and communications in particular, is at a far less developed stage than the comparable work in the medical field. Among the notable developments in the medical field are: (1) the insights of sociolinguistic analysis are used to design survey methodology and, in turn, survey results are used to validate or critique the work of sociolinguists; (2) standardized methods are widely used for both sociolinguistic analysis and survey methodology; (3) the insights and methods of this combined research has penetrated deeply into both education and professional practice; (4) empirical measurement of satisfaction is valued and often required by regulators and funders; and (5) databases are formed that permit comparing performance with other professionals.

Although the legal field has made some recent progress, to date the various elements that have come together in the medical field have generally remained separate in the legal field. The body of literature using sociolinguistics and other social science approaches to study lawyer-client communications is growing, but that research is almost never correlated with survey data from clients. Client satisfaction surveys, largely conducted by the organized bar and agencies rather than by academics, are not designed using insights from the sociolinguistic research. The topic of lawyer-client communication is increasingly addressed in a proliferation of legal education texts, but the pedagogy is not informed by the social science research.[18] Where ac-

15. *See* M. Brownell Anderson et al., *Growing Use of Standardized Patients in Teaching and Evaluation in Medical Education*, 6 Teaching & Learning Med. 15, 16 (1994).

16. *See* Robyn Tamblyn et al., *Can Standardized Patients Predict Real-Patient Satisfaction with the Doctor-Patient Relationship?*, 6 Teaching & Learning Med. 36, 36 (1994). The authors of one of these landmark studies observed that faculty ratings were strongly influenced by the student's competence in technical aspects of care and that interview styles conducive to thorough data collection are different from those associated with patient satisfaction. *See id.* at 36-37 (citing J. Klessig et al., *Evaluating Humanistic Attributes of Internal Medicine Residents*, 4 J. Gen. Internal Med. 514 (1989)).

17. *See id.* at 37. The standardized patient score, however, did not reliably predict which students would receive the lowest real patient satisfaction evaluations. *See id.* at 42.

18. A notable exception is Avrom Sherr's text on interviewing, which draws heavily from both the work in the medical field and his own research. Avrom Sherr, Client Interviewing for Lawyers: An Analysis and Guide (1986). For recent use of social science research in clinical education see Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments in Client Interviews*, 4 Clinical L. Rev. 321 (1998); Gay Gellhorn et al., *Law and Language: An Interdisciplinary Study of*

tual client representation takes place by students, clients are not systematically surveyed to provide guidance for students or teachers.[19] Neither the world of professional practice nor the public funders of legal services rely to any significant degree on either social science analysis or client surveying to train and evaluate attorneys.

The time is now ripe for leaders of the legal profession, legal educators, and social scientists to combine forces to develop a shared approach to evaluating and improving lawyer-client communications.[20] William Felstiner, former director of the American Bar Foundation and a leading researcher on attorney-client relations, has recently published a very useful summary of what he describes as the "vast" and largely critical literature on lawyer-client relations.[21] One source he cites is extensive survey research indicating that "interpersonally the lawyer-client relationship is deeply troubled. All too often lawyers are thought to be inattentive, unresponsive, insensitive, non-empathetic, uncooperative, and arrogant."[22] Felstiner also refers to interviews with lawyers and analyses of observed lawyer-client meetings by socio-legal researchers,[23] statements by leaders of the bar, re-

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Client Interviews, 1 Clinical L. Rev. 245 (1994) [hereinafter Gellhorn et al., *Client Interviews*]; and Linda Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 Clinical L. Rev. 391 (1998).

19. It is common for client interviews by law clinic students to be recorded and analyzed, but the analysis is almost always conducted by lawyers based on their own values and experience, not by social scientists. For a notable exception, see Gellhorn et al., *Client Interviews*, *supra* note 18, at 256-57.

20. *See* Ward Bower, *Implementing Quality Management in a Law Firm*, 8 Prof. Law. 159, 163 (1997) (recommending client surveys and noting that while "[l]awyers tend to view quality in terms of the product . . . clients are judging quality more on service factors . . . ."); Project for the Future of Equal Justice, Comprehensive, Integrated Statewide System for the Provision of Civil Legal Assistance to Low Income Persons to Secure Equal Justice for All 23 (Discussion Draft 1998) (on file with author) (calling for the statewide collection of data measuring client satisfaction).

21. *See* W.L.F. Felstiner, *Professional Inattention: Origins and Consequences*, *in* The Human Face of Law 121, 124 (Keith Hawkins ed., 1997). Another excellent review of the literature, both in the United States and Britain, is found in 1 Avrom Sherr et al., Lawyers—The Quality Agenda 5, 5-12 (1994).

22. Felstiner, *supra* note 21, at 122 (citations omitted). It is not clear, however, that what client survey data exists actually support these dire conclusions.

23. *See id.* at 128-31. The most extensive analysis of observed lawyer-client meetings has been produced by Felstiner himself in collaboration with Austin Sarat. In the early 1980s they recorded 115 lawyer-client conversations in 40 divorce cases using two sites, one on the east coast and the other on the west coast. They have since produced an impressive and influential set of articles analyzing this data. *See* Austin Sarat & William L.F. Felstiner, Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process (1995); William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 Cornell L. Rev. 1447 (1992); Austin Sarat & William L.F. Felstiner, *Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction*, 22 L. & Soc'y Rev. 737 (1988); Austin Sarat & William L.F. Felstiner, *Law and Strategy in the Divorce Lawyer's Office*, 20 L. & Soc'y Rev. 93 (1986); Austin Sarat & William L.F. Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office*, 98 Yale L.J. 1663 (1989); Austin Sarat & William L.F. Felstiner, *Legal Realism in Lawyer-*

ports of lawyer disciplinary bodies, client focus groups, and academic articles.[24] He gathers from these sources the conclusion that lawyers frequently fail to treat clients with respect, do not consider the nature of interpersonal relations with clients to be an important aspect of law practice, are motivated more by financial returns than by professional values, are inaccessible and unresponsive, are poor communicators, do not know how to deal with clients effectively, are indifferent to clients' feelings, and are indifferent to the pace of clients' legal affairs.[25]

