

JOURNAL OF SMALL BUSINESS
STRATEGY

**EVALUATING LAWYER SERVICE QUALITY IN CHAPTER 7
BANKRUPTCIES: THE CASE OF SMALL PROFESSIONAL BUSINESSES**

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ABSTRACT

The increasingly competitive nature of the American legal environment is causing small law firms and solo practitioners to adopt many of the tools and attitudes of business. There is a potential conflict between lawyers' wishes to maximize revenue and fulfilling their professional values in interacting with their clients. This exploratory study examines how clients evaluate their lawyers. Utilizing a "procedural justice" framework, it is hypothesized that the greater the degree of trust, interpersonal respect, and competence exhibited by the lawyer, the greater will be the level of client satisfaction. All three hypotheses are supported.

INTRODUCTION

Small law firms, those with fewer than five lawyers, constitute the bulk of American law firms and provide counsel and legal advice to their clients in situations that include transactions such as transference of real property, estate planning, family law, and personal bankruptcy (Levin, 2004). Small law firms and solo practitioners have been the beneficiaries of the recent explosion in bankruptcy filings. But how have their clients fared in this changed environment? Are these clients satisfied with the services provided by their lawyers and firms? Are clients who are served by sole practitioners and small law firms being deprived of professional safeguards as their lawyers rush to compete in a more dynamic market? No prior empirical research has addressed these questions. This study was designed to

explore clients' evaluations of services provided during bankruptcy proceedings.

BACKGROUND

Justice Sandra Day O'Connor distinguished professional organizations from other businesses in that membership "entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced by legal fiat or through discipline of the market" (O'Connor, 1988). Professional firms serve two masters: the market and their institutionally-derived ethical and professional standards of conduct. Recent changes in the professional environment have served to accentuate the difficulty of aligning these disparate interests. (Zacharias, 2002). For instance, the level of competition has increased dramatically in the legal industry as law schools continue to produce record

numbers of lawyers. This increase has been coupled with the emergence of new entrants such as accounting firms, tax preparers, paralegals, walk-in legal clinics, Internet web sites, and form preparers that are now performing services that were once within the sole province of law firms (Cramton, 1994). The result: lawyers are adopting new business-like attitudes and skills to compete effectively in this changing marketplace (Nelson, 1994).

In the past, state bar associations strictly regulated how law firms could market their services. Traditionally, lawyers were prohibited from engaging in advertising except for modest signs and telephone listings. However, beginning with the Supreme Court's decision in *Bates v. State Bar of Arizona*, many of these prohibitions have gone by the wayside. Since the late 1970's, lawyers have forcefully marketed their services in such areas as personal injury, worker's compensation, family law, and bankruptcy (Trilling, 1998).

These commodity legal services are the routine, typically non-litigious legal matters that form the nucleus of practices for most solo practitioners and small law firms. In such a competitive market, the question of how clients assess service quality becomes very important. The public's trust of legal institutions and its representatives is essential for citizens to voluntarily accept the rulings of a government and produce a well-ordered society (Tyler, 1998). In the past, the legal profession addressed the issue of providing quality service by enacting licensing requirements, i.e., barring non-certified persons from the practice of law (Cramton, 1994). The legal profession essentially addressed the question of asymmetric power between lawyer and client by assuming that clients are simply incapable of assessing lawyer quality. The enactment of licensure requirements moved the issue of service quality from that of the individual lawyer to the legal profession (Cramton, 1994).

Service Quality Measures

This study adopts a procedural justice framework in assessing client quality

evaluation, as opposed to the SERVQUAL approach that attempts to assess the gap between customer expectations and their assessments of the completed service (Parasuraman, et al 1985, 1988). Complex services present a dilemma in that they pose, for many consumers, a "black box" in evaluating the quality of the service provided. The vulnerability of clients increases based upon their inability to assess outputs relative to inputs, thus, raising issues concerning equity (Bagozzi, 1975) and perceived fairness (Oliver and Swan 1989). Because of the complexity of evaluating the legal services received, consumers may find it difficult to set expectations, monitor service, and evaluate performance.

