DOING JUSTICE?

TOWARDS A NEW UNDERSTANDING OF THE LAWYER-CLIENT RELATIONSHIP

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INTRODUCTION

STYLES AND ATTITUDES: A DICHOTOMY IN APPROACH

This thesis developed from an undergraduate dissertation examining factors affecting different approaches to the interactions between lawyers and their clients. Many of the understandings generated in that endeavour will now be explored in greater depth as this thesis seeks to build upon and refine some of the issues that have preoccupied commentators from many academic disciplines for over half a century.

The legal profession has received significant academic attention from many different quarters for many years. Authors have approached the field motivated by myriad concerns and from radically different perspectives, and have often presented strikingly divergent theories and findings. To date, academic interest in lawyering and the legal profession continues to develop, and shows no sign of diminishing. Indeed any brief glance through the relevant journals reveals the plethora of newly formulated endeavours and ideas that testify to the continuing expansion of the field. The different foci of this literature have also developed significantly over the last century. As with any discipline, current understandings are surpassed as the older preoccupations give way to the new. These novel enterprises, no doubt anchored in the harbour of current knowledge, set sail in fresh directions for uncharted territory. And this is certainly so in respect of our knowledge of the lawyer. Many of the concerns of the past have lost their relevance or their urgency as society progresses through the modern and the post modern.

But despite the evolution of the specific foci of enquiry over the years, the often-distinct preoccupations of the respective authors, and the development of methodological techniques, certain themes seem to reoccur again and again in different guises. For example, there is significant consensus in much of the literature about a dichotomy in lawyering. From the early studies of ethics and practice styles, and more recent examinations of lawyers and their roles in shaping and developing legislation, to the most recent investigations into lawyer work patterns and social connections, strikingly compatible findings have emerged in respect of two different approaches to the provision and substance of legal service. Indeed, it may seem nothing more than commonsense to assert that there are different styles of lawyering, as there might be differences in the provision of any professional service. Yet this thesis grows from this assertion. The central issues that will be explored herein begin with the understanding that two largely different approaches to the consultation with clients, or the entire course of dealings between lawyer and client, make up the spectrum of potential interactions between lawyers and clients.

This thesis will begin with an examination of the ways in which a dichotomy in the provision of legal service has been constructed. It is important to stress that the perception of this dichotomy represents a continuing process in the understanding of the legal profession, and not a conclusion dependant upon any specific time or location. Indeed the following analysis draws upon contributions spanning several decades, and notwithstanding the developments in methodological approaches to research, or the general evolution of trends in academic investigation, a remarkable consistency has been identified in respect of differences in styles of lawyering. In chapter 1 I shall briefly outline a range of commensurate contributions running

through the literature identifying these potentially different approaches. I shall argue that even contributions emphasising ostensibly different factors at the fore of their recognition of the dichotomy can be understood collectively to support a broad view of the dichotomy along specific lines. It is accepted that this broad consensus is not total – some of the following contributions can be seen to 'fit' into the broad dichotomy more readily than others; however in the main I shall argue that in respect of lawyer practices, viewpoints and attitudes, there is a remarkable consistency in the understandings proposed by a diverse range of commentators. Having presented the dichotomy and argued that the different conceptions of it can be broadly reconciled, chapter 1 then goes on to demonstrate how many of the contributions discussed in the presentation of the dichotomy describe the differences in approach or attitude to the interaction as being *a choice of the lawyer*. This I shall argue that one broad approach to the understanding of the relationship sees the lawyer, his location, and his predilections as the ultimate determinant of the eventual approach adopted in any given interaction.