According to Felstiner, until recently the organized American bar treated evidence of low public regard for the profession as a public relations issue rather than a substantive problem.[26] Even though he believes that there has been a "total switch of attitude" within the bar, such that bar leaders are now frequently blaming lawyers for the public's low esteem, Felstiner still finds the bar's response misguided and simplistic.[27] Simply urging lawyers to be more "self-aware," he claims, will have little effect: "lawyer behavior has complicated structural origins and . . . any change in that behavior is likely to be slow, uncertain, and grudging."[28] He attributes much of the structural cause to legal education.[29] A central problem may be a prevailing attitude among lawyers that client satisfaction is overwhelmingly dependant on outcomes.[30]

I believe that one of the most promising ways to move forward, from research to reform, is to develop a simple, standardized method of obtaining feedback from clients about their experience of communications with their lawyers. Client evaluations ought to become as standard for law school clinical teaching as student evaluations are for classroom teaching. The same evaluation methods could then extend to practice settings, most likely beginning with publicly funded legal services programs—both because funders would be in a position to

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Client Communication, *in* Language in the Judicial Process 133 (Judith N. Levi & Anne Graffam Walker eds., 1990).

24. *See* Felstiner, *supra* note 21, at 128-31.

25. *See id.*

26. *See id.* at 122. "[The bar assumed that the] public did not value lawyers correctly because it misunderstood their role in the adversary dimensions of the American legal system rather than because lawyers behaved inappropriately." *Id.*

27. *Id.*

28. *Id.*

29. *See id.* at 131-37. Felstiner also plausibly suggests that socialization in the first years of practice is a powerful influence. *See id.* at 137-38.

30. *See* Lynn Mather et al., *"The Passenger Decides on the Destination and I Decide on the Route": Are Divorce Lawyers "Expensive Cab Drivers?"*, 9 Int'l J.L. Fam. 286, 294-97 (1995). There is an impressive body of social science research indicating that clients judge whether outcomes are "fair" in large part in terms of the procedures by which the outcomes are reached, including the way lawyers communicate with them. *See generally* E. Allan Lind & Tom R. Tyler, The Social Psychology of Procedural Justice (1988) (discussing in depth people's interest in issues of process and examining the importance of social process in determining reactions to legal experiences).

encourage their use and because such clients lack the ability of paying clients to "vote with their feet" if dissatisfied with their lawyers. Ideally, law firms would, like the Park Nicollet Clinic, decide it was in their own interest to obtain more objective and complete information about their clients' views, particularly when training and evaluating new attorneys. Legal scholars constantly call for lawyers to hear the voices of their clients; client evaluations would give reality to this rhetoric.

I. Background of the International Project

In 1995, Bonnie McElhinny, a sociolinguist, and I published a "work in progress" article in the *Clinical Law Review* titled *Taking It to the Streets*.[31] The article describes the design for a research project to analyze and improve the way lawyers interview clients.[32] The following year I had the good fortune to read a number of papers based on research outside of the United States on lawyer-client communications. One paper written by Avrom Sherr, a leading English law professor in the field of clinical education, reported on extensive analysis of more than 100 client interviews.[33] A second, written by Livingston Armytage, a consultant on law firm management, was based on a survey of clients of accredited specialist lawyers in Australia.[34] The third article, by a noted Australian sociolinguist, Diana Eades, reported on a highly publicized court case in which a murder conviction was reversed based in part on social science evidence of inadequate lawyer-client communications.[35] Finding these papers to be thought-provok-

31. Clark D. Cunningham & Bonnie S. McElhinny, *Taking It to the Streets: Putting Discourse Analysis to the Service of a Public Defender's Office*, 2 Clinical L. Rev. 285 (1995).

32. *See id.* at 286-87.

33. *See* Avrom Sherr, *The Value of Experience in Legal Competence*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 133, 140 (1996).

34. *See* Livingston Armytage, *Client Satisfaction with Specialists' Services: Lessons for Legal Educators*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 355, 357-65 (1996).

35. *See* Diana Eades, *Legal Recognition of Cultural Differences in Communication: The Case of Robyn Kina*, 16 Language & Comm. 215 (1996). I obtained the Sherr and Armytage papers by attending an international conference on professional legal education in September 1996. The conference was sponsored by the Australasian Professional Legal Education Council and held at the College of Law in Sydney, Australia. For a summary of the Sherr, Armytage, and Eades papers, see Clark D. Cunningham, A Modest Proposal: Cross-National Empirical Research on Lawyer-Client Communications (Sept. 17, 1997) (unpublished manuscript, on file with author). Other papers presented at that conference relevant to empirical study of the legal profession and lawyer-client communication include Gay Crebert, *Bridging the Gap or Leaping the Chasm? A Study of How Six New Law Graduates Dealt with the Different Learning Contexts of University and Professional Practice*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 515 (1996); John K. de Groot, *A Comparison of the Relative Effectiveness of Articles of Clerkship and Legal Practice Courses in Producing a Competent Lawyer*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 389 (1996); Ainslie Lamb, *Cross-Cultural Awareness*

ing, especially on the troubling question of receiving feedback from clients, I proposed that a model be developed for empirical research on client interviewing that could be applied internationally. Looking beyond national boundaries not only suggests new ideas and approaches, but also can prompt reconsideration of attitudes so dominant in one's own culture that they seem self-evidently true.

II. THE CURRENT RESEARCH PROJECT

The proposal for cross-national empirical research on lawyer-client communication, which for a time existed only as a working paper and a conference presentation, is now on the verge of being implemented. The Centre for Legal Education in Sydney, Australia has agreed to sponsor the project. The Centre's director, Christopher Roper, and I are serving as the project's co-directors. An international Advisory Board consisting of legal educators and social scientists has also been formed.[36] In July 1998, Roper and I met with a number of Advisory Board members during the World Wide Advocacy Conference in London, sponsored by the Inns of Court School of Law. As a result of those meetings, we developed the following initial research questions focused on the initial interview:

1. What specific sociolinguistic features of lawyer discourse correlate with client satisfaction as measured by a client questionnaire at the completion of the interview?
2. Can a lawyer consistently increase client satisfaction by altering specific sociolinguistic features of the lawyer's discourse?