"Procedural justice" is a construct used to assess the perceived fairness and satisfaction with institutions and its representatives by examining how participants assess the procedures and criteria used to arrive at a decision. Thibault and Walker (1975) contend that the perceived fairness of a situation is related to the type of control that the client has in the legal process: decision control and process control. "Decision control" refers to the input a client has in the final decision, while "process control" refers to the degree of control and participation clients have over the legal procedure (Blau, 1964; Adams, 1965).

Thibault and Walker found that process control is the key to client satisfaction with legal procedures (Thibault & Walker, 1975). Recent research establishes that people are more likely to accept negative outcomes from governmental institutions if they believe that the decision was made in a way that is procedurally fair (Tyler, 1990).

Tyler (1997) states that four elements explain how participants in legal proceedings assess fairness: trustworthiness, interpersonal respect, neutrality, and voice. "Trustworthiness" refers to a client's judgment about whether a third party (typically the judge or arbitrator) is concerned with their needs and is motivated to treat them fairly. "Interpersonal respect" refers to being treated with dignity and honor. "Neutrality" refers to the impartiality and honesty of the

third party who will decide the dispute. "Voice" refers to the ability of the client to participate in the proceedings.

Our study attempts to assess client satisfaction with their attorney's services by utilizing a modified Tyler framework that takes into account non-confrontational lawsuits in which the client has contact only with his or her attorney. In the case of a simple bankruptcy, although there is a third-party decision maker, the client almost never interacts with this party, only with his or her lawyer. The lawyer, bound by professional ethics, plays multiple roles as both a representative of the client and the legal system. Although we believe that the underlying assumptions of procedural justice theory should apply, modifications reflecting either a simple bilateral relationship or a more complex multiple-player relationship should be accounted for.

We believe that only two of the factors as posited by Tyler, trustworthiness and interpersonal respect, would clearly apply. Both of these concepts, as used in the literature, can be applied to the client's lawyer, as well as neutral third parties. These play well into what has been described as the relational concerns of the procedural fairness construct (Blader, Chang & Tyke, 2001). Voice is somewhat problematic. Since clients are rarely involved in a formal courtroom scenario and, in fact, typically only interact with their lawyer, the authors felt that voice in bankruptcy proceedings is irrelevant, especially since clients are typically in such distressed financial circumstances that their options are extremely few; and few options translate into limited choices and consequentially limited voice and involvement.

Likewise, the classic definition of neutrality, as envisioned by Tyler, would clearly not apply. In a confrontational courtroom setting, the lawyers act as an advocate, while the judge sits as a neutral decision maker. Clients base their satisfaction as much upon the institutional constructs as upon the behavior of their attorney. An underlying assumption of procedural justice theory is that in assessing satisfaction with various

legal or political institutions, people are more likely to be satisfied with decisions that they feel are "just." When assessing their lawyer who performs legal services in a non-confrontational setting with little interaction with any third parties, the client still wishes for third-party institutional justification for the decision rendered. For example, in a bankruptcy setting, the client not only wishes to be relieved of their debt burden but also of the guilt for no longer being responsible for this debt. Institution-based decisions help the client to rationalize the outcome, making it more palatable. Since the lawyer acts as a representative of the client and the legal system, strict neutrality is not an available alternative. However, lawyer competence may serve, by analogy, a similar function. We posit that neutrality is still important in the eyes of the client in that if their verdict or solution is institutionally based, then this represents justice and makes the client more amenable to accepting the solution. If the attorney is perceived to be competent, then this reinforces the client's belief that the course of action and the result is institutionally based. Legal ethics explicitly promotes a dual role for attorneys: advocate for the client and representative of the system (i.e., agent of the court). In their role as a representative of the court, lawyers must act neutrally, rendering counsel, not orders, to the client and acting in a nonpartisan manner. In conclusion, we believe that trustworthiness, interpersonal respect, and perceived competence should significantly explain client satisfaction with their bankruptcy attorney.