Chapter 2 challenges the lawyer-determined view proposed in chapter 1, arguing instead that client power to command certain approaches to service ultimately accounts for the style of service in any given interaction. Chapter 1 recognises in passing how some of the contributions to the broad dichotomy do not support the lawyer-determined view, accepting that differences in lawyer approach correlate to structural differences in the client base. Chapter 2 endorses this correlation, and argues further that it is *client power and influence* over their lawyers that ultimately determines the relationship. The structural positions of different types of client are considered with a view to demonstrating that some clients do enjoy substantively different relations with their lawyers from others. And yet perhaps the power of lawyer choices cannot

be excluded entirely from the analysis. Chapter 2 concludes with a second look at the impact of certain lawyer choices – specifically those made with a view to facilitating some forms of extremely inclusive law practice, and the emerging consensus about the quality of legal advice from nonlawyers, recognising that in these situations at least, lawyer (or nonlawyer) choices do impact decisively upon the model of the interaction itself.

Chapter 3 represents the critical climax of this thesis, challenging the different views suggested in chapters 1 and 2 of the determination of the interaction as either lawyer or client dependant. This chapter begins by considering exceptions undermining either lawyer choice or client power as determinants of the relationship, demonstrating how norms of location, and the power of the profession will also impact upon lawyer choices and client power. In this respect, some of the anomalies touched upon in the first two chapters are revisited, in an attempt to demonstrate various problems with the analyses advance thus far. Finally this chapter then moves on to offer a more specific critique of the lawyer choice / client power understandings, *as viewpoints both formed and expressed to differing degrees through the experiences and perspectives of lawyers*. This thesis thus argues that a way must be found of giving the client equal weight in the analysis, even if he does not have equal weight empirically in the lawyer's office. This critique, both substantive and methodological then shapes the empirical work presented in Part II of this thesis.

CHAPTER 1 – LAWYERS: STYLES, ATTITUDES AND CHOICES.

This chapter will commence by surveying various conceptions of the dichotomy in practices and attitudes associated with the provision of legal service which are presented in the literature. I shall then attempt to reconcile the differences in the various conceptions in terms of an enriched understanding of a dichotomy broader in scope than the sum of its parts. I describe in general terms the different practical service models, the underlying attitudinal perspectives of the actors, and entire nature and dimension of the lawyer-client relationship, using a linear spectrum upon which the dichotomy in its purest sense expresses the difference between the bipolar extremes. Finally I shall advance an argument that, one way or another, the choice in individual interactions as to the employment or adoption of either model described by the dichotomy actually resides with the lawyer.

GENERAL DIFFERENCES IN APPROACH: THE TRADITIONAL AND PARICIPATORY MODELS[1]

In 1962, Jerome Carlin as part of an early influential study of solo practitioners, proposed two extremes of deviation from the professional ideal of the lawyer-client relationship,[2] encouraged by the economically difficult nature of individual practice. He distinguished between the

[1] This terminology was coined by Douglas Rosenthal, and will be discussed below. For convenience, this thesis initially adopts these labels as descriptions modelled on either side of the dichotomy in legal service discussed in this chapter, however the broader the dichotomy becomes as it is enriched by the varying conceptions, the more the inadequacy of these labels becomes apparent.

[2] Based on the responsibilities and obligations outlined in the Canons of Professional Ethics of the American Bar Association.

lawyer's perceptions of "clients as expendables" and "clients as partners"[3] as alternative managerial solutions to the problems of economic viability encountered by solo practitioners. In certain fields (personal injury, local tax, criminal and divorce), the relationship with the client is often mediated by a broker or business supplier. Carlin found that lawyers in these fields were principally concerned with pleasing the broker, or winning his approval, "more so than he is with satisfying the individual client".[4] As the source of business counts for more than the individual client, the client is expendable, and can be exploited.

The alternative concerns lawyers whom Carlin terms "upper-level" lawyers, involved in high stakes real estate or corporate law. Such lawyers are thought to have "close, intimate relationships with their business clients,"[5] often to the point that they involve themselves in joint ventures together. Such clients are unlikely to find their interests subordinated – indeed Carlin suggests that "under these conditions it would appear to be difficult...to adopt towards (clients) an attitude of indifference."[6] As extremes, these conceptions inform and support the dichotomy. The view of clients as expendables accords with a model of self-prioritisation by the lawyer which I shall call *traditional*, while the view of clients as partners accords with a model of client-centred and client-focussed concern which I shall call *participatory* (following Rosenthal, 1974).