Examples of sociolinguistic features that will be studied are: (1) the use of open-ended versus closed-ended questions; (2) "framing" questions (i.e., explaining why the question is being asked);[37] and (3) forms

in Legal Issues Involving Aboriginal and Torres Strait Islander People, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 25 (1996); and Rosemary Samwell-Smith, *Skills, Myths and Videotapes: (Effective Client Communication: The English Perspective)*, *in* 2 Skills Development for Tomorrow's Lawyers: Needs and Strategies 923 (1996). For recent work by Australian scholars on lawyer-client communication, see Allan Chay & Judith Smith, Legal Interviewing in Practice (1996); Diana Eades, Aboriginal English and the Law (1992); Diana Eades, Language In Evidence: Issues Confronting Aboriginal and Multicultural Australia (1995); and Kay A. Lauchland & Marlene J. LeBrun, Legal Interviewing, Theory, Tactics and Techniques (1996). I became acquainted with Eades and her work thanks to Judith Levi, former chair of the linguistics department at Northwestern University, who has been, for myself and many others in law, an invaluable resource for becoming acquainted with linguists working in the legal field.

36. *See infra* app. at 1981-86. For further information about Advisory Board members, see Washington University School of Law, *Effective Lawyer Client Communication: An International Project to Move From Research to Reform* (visited Feb. 16, 1999) <http://ls.wustl.edu/Communication/>.

37. Lawyers frequently do not explain why they are asking questions and even refuse client requests for such explanations. *See, e.g.*, Robert Traver, Anatomy of a Murder 24 (1958) ("Lawyer: '[Is this] your first marriage?' Client: 'No.' Lawyer: 'Suppose you tell me the matrimonial score and save time. Like Sergeant Friday, all I

of address (for example, referring to the client as "Ms. Smith" or "Jane"). As discussed below, we believe that this research topic is itself of considerable interest and importance. Our goals, however, go well beyond answering these questions. Our hope is that this project will prompt the creation and testing of valuable new tools for evaluating attorney-client relations in general. In particular, we want this initial project to be the setting for developing "new laboratory equipment" for analyzing the research issues discussed below.

A. *Research Issues with Sociolinguistic Analysis*

A major obstacle that lies at the threshold of any effort to record and analyze lawyer-client interviews, at least in the United States, is the problem of preserving the attorney-client privilege.[38] In most (if not all) jurisdictions, if the client consents to having a third person present at a meeting, then the client waives any claim of confidentiality.[39] Thus, if an opposing party discovered that a social scientist had observed the meeting, then the attorney-client privilege would not be available to prevent the opponent from compelling either the client or the client's attorney to disclose the contents of the meeting in discovery or at trial. Authorizing a third party not physically present to listen to a recording of the meeting would probably have the same effect.[40] The handful of social scientists who have somehow succeeded in persuading attorneys and their clients to permit them to observe and/or record interviews have generally not explained how this problem was addressed.[41] One exception is the Gellhorn, Robins, and Roth study[42] in which Gellhorn and Roth were the supervising attorneys. They decided to authorize Robins, an anthropologist, and her students to review the recorded interviews with their clients without seeking client consent on the rationale that the risks created by loss of the privilege were minimal due to the type of cases studied.[43] In *Taking It to the Streets*, McElhinny and I concluded that sociolinguistic research could be designed to preserve the privilege.[44]

want are the facts, ma'am.' Client: 'Is all this necessary?' Lawyer: 'Suppose you let me be the judge.' Client: 'It's my second.'").

38. *See* Legal Services Corp., The Delivery Systems Study: A Policy Report to the Congress and the President of the United States 106 (1980) [hereinafter Delivery Systems Study]; Brenda Danet et al., *Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure*, 14 L. & Soc'y Rev. 905, 908-10 (1980).

39. *See* Cunningham & McElhinny, *supra* note 31, at 292-96.

40. *See id.*

41. *See id.* at 292 n.12.

42. *See* Gellhorn et al., *Client Interviews*, *supra* note 18.

43. *See id.* at 272-74. The cases involved disability claims in an administrative tribunal where there was no opposing party or opposing counsel. *See id.* at 272 n.83. For a critique of their rationale, see Nina W. Tarr, *Clients' and Students' Stories: Avoiding Exploitation and Complying with the Law to Produce Scholarship with Integrity*, 5 Clinical L. Rev. 271, 289-305 (1998).

44. Cunningham & McElhinny, *supra* note 31, at 295-96.

Where the researcher agrees to serve as a consultant to the attorney to assist in effective representation of that client and to be bound by the privilege—and thus not to use or disclose the contents of the interview without the attorney's approval—the privilege is maintained.[45] The attorney would obtain the client's consent before authorizing use, typically after the conclusion of the case.[46] One particular benefit of conducting this proposed project cross-nationally is that, in other countries, the privilege is not waived by the researcher's presence.[47]

In addition to preserving the lawyer-client privilege, obtaining informed client consent requires careful consideration. For researchers in the United States who are university-based or are receiving federal funding, standards and procedures for research involving human subjects may be applicable.[48]

Although social scientists would probably prefer a method that gave them maximum information—such as personal observation plus video recording—such an approach raises substantial cost and pragmatic problems, particularly coordinating the observer's schedule with the time of the interview. We are also concerned about the distorting and intimidating effect of having the researcher physically present. Therefore, we plan to use audio recording in most cases. The cooperating attorney will operate the tape recorder and send the tape to the sociolinguist for analysis.[49]

It is critical to develop a standardized list of features to analyze, with particular emphasis on features capable of objective measurement—for example, the number of interruptions coded by the identity of the speaker and the form of the speaker's address. Discourse analysis in general, and the study of professional discourse in particular, is a sufficiently developed field sharing wide consensus about terminology and methods.[50] We selected our initial research questions in part so that we could draw upon this work.

B. *Research Issues with Surveying*

In 1980, the Legal Services Corporation reported to the United States Congress that it was unable to conduct a satisfactory client sat-

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45. *See id.*

46. *See id.* at 294-96. For a sample consulting agreement and client disclosure, see *id.* at 312-13.