HYPOTHESES

The lawyer/client relationship is one based primarily on trust, evidenced in the legal environment by such concepts as attorney-client privilege and work product confidentiality. Prior research has focused on fairness (Huppertz, Arenson, and Evans, 1978; Oliver and Swan, 1989), i.e., *distributive justice*, which posits that the parties are satisfied with the transaction when each receives benefits that are proportional to their investments (Oliver and Swan, 1989). In the context of bankruptcy services, the relationship between the client

and lawyer are asymmetric, due to the vast difference in the level of benefits received by the parties, making an assessment of inputs and outputs in terms of benefits received indirect. Clients do not concern themselves with whether the attorneys received just compensation, i.e., *benefit fairness*, but rather with *relationship fairness* in which clients assess in terms of whether the lawyers keeps their word and how they interact with the client. In other words, trustworthiness is a surrogate for assessing the fairness of outcomes and is consistent with how the construct is defined: as A's belief that B can be relied upon to produce positive outcomes or, at least, to minimize the production of negative outcomes (Andaleeb and Basu 1994). This approach is consistent with the findings of Oliver and Swan (1989) who observed a similar relationship between car dealers and their customers. Therefore we propose:

H1: The greater the perceived trustworthiness of the bankruptcy attorney, the greater the level of client satisfaction with their lawyer.

Tyler (1997) suggests that being treated with dignity enhances feelings of fairness. In a study examining alternative forms of adjudication, Lind et al. (1990) found that perception of dignity was crucial in explaining higher procedural fairness ratings. Johnson and Zinkhan (1991) found that courtesy accounted for close to 60 percent of the variation in how clients assessed their attorneys. In a study examining criterion and cues to evaluate service quality, courtesy or dignity was the only criterion common to four services studied (Crane and Clarke, 1989). The typical debtor has often gone through a humbling and degrading experience. When most debtors contact a bankruptcy lawyer, that lawyer is often the first person who may show any personal concern for the them and their plight. Likewise, information exchanged between the parties, critical for both addressing the elements of the case and providing assurance, and the accompanying reciprocity enhances this interpersonal respect (Coyle-Shapiro & Kessler, 2002). Therefore, it was expected that outward expressions of

concern will enhance the clients' appreciation of their lawyer. It is proposed:

H2: The greater the interpersonal respect perceived by the client in their interactions with their lawyer, the greater will be the level of the client satisfaction with their lawyer.

In the typical bankruptcy scenario, the client never meets with a third-party adjudicator; hence, the construct of neutrality, as envisioned by Tyler, does not explicitly emerge. However, we posit that neutrality is still important in the eyes of the client. If their verdict or solution is institutionally based, then this represents justice and makes the client more amenable to acceptance of the solution. If the attorney is perceived to be competent, then this reinforces the client's belief that the course of action and the result is institutionally based. In the role as a representative of the court, the lawyer must act neutrally, render counsel to the client, and act in a nonpartisan manner. Thus, competence acts as a surrogate for neutrality in a professional setting. Ethnographic studies reveal that clients in professional settings depend upon their lawyer's competence to put their narrative in a form that permits equitable and efficient decision making (Heinz and Kerstetter 1979). Answering questions promptly, speaking authoritatively, and other actions by the lawyers make them appear to be competent and enhance the client's belief that the attorney is providing quality representation. Hence:

H3: The greater the perceived competence of the bankruptcy attorney by the client, the greater will be the level of the client satisfaction with their lawyer.

METHODOLOGY

A preliminary version of the questionnaire was developed; items were based largely on information generated by in-depth qualitative interviews with bankruptcy attorneys and consumer debt counselors. These questionnaire items were rated on seven-point Likert scales in a structured format. Multiple items

were used to determine the reliability and validity of the constructs. The questionnaire was pre-tested to ensure that the wording, format, length, sequencing of questions, and the range of the scale items were appropriate.