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[3] J E Carlin, *Lawyers on Their Own,* (1962) Rutgers University Press, pp.161-166.
[4] *Ibid,* p 161.
[5] *Ibid,* p 164.
[6] *Ibid.*

Based upon questionnaires distributed to lawyers from Duval County, Florida in 1966-67, John Reed attempted to distinguish between two different forms of lawyer-client relationship.[7] Reed found that under certain circumstances lawyer-client conferences may well take on the character of a "colleagueship in the search for information and alternative solutions to the client's problem."[8] Whereas in other circumstances the lawyer's discretion in problem resolution is emphasised and he "proceeds with his own assessment of what must be done."[9] Here Reed is describing the practical differences in interaction – between cooperative *colleagueship* (participatory) and lawyer hierarchical self-autonomy (traditional). But also perhaps the underlying lawyer perspectives associated with the delivery of these different approaches – the difference between lawyer perceptions of their clients as colleagues and participants, or of their clients as customers reliant on technical skill or know-how.

In 1974 Douglas Rosenthal published a seminal investigation of the opposing philosophies adopted by lawyers in the service of their clients.[10] Rosenthal's interviews identified the Traditional and Participatory models of lawyer-client interaction as part of a broader analysis of the benefits (and implications) to the client of different styles of professional practice. The traditional approach is characterised by the control exercised by the lawyer over the client. Under this model, lawyers believe that the interests of both parties are best served by the professional's assumption of broad control over the solutions to the problems brought to them by the client. This approach hinges upon the contention that the lawyer as a professional is capable of providing an effective solution to a technical problem incomprehensible to the

[7] J P Reed, "The Lawyer-Client: A Managed Relationship?" (1969) *Academy of Management Journal*, 12, 67.
[8] *Ibid,* p.78.
[9] *Ibid,* p.76.
[10] D Rosenthal, *Lawyer and Client: Who's in Charge?* (1974) Russell Sage Foundation.

layperson, in a manner of disinterested service, which assumes as the aims of the lawyer the goals of the client. The lawyer can be seen as a paternalistic figure who acts benevolently in the interests of the client, in a capacity in which only such a trained and qualified professional would be able to function. If the solution to any given problem were not dependent upon the lawyer, but was generally understood by the client, the basis for the control function of the lawyer as described in the traditional approach would be undermined. If a client were able to determine what problems might be actionable, and what procedures might be utilised in the action, the role of the lawyer would shift to that of giving an expert opinion guiding the client in question towards the specific legal outcome that the client has envisaged. This is a description of the participatory approach. The role of the lawyer under the traditional approach is to determine what actually constitutes the best form of action for the client, based on the exclusive knowledge of the law that the lawyer possesses, and that the client does not. This is the rationale of the traditional approach – the concept that the client is dependant upon the judgment of the lawyer, and that this dependence is best resolved by allowing the lawyer broad control over the choice and form of action employed in the resolution of the problems of the client.

The main characteristic of the participatory approach is co-operation between lawyer and client, the idea being that both gain from a sharing of control over many of the decisions arising out of the relationship. Rosenthal's analysis identified the participatory approach as the more rational and appropriate approach in the context of modern day lawyering, both substantively in terms of his personal injury claims evaluation, where he found that participating clients tended to obtain better outcomes to their cases, but also conceptually, in recognition of certain

assumptions which conflict with the assumptions pertaining to the traditional approach: the traditional contentions that the lawyer is able to provide a highly effective, disinterested service relating to a technical problem beyond the understanding of the client are challenged. The participatory approach centres around the notions that the client is able to understand and participate in the decision-making process, and furthermore, that the lawyer cannot be trusted (if left to his own devices) to provide the required standards of effectiveness in performance and disinterested service. Hence the participatory approach advocates the continuous involvement of the client in the processing of the case, both as a check on the power of the lawyer, and as a guarantee that the action pursued accords with both the interests and desires of the client.