47. In my conversations with Avrom Sherr, he has stated that English law does preserve the privilege despite recording and analysis by researchers. This explains why Sherr has been able to conduct his extensive research. We are researching this issue for other Commonwealth countries.

48. *See* Cunningham & McElhinny, *supra* note 31, at 296-303 (discussing other ethical obligations of social scientists); Tarr, *supra* note 43, at 287-92 (discussing informed consent requirements against the background of research involving human subjects).

49. Many law school clinics routinely videotape interviews, and if such a clinic is a research site, then videotaping would be practical and impose no additional costs.

50. *See* Cunningham & McElhinny, *supra* note 31, at 288-90.

isfaction survey (designed to compare private attorney to staff attorney models for service delivery) because of low response rates.[51] The method used was a thirty-minute interview by a research contractor, conducted primarily by telephone, after the case was complete.[52] Legal service providers gave the contractor a list of clients intended to be representative and then mailed the clients information about the project and a postcard to be sent to the contractor if the client wished to participate.[53] Only twenty percent of these clients returned postcards, making the overall response rate against the original sample only seventeen percent.[54] This response rate was considered too low for reliability by the Legal Services Corporation, which was also concerned about a selection effect from the use of the postcard system.[55] According to Alan Houseman, director of research at the Legal Services Corporation during the time of this study, the study was the most comprehensive examination to date of any legal services delivery system and yet could not complete the client satisfaction measure.[56] Indeed, he concludes that despite years of efforts by a variety of agencies, there has never emerged an assessment model that worked well and was supported by the government funding source.[57]

Houseman's conclusion makes for an interesting contrast to what has taken place in the medical field. We hope to revisit the feasibility of surveying client satisfaction by learning from the experience in the medical field. At this point, we would propose to administer a short, one-page questionnaire to be completed privately by the client, immediately after the initial interview, preferably before the client left the office.[58] We think the simplicity and brevity of this procedure, combined with the current relevance of representation to the client, will significantly increase response rates. We are also willing to provide clients with a financial incentive for completing the survey, a standard practice in social science research.

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51. *See* Delivery Systems Study, *supra* note 38, at 105.

52. *See id.* at 106.

53. *See id.* at 108.

54. *See id.* Nevertheless, 84% of those clients returning postcards were successfully interviewed. *See id.*

55. *See id.* at 109-12.

56. *See* Letter from Alan Houseman, Director of Research, Legal Services Corporation (January 27, 1998) (on file with author).

57. *See id.*

58. The Legal Services Corporation elected to wait until the case was completed to "ensure that the survey did not interfere with the attorney-client relationship." Delivery Systems Study, *supra* note 38, at 106. Although this is a concern, we do not think this is an insurmountable problem, particularly if clients are reliably assured that their responses will be coded for anonymity. Having the clients fill out the questionnaire themselves rather than speak to an interviewer has been shown to increase confidence of confidentiality in the medical field. *See* Melvin F. Hall, *Patient Satisfaction or Acquiescence? Comparing Mail and Telephone Survey Results,* 15 J. Health Care Marketing 54, 55 (1995).

Questionnaire design is critical. General questions about "are you satisfied" are much less helpful than more specific questions. One major firm in the medical field has a general principle that a question on a satisfaction survey should almost always address a specific, concrete issue or practice that the provider could take action about based upon the response.[59] Of course, we would want the survey questions to correlate, using lay language, with the sociolinguistic features being analyzed. Equally important is a standard list of questions so that results can be compared between attorneys and across programs. In academic medicine, one standardized set has been widely used[60] and, as discussed above, major funders of health care are in the process of developing their own standard forms.[61]

One of our Advisory Board members, Diana Eades, has pointed out that completing a written satisfaction survey may be an unfamiliar and uncomfortable activity for many cultural groups, citing her research on legal representation of Aborigines in Australia as an example.[62] We intend to look for such problems and to experiment with alternative, culturally appropriate methods for obtaining client feedback.

CONCLUSION

We continue to gather more information about empirical methods used for assessing professional communication with plans to begin one or more pilot projects in 1999. I hope that any readers of this paper who have used methods for determining client satisfaction or objectively assessing videotaped interviews will share them with me. We also plan to post queries on the Internet.[63] We particularly plan to

59. *See* About Press, Ganey, *supra* note 13, at 8 (claiming that The Press, Ganey data collected from surveys are valid because hospitals can and do use the data to make concrete improvements in health care delivery).

60. *See* John E. Ware et al., Development and Validation of Scales to Measure Patient Satisfaction with Health Care Services (1976).

61. *See supra* note 12 and accompanying text.

62. This information was obtained from my communication with Diana Eades. For a further discussion of this issue, see Diana Eades, Aboriginal English and The Law (Communicating with Aboriginal English Speaking Clients: A Handbook for Legal Practitioners) (1992); Diana Eades, Language In Evidence: Issues Confronting Aboriginal And Multicultural Australia (1995); and Diana Eades, *Legal Recognition of Cultural Differences in Communication: The Case of Robyn Kina*, 16 Language & Comm. 215 (1996).

63. For access to United States clinical law teachers, LAWCLINIC@lawlib.wuacc.edu is proving to be a very powerful communication medium. A new "bulletin board" (or "listserve") that connects clinical law teachers around the world has been set up. This international discussion group is sponsored by the Global Alliance for Justice Education ("GAJE"). Membership information for GAJE is available from Robin Palmer, University of Natal, South Africa via email at <palmer@law.und.ac.za>; the listserve itself is maintained by Gary Blasi at UCLA via email at <blasi@law.ucla.edu>.

look closely at research on the medical profession on this subject, which is, as discussed above, far more advanced.[64]

If a variety of schools and professional settings began to use a standard client survey form and methodology for assessing recorded interviews, then one would want the model to be as good as possible before implementation. Even an imperfect approach, however, would not only begin to develop a rich body of data, but it could also create a common vocabulary to enable law teachers and practitioners around the world to talk to each other about our common goal of representing clients well.