The population studied consisted of all persons obtaining a Chapter 7 bankruptcy discharge from the Bankruptcy Court of the United States, Western District of Pennsylvania, Erie Division between the dates of April 30 and September 30, 1997 who had been represented by counsel of law firms with less than ten lawyers. A total of 530 bankruptcy filers were identified. Surveys were mailed to them using a self-administered questionnaire. Two weeks later a second mailing was sent out to those who had not yet responded. A total of 89 surveys were returned for a response rate of 16.79 percent.

Exploratory factor analysis with varimax rotation was used to examine the factor

structure of the measures. In regard to the sample size (89), this study meets the general rule that there should be four to five times as many observations as there are variables to be analyzed (Hair, Anderson & Tatham, 1987). An examination of the items with their respective loadings revealed that several items loaded simultaneously on more than a single factor, while several others did not seem to belong to the group in which they were expected to load. These items were systematically removed; the final factor structure resulted in the three factors that coincided with our expected model. These factors explained 73.44 percent of the variance. The items that made up each of the factors were next factor analyzed separately. With no exception, only one factor emerged for each separate set with an eigenvalue exceeding one. Using the Bartlett's sphericity test, the null hypothesis of unidimensionality could not be rejected at $\alpha = .10$.

Table 1 – Factor Analysis

	Trustworthiness	Interpersonal Respect	Competence
Did not pay enough attention to me	.847	.236	.0243
I felt that I was taken advantage of	.799	.058	.078
Did the work promised	.786	.340	.216
Listened	.759	.327	.227
Treated me the same	.715	.236	.291
More interested in fee than me	.571	.132	.085
Friendly	.191	.945	.087
Polite	.326	.905	.182
Sociable	.222	.647	.268
Knows a lot about bankruptcy law	.178	.150	.902
Specializes in bankruptcy law	.128	.30	.887

The three factors derived from the analysis clearly reflect Tyler's (1997) model. The first six items (see Appendix A) each relate to the relationship between the customers and their attorney, focusing on the balance achieved by the parties in providing the service. This factor, trustworthiness, addresses the client's beliefs about the nature

of the outcome, especially given the unequal power balance between the two and because of the knowledge bases inherent in credence based services.

The next three items (see Appendix A) comprising the factor, Interpersonal Respect, address the lawyer's outward manifestation toward the client. Expressing empathy

toward a client who has engaged an attorney for services high in credence properties assists in the establishment of symmetry in the relationship. The final derived factor, Competence, (see Appendix A) relates to perceived attorney knowledge and corresponds closely to Tyler’s concept of Neutrality. In the typical Chapter 7 bankruptcy filing, the lawyer is the only party that the client will ever interact with. Since the client never meets a third party, it is the lawyer who serves as a proxy for the entire system. Attorneys’ professionalism, as reflected in their competence, serves notice to the clients that their problem is relevant and that the solution being offered is institutionally based and hence, represents justice.

The reliability of each multiple-item scale was assessed first, using coefficient alpha. Reliability analysis indicated that the internal consistency of the constructs was reasonable. The dependent variable exceeded Nunnally’s (1978) recommended value of .70, as did the values of the other constructs. Several methods were used to assess validity. The results in Table 2 provide support for discriminant validity, since the correlation between one scale and another is not as high as each scale’s coefficient alpha (Gaski and Nevin 1985). The directions and strengths of the correlations in Table 2 provide support for nomological validity, since the signs are in the right direction and the significant relationships are theoretically justifiable.

Table 2 – Correlation Analysis

Variables	1	2	3	4	Mean	S.D.
Trustworthiness (1)	.8732 †				6.02	1.23
Interpersonal Respect (2)	.643*	.8867 †			6.41	1.04
Competence (3)	.387*	.327*	.8163 †		6.39	.955
Satisfaction (4)	.788*	.850*	.527*	.9878 †	6.25	1.37
* p<.001						
† Figures in diagonal represent Cronbach’s alpha for standardized variables.						