In an article published in 1974 that has had far reaching implications across disciplines, drawing secondary conclusions from the then recent results of various other interview based researches, Marc Galanter examined the different types of service provided to 'one-shotter' and 'repeat-player' clients.[11] Galanter's primary concern is the structural inequalities of the parties, and the impact of these upon outcomes and change. However in his analysis he also describes a general difference in styles of legal service, and of accompanying underlying lawyer perspectives. Compare the "stereotyped and uncreative brand"[12] with the "more close and enduring...lawyer-client relationship."[13] The former, involving the 'mass-processing' of cases, where little time is afforded to individual problems beyond their allocation into convenient legal categories, and with accompanying lawyer attitudes demonstrating no desire to go beyond

[11] M Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change", (1974) 9 *Law and Society Review,* 95.
[12] *Ibid,* p117.
[13] *Ibid,* p114.

the case as the client presents it.[14] The latter involves more dedicated and attentive service and an accompanying attitude of commitment and cooperation where the primary loyalty of lawyers is to clients.[15] Indeed he proposes "scales along which legal professionals might be ranged" including greater or lesser enduring relationships with clients, greater or lesser identification with clients, and problem-solving or legalistic ideologies.[16] These spectra of analysis, along with the descriptions of the styles and attitudes of the different approaches that Galanter identifies readily inform our dichotomy.

Other commentators have applied different analyses, although certain constant themes appear to be identifiable. In 1979 Margaret Herrman, Patrick McKenry and Ruth Weber published the results of interviews conducted with lawyers from the metropolitan counties of Atlanta. They proposed two alternative approaches in respect of the "role orientation" that the lawyer exhibits, with a possible conceptualisation of either "the advocate" or "the counsellor".[17] Herrman et al. found that the advocate "represents the traditional stereotype"[18] of the attorney who seeks the maximum benefit for his client, with a willingness to act upon client wishes rather than trying to motivate the client to work through conflicts to reach a settlement that might be in the best interests of both parties. The advocate was more inclined to focus on economic issues, and less willing to entertain emotional or social issues. The counsellor "represents the less traditional

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[14] *Ibid*, p117. Galanter cites J Carlin and J Howard, "Legal Representation and Class Justice" (1965) 12 *UCLA Law Review 381* in describing this style and approach.
[15] *Ibid*, p115.
[16] *Ibid*. See note 48.
[17] M S Herrman, P C McKenry & R E Weber, "Attorney's Perceptions of Their Role in Divorce", (1979) *Journal of Divorce* 2, pp.313-322.
[18] *Ibid*, p315.

ideal type,"[19] concerned to reach a solution that is fair to both parties. As such this role involves more in-depth evaluation of the needs and circumstances of the client. The counsellor was less inclined towards acting simply upon the wishes or instructions of the client, concerned instead to attempt to determine what objectively is the most equitable solution given all the relevant considerations.[20] In many ways this counsellor approach is similar to the participatory model. By insisting that the client consider all possible actions in the interests of equity, the lawyer is ensuring that the client participates, and bases his input on the relevant information. The advocate approach clearly accords to the traditional model, in that the lawyer both controls the client's actions, and seeks to act in the best interests of the client. This contribution thus recognises the potential dichotomy in the method of the actual interaction between the lawyer and client.[21] However this analysis also emphasises the concerns and underlying attitudes behind these alternative models of interaction – the role orientation, or perspective, of the lawyer accompanying the different models.

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[19] *Ibid.*

[20] Clearly such an identification will be subject to the lawyers' understanding and conception of an equitable solution. However the point here is that the counsellor approach seeks to represent more than simply the lawyers' view of the best solution to the clients' problem divorced from the wider context of the situation.