64. For examples of research on the medical profession on this subject, see The Social Organization Of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983); David Zimmerman et al., The Healthcare Customer Service Revolution: The Growing Impact of Managed Care on Patient Satisfaction (1996); Lynda A. Anderson & Marc A. Zimmerman, *Patient and Physician Perceptions of Their Relationship and Patient Satisfaction: A Study of Chronic Disease Management*, 20 Patient Educ. & Counseling 27 (1993); Howard Beckman, *Communication and Malpractice: Why Patients Sue Their Physicians*, 62 Clev. Clinic J. Med. 84 (1995); Christina G. Blanchard et al., *Physician Behaviors, Patient Perceptions, and Patient Characteristics as Predictors of Satisfaction of Hospitalized Adult Cancer Patients*, 65 Cancer 186 (1990); Rita Charon et al., *Multi-Dimensional Interaction Analysis: A Collaborative Approach to the Study of Medical Discourse*, 39 Soc. Sci. & Med. 955 (1994); Loretto M. Comstock et al., *Physician Behaviors that Correlate with Patient Satisfaction*, 57 J. Med. Educ. 105 (1982); Ronald M. Epstein et al., *Perspectives on Patient-Doctor Communication*, 37 J. Fam. Prac. 377 (1993); Judith A. Hall et al., *Older Patients' Health Status and Satisfaction with Medical Care in an HMO Population*, 28 Med. Care 261 (1990); Hall, *supra* note 58; Christian Heath, *The Delivery and Reception of Diagnosis in the General-Practice Consultation*, *in* Talk at Work: Interaction in Institutional Settings 235 (Paul Drew & John Heritage eds., 1992); John Heritage & Sue Sefi, *Dilemmas of Advice: Aspects of the Delivery and Reception of Advice in Interactions Between Health Visitors and First-Time Mothers*, *in* Talk at Work: Interaction in Institutional Settings, *supra*, at 359; William T. Merkel, *Physician Perception of Patient Satisfaction: Do Doctors Know Which Patients Are Satisfied?*, 22 Med. Care 453 (1984); Cassie L. Murphy-Cullen & Lars C. Larsen, *Interaction Between the Socio-Demographic Variables of Physicians and Their Patients: Its Impact upon Patient Satisfaction*, 19 Soc. Sci. & Med. 163 (1984); Ong et al., *supra* note 14; Albert B. Robillard et al., *Between Doctor and Patient: Informed Consent in Conversational Interaction*, *in* The Social Organization of Doctor-Patient Communication, *supra*, at 107; Lynne S. Robins & Fredric M. Wolf, *Confrontation and Politeness Strategies in Physician-Patient Interactions*, 27 Soc. Sci. & Med. 217 (1988); Lynne S. Robins & Fredric M. Wolf, *The Effect of Training on Medical Students' Responses to Geriatric Patient Concerns: Results of a Linguistic Analysis*, 29 The Gerontologist 341 (1989); Debra Roter & Richard Frankel, *Quantitative and Qualitative Approaches to the Evaluation of the Medical Dialogue*, 34 Soc. Sci. & Med. 1097 (1992); *Special Section: Annex to the Proceedings of the AAMC Consensus Conference on the Use of Standardized Patients in the Teaching and Evaluation of Clinical Skills*, 6 Teaching & Learning Med. (1994); Paula L. Stillman et al., *Use of Client Instructors to Teach Interviewing Skills to Law Students*, 32 J. Legal Educ. 395 (1982).

APPENDIX

QUESTIONNAIRE

PATIENT/PHYSICIAN COMMUNICATION PROFILE

Please complete this form regarding the care you have received from Dr. __________ in the __________ Department.

1. How long have you been a patient of Dr. __________? *(Check one box)*
   1 ☐ Less than 6 months 2 ☐ 6 to 12 months 3 ☐ More than 1 year

2. Approximately how many times have you seen Dr. _____ for care? *(Check one box)*
   1 ☐ 1 time 2 ☐ 2 to 4 times 3 ☐ 5 to 7 times 4 ☐ 8 or more times

3. How long do you usually wait before you are seen by Dr. _____? *(Check one box)*
   1 ☐ 0 to 15 minutes 2 ☐ 16 to 30 minutes 3 ☐ More than 30 minutes

(Please check one box for each item)

DR. __________	Strongly Disagree	Disagree	Uncertain	Agree	Strongly Agree	Not Applicable
4. Makes me feel comfortable	☐1	☐2	☐3	☐4	☐5	☐8
5. Spends enough time with me	☐1	☐2	☐3	☐4	☐5	☐8
6. Sits down while talking to me	☐1	☐2	☐3	☐4	☐5	☐8
7. Answers my questions	☐1	☐2	☐3	☐4	☐5	☐8
8. Listens to what I'm saying	☐1	☐2	☐3	☐4	☐5	☐8
9. Explains my condition or diagnosis to my satisfaction	☐1	☐2	☐3	☐4	☐5	☐8
10. Explains lab tests or x-rays	☐1	☐2	☐3	☐4	☐5	☐8
11. Provides me with the results of lab tests or x-rays	☐1	☐2	☐3	☐4	☐5	☐8
12. Explains medication to my satisfaction	☐1	☐2	☐3	☐4	☐5	☐8
13. Provides information so that I can make decisions in my own care	☐1	☐2	☐3	☐4	☐5	☐8
14. Is concerned for me as a person as well as a patient	☐1	☐2	☐3	☐4	☐5	☐8
15. Refers me to other consultants as I think they are needed	☐1	☐2	☐3	☐4	☐5	☐8
16. Is sensitive to my needs	☐1	☐2	☐3	☐4	☐5	☐8
17. I am generally satisfied with the care I have received from this doctor	☐1	☐2	☐3	☐4	☐5	☐8
18. I would recommend this doctor to a friend	☐1	☐2	☐3	☐4	☐5	☐8

19. Overall, how would you rate Dr. __________'s quality of care? *(Check one box)*
    1 ☐ Poor 2 ☐ Fair 3 ☐ Good 4 ☐ Very Good 5 ☐ Excellent

Please note any additional comments about the quality of care you have received from Dr. _______. *(Continue on back, if necessary)*

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SUPPLEMENTARY MATERIALS

SAMPLE SURVEY COVER LETTER

Park Nicollet Medical Center
A HealthSystem Minnesota℠ member

5000 West 39th Street
Minneapolis, MN 55416-2699
612/927/3123

<<date>>

Dear Patient:

Will you help?