Results

Multiple regression analysis was used to test the three hypotheses. With *client satisfaction with their bankruptcy lawyer* as the dependent variable, the full model was significant as indicated by the overall F-statistic (F = 147.4, p<.0001). The model possessed an adjusted R² of .853. All three hypotheses were supported. The standardized

betas indicate that perceived interpersonal respect shown by lawyers had the greatest impact on client satisfaction (b = .867; β = .682, p < .001). Trustworthiness was the next significant variable influencing client satisfaction (b = .655; β = .515; p < .001). Competence had the least impact of the three perceptual constructs (b = .458; β = .36; p < .001).

Table 3 – Regression Analysis with Client’s Satisfaction with the Bankruptcy Lawyer as the Dependent Variable

Independent Variables	Unstandardized Coefficients	Beta	t-ratio	Sig.
Constant	6.305		113.354	
Interpersonal Respect	.867	.682	15.492	<.001
Trustworthiness	.655	.515	11.701	<.001
Competence	.458	.360	8.172	<.001
R ² = .859, Adjusted R ² = .853, F = 147.9, p<.0001				

Collinearity was assessed in two ways. First, the correlations between the independent variables were examined which indicated lack of collinearity since no two constructs had correlations above .8 (Billings and Wroten 1978). The tolerance and variance inflation factors also indicated very clearly that multicollinearity was not of any significant concern.

DISCUSSION

This study indicates, that in assessing the service quality of their lawyers, clients are utilizing such constructs as interpersonal respect, competence, and trustworthiness – all values historically linked with professional codes of conduct. This procedural justice model of assessing service quality has an adjusted R^2 of .853, indicating that these three factors explain a significant portion of the variance in the dependent variable, client satisfaction with their lawyer. This study is unique in that it applies procedural justice theory to a non-confrontational legal setting, suggesting that, in such a scenario, the lawyer's dual roles of representing both the client and the system will be assessed and evaluated by their clients.

This perspective shows that coupling marketing and professional values could have important ramifications, as the legal profession continues its transformation. Traditional legal philosophy differentiates between clients' and attorneys' needs and interests. This notion provides, in part, the rationale for many of the cartel qualities of the modern legal profession. But as this industry structure comes under assault, many lawyers feel that traditional legal values limit their competitiveness by making them place client interests in front of their own. This runs counter to much of the "slash and burn" philosophy that many business people and lawyers have adopted. As competition intensifies within the legal industry, there is a tendency for some lawyers to minimize the importance of professional standards and to treat them as anachronisms, completely irrelevant in a market driven world. Our research suggests the exact opposite. This is especially important for sole practitioners

and lawyers practicing in small firms, as the pressures to change value sets may be more intense.

When further research confirms our notion of a linkage between professional and marketing values, this could provide a useful impetus for teaching and learning. Legal education, at both the law school and continuing education levels, should emphasize professional values not only for their traditional valence but also for their marketing potential. By linking "good law" with "good business" one can reinforce these important values. Future research utilizing the procedural justice model should expand into other areas of non-confrontational law to assess the usefulness of the model in explaining client satisfaction. It should be noted though that such research might be difficult to conduct, given the legal concept of confidentiality between a lawyer and client.

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Appendix A – Dimensions and Respective Items

Trustworthiness

- My lawyer did not pay enough attention to me.
- I felt I was being taken advantage of.
- My lawyer did the work promised.
- My lawyer listened to me.
- My lawyer treated me the same as his or her other clients.
- My lawyer was more interested in his or her fee than in me.

Interpersonal Respect

- My lawyer was friendly.
- My lawyer was polite.
- My lawyer was sociable.

Competence

- My lawyer knows a lot about bankruptcy law.
- My lawyer specializes in bankruptcy law.

Client Satisfaction

- Overall, how satisfied were you with your lawyer?*
- How willing would you be to use this lawyer in the future?***

Note: All items with the exception of "client satisfaction" were assessed with a 7-point Likert scale with 7 anchoring "Strongly Agree" and 1 anchoring "Strongly Disagree."

- Assessed with a 7 point Likert scale with 7 anchoring "Very Satisfied" and 1 anchoring "Very Dissatisfied."

** Assessed with a 7 point Likert scale with 7 anchoring "Very Willing" and 1 anchoring "Very Unwilling."

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