[21] Perhaps this conception does not 'fit' into the broader dichotomy quite as straightforwardly as many of the others. Certainly the concern of the counsellor to ensure that the client considers all the options seems to echo the participatory ideal, as the corresponding concern of the advocate to exclude 'irrelevant' extra-legal factors from the professional decision-making process echoes the professional dominance prescribed by the traditional model. However in other ways this analysis presents problems for the broader dichotomy. The centrality of fairness to all parties in the counsellor approach, even at the expense of some individual client outcomes, cannot be easily reconciled with the participatory concern to maximise client autonomy and satisfaction, unless (perhaps as the counsellors recognised) a far broader view of satisfaction in outcome is taken than simple win-lose or economic measures. Maybe these counsellors understood that people will really be satisfied by a type of justice that is caring and humane and does not only deal in strict entitlement in pounds and pence. However notwithstanding such an admirable conception, the fact remains that enhancing client autonomy is different from imposing one's own personal morality, especially when client objectives may differ considerably from those the lawyer may in good conscience support. Presumably the corporate lawyer will rarely if ever concern himself with being fair to the other side, except where this may carry other publicity based connotations. Yet at the other extreme it seems that some lawyers do specifically locate themselves in fields of practice where they can reconcile their professional obligations and their personal aspirations. Perhaps such choices represent a problem for this analysis, but perhaps they ultimately confirm it. I shall discuss this issue later.

John Heinz and Edward Laumann's landmark 1982 study of the social structure of Chicago lawyers also reveals the dichotomy.[22] They describe two distinct 'hemispheres' of legal practice, defined principally by the clients served by each, but largely populated by very different types of lawyers.[23] Indeed they portray the profession as comprising two types of lawyer, serving (respectively) two types of client: high status lawyers serving corporate high status clients, and low status lawyers serving individual, private, low status clients. In respect of the different approaches to client service, they demonstrate that the lawyers for individuals tend to dominate their clients in decisions and choices about the nature of their work, while the lawyers for corporations tend to have the nature/choices regarding their work dictated to them by these clients.[24] Clearly this analysis directly addresses the dichotomy in approach to law work. The description of lawyers who dominate their clients in respect of the choices about the work that they do corresponds to the traditional model as described. Whereas the description of those lawyers who have their work defined and dictated by their clients seems to accord far more to the participatory approach.

Michael Powell's 1989 important study of the structure and power of New York's Bar Association also supports this analysis.[25] This study, focused primarily on the collective organisation of the legal profession, proposes two critical views underlying professional

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[22] J Heinz and E Laumann, *Chicago Lawyers: The Social Structure of the Bar*, Revised Edition (1994), Northwestern University Press.
[23] *Ibid*, p 127. The lawyers in these two hemispheres tend to be differentiated in terms of various different measures, including educational background, social origins, political affiliations and career histories.
[24] *Ibid*, p 171.
[25] M Powell, *From Patrician to Professional Elite,* (1989) Russell Sage Foundation, New York.

collective actions.[26] Powell identifies the first as the self-interested, monopolistic intent view, and the second as the subservient, reflection of dominant client-interest view.[27] Immediately the parallel to Rosenthal's models is manifest. The self-interested, monopolistic intent approach reflects an economic or prestige based reasoning on the part of the lawyer, that seems to describe the lawyer perspective underlying the traditional model as described. The subservient client-centred approach represents a deference to client dominance and seems to accord in broad terms with the participatory model.

In a similarly focused study, published just prior to Powell's *From Patrician to Professional Elite*, Terence Halliday examined the societal and political significance of the resource wealthy Chicago Bar Association.[28] Like Powell, Halliday identified two opposing faces of professionalism that he termed the *monopolistic* and the *altruistic*. From the outset, he acknowledged the inherent tensions between these two opposing perspectives, and indeed he seemed to explain much of the internal dissensus within the CBA as manifestations of these differing perspectives. Furthermore, his conclusion that an unstable tension "between civic and monopolistic values permeates the collective professionalism of lawyers"[29] depends upon the understanding that individual lawyer choices and motivations are characterised by a struggle

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[26] Looking more closely at Powell's assertions, can a relationship between professional views underlying collective action through professional associations, and professional views underlying individual actions for clients be established? Insofar as Powell suggests that his professional motivations behind collective actions represent alternative, profession-wide views, we might infer that such views are not specific to individual collective actions, nor to collective actions in general, but are more likely to describe the difference in perception in general to the role the individual professional plays. After all, it seems reasonable to suggest that a lawyer who supports restriction of the membership of a professional association as a means of protecting his own status and stimulating demand in the market for his own services is likely to adopt similar, self-interested approaches in individual client consultations.