Your opinion is extremely important to us. By responding candidly to the enclosed survey, you will help assure that we provide the best possible care and service to our patients. The questionnaire focuses on the importance of good communication between patient and physician.

Your name was selected at random from the appointment sheets of Dr. <<fname>> <<lname>> in the <<dept>> department. To be sure that all information is both confidential and anonymous, questionnaires will never be identified by name. Your comments will be combined with responses from other patients in a summarized report.

Thank you for your time and attention. We look forward to reviewing your comments as we learn from your experiences. Please return your survey in the postage-paid envelope by <<date2>>.

If you have any questions, please call Cheryl Craft, R.N. at 993-3525.

Sincerely,

Theresa Ryan, M.D.
Medical Director, Clinical Operations

aditcov
2/6/95

Courtesy of Park Nicollet Medical Foundation, Minneapolis, Minnesota.

BIBLIOGRAPHY

Niyi Akinnaso & Cheryl Seabrook Ajirotutu, *Performance and Ethnic Style in Job Interviews*, *in* Language and Social Identity (John J. Gumperz ed., 1982).

Tony Alfieri, *Reconciling Poverty Law Practice: Learning Lessons of Client Narrative*, 100 Yale L.J. 2107 (1991).

William W. Allen et al., *Satisfaction with Care Received from Family Physicians: A Comparison of Medicaid Enrollees and Other Patients*, 28 Fam. Med. 429 (1996).

Lynda A. Anderson & Marc A. Zimmerman, *Patient and Physician Perceptions of Their Relationship and Patient Satisfaction: A Study of Chronic Disease Management*, 20 Patient Educ. & Counseling 27 (1993).

Livingston Armytage, *Client Satisfaction with Specialists' Services: Lessons for Legal Educators*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 355 (1996).

Livingston Armytage, A Review of Aspects of the Specialist Accreditation Program of the Law Society of New South Wales (1996).

Lawrence Becker, *Subjects Are Not Patients*, 13 Language & Comm. 95 (1993).

Howard Beckman, *Communication and Malpractice: Why Patients Sue Their Physicians*, 62 Clev. Clinic J. Med. 84 (1995).

Christina Blanchard et al., *The Impact of Oncologists' Behavior on Patient Satisfaction with Morning Rounds*, 58 Cancer 387 (1986).

Christina Blanchard et al., *Interactions Between Oncologists and Patients During Rounds*, 99 Annals Internal Med. 694 (1983).

Christina G. Blanchard et al., *Physician Behaviors, Patient Perceptions, and Patient Characteristics as Predictors of Satisfaction of Hospitalized Adult Cancer Patients*, 65 Cancer 186 (1990).

Bryna Bogoch, *Gendered Lawyering: Difference and Dominance in Lawyer-Client Interaction*, 31 L. & Soc'y Rev. 677 (1997).

Bryna Bogoch, *Power, Distance and Solidarity: Models of Professional-Client Interaction in an Israeli Legal Aid Setting*, 5 Discourse & Soc'y 65 (1994).

Bryna Bogoch & Brenda Danet, *Challenge and Control in Lawyer-Client Interaction: A Case Study in an Israeli Legal Aid Office*, 4 Text 249 (1984).

Ward Bower, *Implementing Quality Management in a Law Firm*, 8 Prof. Law. 159 (1997).

Samuel J. Brakel, *Free Legal Services for the Poor:* Staffed Office vs. Judicare*: The Client's Evaluation*, 2 Wis. L. Rev. 532 (1973).

Samuel J. Brakel, Judicare: Public Funds, Private Lawyers, and Poor People (1974).

Deborah Cameron et al., *Ethics, Advocacy and Empowerment: Issues of Method in Researching Language*, 13 Language & Comm. 81 (1993).

Deborah Cameron et al., Researching Language: Issues of Power and Method (1992).

Christopher N. Candlin et al., The Language of Lawyer-Client Conferencing (1994).

Jonathan D. Casper et al., *Procedural Justice in Felony Cases*, 22 L. & Soc'y Rev. 483 (1988).

Rita Charon et al., *Multi-Dimensional Interaction Analysis: A Collaborative Approach to the Study of Medical Discourse*, 39 Soc. Sci. & Med. 955 (1994).

Allan Chay & Judith Smith, Legal Interviewing in Practice (1996).

Aaron V. Cicourel, Hearing Is Not Believing: Language and the Structure of Belief in Medical Communication (1983).

Loretto M. Comstock et al., *Physician Behaviors that Correlate with Patient Satisfaction*, 57 J. Med. Educ. 105 (1982).

Consortium on Legal Services and the Public, Legal Needs and Civil Justice: A Survey of Americans (1994).

Gay Crebert, *Bridging the Gap or Leaping the Chasm? A Study of Six Law Graduates in University and Practice*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 515 (1996).

Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 Cornell L. Rev. 1298 (1992).

Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 Mich. L. Rev. 2459 (1989).

Clark D. Cunningham & Bonnie McElhinny, *Taking it to the Streets: Putting Discourse Analysis to the Service of a Public Defender's Office*, 2 Clinical L. Rev. 285 (1995).

Barbara A. Curran, The Legal Needs of the Public (1977).

Brenda Danet et al., *Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure*, 14 L. & Soc'y Rev. 905 (1980).

Peggy C. Davis, *Contextual Legal Criticism: A Demonstration Exploring Hierarchy and "Feminine" Style*, 66 N.Y.U. L. Rev. 1635 (1991).

John de Groot, *A Comparison of the Relative Effectiveness of Articles of Clerkship and Legal Practice Courses in Producing a Competent Lawyer*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 389 (1996).

Robin M. DiMatteo, *The Significance of Patients' Perceptions of Physician Conduct: A Study of Patient Satisfaction in a Family Practice Center*, 6 J. Community Health 18 (1980).

Robert D. Dinerstein, *A Mediation on the Theoretics of Practice*, 43 Hastings L.J. 971 (1992).

Diana Eades, Aboriginal English and the Law (Communicating with Aboriginal English Speaking Clients: A Handbook for Legal Practitioners) (1992).