[27] *Ibid,* p245.

[28] T Halliday, *Beyond Monopoly,* (1987) University of Chicago Press.

[29] *Ibid*, p370.

between self-interest and altruism. In this respect, Halliday's contribution is compatible with Rosenthal's models. Presumably the monopolistic or self-interested view can be equated with the lawyer's perspective behind the traditional approach, and the altruistic view with the corresponding attitude in respect of the participatory approach.

Yet more support from a related enquiry is provided by Robert Nelson.[30] This study sought to examine the relationship between organisational style and professional dominance, and also to explore hierarchical relationships among professional colleagues in autonomous professional organisations. Nelson recognised that the term 'profession' carries a double meaning – an "inherent dualism"[31] connoting both a job, an exchange, economic viability, and also a promise of standards to be upheld, of public service, of competence, of commitment to clients. It is submitted that these different interpretations of the concept of professionalism represent the differing underlying lawyer attitudes described by the traditional and participatory models.

Richard Abel also echoes some of these concerns. Again his study is concerned with the changes in the legal profession as part of a general sociology of the profession itself rather than the way that lawyers work.[32] Abel contends that the history of the American legal profession helps us to understand why lawyers are still struggling to reconcile the tensions between the search for professional identity, and the pursuit of economic success. This "status anxiety"[33] as Abel refers to it, demonstrates the perspectival/attitudinal difference between the models.

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[30] R Nelson, *Partners With Power,* (1988) University of Chicago Press.
[31] At p18. See also E Freidson, *Profession of Medicine: A Study of the Sociology of Applied Knowledge,* (1970) New York: Dodd-Mead, p xvii, and E Freidson, "The Changing Nature of Professional Control." (1984) *Annual Review of Sociology* 10: 1-20.
[32] R Abel, *American Lawyers,* (1989) Oxford University Press.
[33] At p5.

Professional identity is to be equated with participatory inclinations – the desire to offer competent, client-centred service. And the pursuit of economic success is to be equated with the traditional perspective – the prioritisation of lawyer concerns.

In an influential and engaging essay published in the Maryland Law Review in 1991 and based upon his own experiences as a practicing lawyer, William Simon identified two conflicting views of lawyer-client interaction, which bear more than a little resemblance to Rosenthal's traditional-participatory analysis. Simon classified the two alternatives as the "best interest" view and the "informed consent" view.[34] The best interest view, or paternalist view, can be equated with the traditional approach. Here the professional's role is to make decisions for the client based on the professional's view of the client's best interests. This approach is often associated with official decisions concerning children or the mentally disabled. The informed consent view, or client autonomy view, can be classified alongside the participatory approach. Here the "the lawyer's most basic function is to enhance the autonomy of the client",[35] by providing the information that maximises the client's understanding of his situation and minimises the influence of the lawyer's personal views. This distinction appears to hinge more on the principle of disclosure of information, than of control of the relationship as seen in Rosenthal's (1974) analysis, or Herrman et al.'s (1979) role orientation. On the one hand the lawyer may inform the client to the point of his having understood the problem at issue, so that he may be able to make a rational and informed choice about what action to take - the lawyer as facilitator of the client's self determination, through the information he provides. The

[34] W H Simon, "Lawyer Advice and Client Autonomy: Mrs. Jones's Case", (1991) *Maryland Law Review* 50 213.
[35] *Ibid,* p213.

alternative is for the lawyer to withhold information, perhaps in the belief that the client will not be able to make as 'good' a judgment as his lawyer, or in order to increase his own indispensability, so that the outcome reached is the product of his reasoning and judgment only, albeit with the best interests of the client in mind.