Diana Eades, *Case of Communicative Clash: Aboriginal English and the Legal System*, *in* Language and the Law (J. Gibbons ed., 1994).

Diana Eades, *Language in Court: The Acceptance of Linguistic Evidence About Indigenous Australians in the Criminal Justice System*, *in* Australian Aboriginal Studies 15 (1997).

Diana Eades, Language in Evidence: Issues Confronting Aboriginal and Multicultural Australia (1995).

Diana Eades, *Legal Recognition of Cultural Differences in Communication: The Case of Robyn Kina*, 16 Language & Comm. 215 (1996).

Ronald M. Epstein et al., *Perspectives on Patient-Doctor Communication*, 37 J. Fam. Prac. 377 (1993).

W.L.F. Felstiner, *Professional Inattention: Origins and Consequences*, *in* The Human Face of Law: Essays in Honour of Donald Harris 121 (Keith Hawkins ed., 1997).

Sue Fisher, *Doctor Talk/Patient Talk: How Treatment Decisions Are Negotiated in Doctor-Patient Communication*, *in* The Social Organization of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Esther Figueroa, *Research and Empowerment: Who's Empowerin' Who?*, 13 Language & Comm. 101 (1993).

Richard M. Frankel, *The Laying of Hands: Aspects of the Organization of Gaze, Touch, and Talk in a Medical Encounter*, *in* The Social Organization of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 Clinical L. Rev. 321 (1998).

Gay Gellhorn et al., *Law and Language: An Interdisciplinary Study of Client Interviews*, 1 Clinical L. Rev. 245 (1994).

Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 Hastings L.J. 861 (1992).

Howard Giles, *Empowering and "Disempowering"?*, 13 Language & Comm. 105 (1993).

John Daniel Goldsmith, *The Initial Attorney/Client Consultation: Case History*, 45 S. Speech Comm. J. 394 (1980).

Judith A. Hall et al., *Older Patients' Health Status and Satisfaction with Medical Care in an HMO Population*, 28 Med. Care 261 (1990).

Melvin F. Hall, *Patient Satisfaction or Acquiescence? Comparing Mail and Telephone Survey Results*, 15 J. Health Care Mktg. 54 (1995).

Sandra Harding, Whose Science? Whose Knowledge? Thinking from Women's Lives (1991).

Rom Harre, *Doing Well by Doing Good: Some Methodological Consequences of Treating Subjects as if They Were People*, 13 Language & Comm. 109 (1993).

Christian Heath, *The Delivery and Reception of Diagnosis in the General-Practice Consultation*, *in* Talk at Work: Interaction in Institutional Settings (Paul Drew & John Heritage, eds., 1992).

John Heritage & Sue Sefi, *Dilemmas of Advice: Aspects of the Delivery and Reception of Advice in Interactions Between Health Visitors and First-Time Mothers*, *in* Talk at Work: Interaction in Institutional Settings (Paul Drew & John Heritage, eds., 1992).

Carl J. Hosticka, *We Don't Care About What Happened, We Only Care About What Is Going to Happen: Lawyer-Client Negotiations of Reality*, 26 Soc. Prob. 599 (1979).

Kate Howe, *Unanswered Questions, Unforeseen Dangers*, 13 Language & Comm. 113 (1993).

Gail Jefferson & John R. E. Lee, *The Rejection of Advice: Managing the Problematic Convergence of a "Troubles-Telling" and a "Service Encounter,"* *in* Talk at Work: Interaction in Institutional Settings (Paul Drew & John Heritage, eds., 1992).

William J. Krowinski & Steven R. Steiber, Measuring and Managing Patient Satisfaction (1996).

William Labov, *Objectivity and Commitment in Linguistic Science: The Case of the Black English Trial in Ann Arbor*, 11 Language in Soc'y 164 (1982).

William Labov, Sociolinguistic Patterns (1972).

Ainslie Lamb, *Cross-Cultural Awareness in Legal Issues Involving Aboriginal and Torres Strait Islander People*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 25 (1996).

Donald Larmouth, *The Legal and Ethical Status of Surreptitious Recording in Dialect Research: Do Human Subjects Guidelines Apply?*, *in* Legal and Ethical Issues in Surreptitious Recording 76 (1992).

Celia O. Larson et al., *The Relationship Between Meeting Patients' Information Needs and Their Satisfaction with Hospital Care and General Health Status Outcomes*, 8 Int'l J. Quality Health Care 447 (1996).

Kay Lauchland et al., *Legal Interviewing: Who Cares About the Client? A Workshop on Training in Interviewing and Counselling Skills, in* 2 Skills Development for Tomorrow's Lawyers: Needs and Strategies 955 (1996).

Kay A. Lauchland & Marlene J. Le Brun, Legal Interviewing, Theory, Tactics and Techniques (1996).

Legal Services Corp., The Delivery Systems Study: A Policy Report to the Congress and the President of the United States (1980).

Legal Services Corp., The Delivery Systems Study: A Research Project on the Delivery of Legal Services to the Poor (1977).

E. Allan Lind & Tom R. Tyler, The Social Psychology of Procedural Justice (1988).

Gerald López, Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice (1992).

Per Maseide, *Analytical Aspects of Clinical Reasoning: A Discussion of Models for Medical Problem Solving, in* The Social Organization Of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Lynn Mather et al., *"The Passenger Decides on the Destination and I Decide on the Route": Are Divorce Lawyers "Expensive Cab Drivers?"*, 9 Int'l J.L. & Fam. 286.

Bonnie S. McElhinny, *An Economy of Affect: Objectivity, Masculinity and the Gendering of Police Work, in* Dislocating Masculinities: Comparative Ethnographies (Andrea Cornwall & Nancy Lindisfame-Tapper eds., 1994).

Bonnie S. McElhinny, We All Wear the Blue: Language, Gender and Police Work (1993).

Bonnie S. McElhinny, *You Don't Smile A Lot: Gender, Affect and the Discourse of Pittsburgh Police Officers, in* Locating Power: Proceedings of the 1992 Berkeley Conference on Women and Language (Kira Hall & Birch Moonwomon eds., 1992).

Jeanne McGee et al., Collecting Information from Health Care Consumers: A Resource Manual of Tested Questionnaires and Practical Advice (1997).

William T. Merkel, *Physician Perception of Patient Satisfaction: Do Doctors Know Which Patients Are Satisfied?*, 22 Med. Care 453 (1984).

Peter Muhlhausler, *Comment*, 13 Language & Comm. 121 (1993).

Cassie L. Murphy-Cullen & Lars C. Larsen, *Interaction Between the Socio-Demographic Variables of Physicians and Their Patients: Its Impact upon Patient Satisfaction*, 19 Soc. Sci. & Med. 163 (1984).

L.M.L. Ong et al., *Doctor-Patient Communication: A Review of the Literature*, 40 Soc. Sci. & Med. 903 (1995).

Marianne A. Paget, *On the Work of Talk: Studies in Misunderstandings*, *in* The Social Organization of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Anne Pauwels, Cross-Cultural Communication in Legal Settings (1992).

Project for the Future of Equal Justice, Comprehensive, Integrated Statewide System for the Provision of Civil Legal Assistance to Low Income Persons to Secure Equal Justice for All (Discussion Draft 1998).

Roy W. Reese & Carolyn A. Eldred, Legal Needs Among Low-Income and Moderate-Income Households: Summary of Findings from the Comprehensive Legal Needs Study (1994).

John Rickford, *Comments on "Ethics, Advocacy and Empowerment"*, 13 Language & Comm. 129 (1993).

Albert B. Robillard et al., *Between Doctor and Patient: Informed Consent in Conversational Interaction*, *in* The Social Organization of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Lynne S. Robins & Fredric M. Wolf, *Confrontation and Politeness Strategies in Physician-Patient Interactions*, 27 Soc. Sci. & Med. 217 (1988).

Lynne S. Robins & Fredric M. Wolf, *The Effects of Training on Medical Students' Responses to Geriatric Patient Concerns: Result of a Linguistic Analysis*, 29 Gerontologist 341 (1989).

Douglas E. Rosenthal, *Comment on "Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure"*, 14 L. & Soc'y Rev. 923 (1980).

Douglas E. Rosenthal, Lawyer and Client: Who's in Charge? (1974).

Debra Roter & Richard Frankel, *Quantitative and Qualitative Approaches to the Evaluation of the Medical Dialogue*, 34 Soc. Sci. & Med. 1097 (1992).

Rosemary Samwell-Smith, *Skills, Myths and Videotapes: Effective Client Communication*, *in* 2 Skills Development for Tomorrow's Lawyers: Needs and Strategies 921 (1996).

Austin Sarat, *". . .The Law is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 Yale J.L. & Humanities 343 (1990).

Austin Sarat & William L.F. Felstiner, Divorce Lawyers and Their Clients (1995).

Austin Sarat & William L.F. Felstiner, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 Cornell L. Rev. 1447 (1992).

Austin Sarat & William L.F. Felstiner, *Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction*, 22 L. & Soc'y Rev. 737 (1988).

Austin Sarat & William L.F. Felstiner, *Law and Strategy in the Divorce Lawyer's Office*, 20 L. & Soc'y Rev. 93 (1986).

Austin Sarat & William L.F. Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office*, 98 Yale L.J. 1663 (1989).

Austin Sarat & William L.F. Felstiner, *Legal Realism in Lawyer-Client Communication*, *in* Language in the Judicial Process (Judith N. Levi & Anne Graffam Walker eds., 1990).

Deborah Schiffrin, Approaches to Discourse (1994).

Deborah Schiffrin, *Research Talk ON, FOR and WITH Social Subjects*, 13 Language & Comm. 133 (1993).

Avrom Sherr, Client Interviewing for Lawyers (1986).

Avrom Sherr, *Lawyers and Clients: The First Meeting*, 49 Mod. L. Rev. 323 (1986).

Avrom Sherr, *The Value of Experience in Legal Competence*, *in* 1 Skills Development for Tomorrow's Lawyers: Needs and Strategies 133 (1996).

Avrom Sherr et al., Lawyers—The Quality Agenda (1994).

Roger W. Shuy, *Three Types of Interface to an Effective Exchange of Information in the Medical Interview*, *in* The Social Organization of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional" Interview and the "Client Centered" Interview*, 1 Clinical L. Rev. 541 (1995).

Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 Clinical L. Rev. 391 (1998).

Special Section: Annex to the Proceedings of the AAMC Consensus Conference on the Use of Standardized Patients in the Teaching and Evaluation of Clinical Skills, 6 Teaching & Learning Med. (1994).

Moira Stewart & Debra Roter, Communicating with Medical Patients (1989).

Paula L. Stillman et al., *Use of Client Instructors to Teach Interviewing Skills to Law Students*, 32 J. Leg. Educ. 395 (1982).

Deborah Tannen & Cynthia Wallat, *Doctor/Mother/Child Communication: Linguistic Analysis of a Pediatric Interaction*, *in* The Social Organization of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Nina W. Tarr, *The Law, Ethics and Integrity of Using Clients' and Students' Experiences as the Basis for Scholarship*, 5 Clinical L. Rev. 271 (1997).

Alexandra Dundas Todd, *A Diagnosis of Doctor-Patient Discourse in the Prescription of Contraception*, *in* The Social Organization of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Jason Townsend, Coordinated Advice and Referral Program for Legal Services: Evaluation Project (1998).

Tom Tyler, *Client Perceptions of Litigation*, Trial, July 1988, at 40.

Rodney J. Uphoff & Peter Wood, The Allocation of Decisionmaking Between Defense Counsel and Criminal Defendant: An Empirical Study of Attorney-Client Decisionmaking (1998).

John E. Ware, Jr. et al., Development and Validation of Scales to Measure Patient Satisfaction with Health Care Service (1976).

Candace West, *Ask Me No Questions . . . : An Analysis of Queries and Replies in Physician-Patient Dialogues*, *in* The Social Organization of Doctor-Patient Communication (Sue Fisher & Alexandra Dundas Todd eds., 1983).

Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 Buff. L. Rev. 1 (1990).

David Zimmerman et al., The Healthcare Customer Service Revolution: The Growing Impact of Managed Care on Patient Satisfaction (1996).

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