Christopher Gilkerson's participant observation of an American poverty law practice published in 1992 differentiates between the lawyer who pursues the "claim" by scripting the client narrative as he sees fit, perhaps ignoring the real issues or the concerns of the client; and the lawyer who encourages the client to tell his own story in his own way, emphasising those aspects that he feels are important.[36] This differentiation almost describes the difference between the traditional and participatory models on this issue. Where the traditional model accepts the basic role of translation and transformation[37] of the client's desires into situations justiciable at law, the participatory model involves not transformation by the lawyer, but (following consultation to establish the true nature of the client's aims and desires), explanation by the lawyer resulting in an appropriate expression of the problem, acceptable *at law*, by the client, or translation of the client problem by the lawyer into a legally actionable framework.

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[36] C P Gilkerson, "Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories", (1992) 43 (4) *Hastings Law Journal,* 891-945.

[37] See M Cain, "The General Practice Lawyer and Client" (1979) *International Journal of the Sociology of Law,* 7:331-354 for the original application of these concepts. In the context of Gilkerson's differentiation, transformation involves substitution of lawyer defined outcomes for client chosen outcomes, corresponding to the traditional model. Translation involves reformulation of client chosen outcomes into legally actionable language. Accordingly such translation may serve to empower the client, the lawyer acting as technician facilitating the legal achievement of the real-life desire of the client. In this sense, translation may be understood to be associated more readily with the participatory model than the traditional one; however it is accepted that the lawyer will act as translator to differing degrees under both models.

Gerald López's insightful examination of styles of progressive lawyering (1992) is grounded in his own life experiences growing up in the 1960's when the "first wave of self-consciously progressive lawyers"[38] arrived in his East Los Angeles neighbourhood, and offers a compelling critique of orthodox notions about law practice. As a law professor and prominent critical race scholar, López presents a series of fictional accounts of progressive lawyering in an effort to redefine and redirect activist legal practice, arguing that if they are to really advance the causes of their clients, progressive lawyers must fight against a vision of the "good lawyer" manifest in legal and popular cultures that constitute the professional norms of legal activity. López's contribution recognises a duality in approach to progressive legal service that he terms the "regnant" or the "rebellious" ideals. Regnant lawyers "assume leadership in proactive campaigns," a posture that relegates clients to passive and insignificant roles. They rely uncritically on familiar legal approaches to problems, especially litigation,[39] and "tended to fit (client) needs and aspirations into preestablished frameworks that were neither animated by nor ultimately much responsive to the lives (they) were leading."[40] López highlights the propositions that comprise the regnant idea: the privileging of specialised professional knowledge, and the marginalisation of practical knowledges emerging from daily life. The important skill of the regnant lawyer is knowing "how things work and how to get things done,"[41] and the professionals who embrace this approach perpetuate the regnant idea, protecting their own status, prestige and authority to speak the 'truth' about the legal world. This analysis clearly equates with the traditional model. Regnant lawyers will be dominant,

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[38] G Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*, (1992) Westview Press, at p1.
[39] *Ibid*, p24.
[40] *Ibid*, p3.
[41] *Ibid*, p26.

taking self-prescribed measures to address self-identified needs of clients who may be afforded little leeway to formulate or express their own problems.

The regnant model can be contrasted with the rebellious alternative. Whereas law work under the regnant model is defined by the regnant lawyer's perception and identification of 'truth' and the corresponding legal responses to given situations, for López, and his rebellious lawyers, truth is neither total nor universal. Rather truth is constructed, situational and contingent. Accordingly, López advocates a form of law practice intent on reimagining, contesting, and ultimately transforming dominant taken-for-granted truths, as rebellious lawyers realise both the importance of gaining a perspective on truth from their clients, and that significant practical knowledge may reside outside of their own situated understandings of the social world.[42] In this respect, the rebellious lawyer will willingly abandon his privileged professional position as he seeks to learn about other ways of knowing – and interactions with clients will consequently involve closely collaborative relations. "Lawyers must know how to work with (not just on behalf of) women, the indigent, people of diverse ethnic backgrounds, the disabled, the elderly, gays and lesbians...they must open themselves up to being educated by all those with whom they come into contact, particularly about the traditions and experiences of life on the bottom and at the margins."[43] Like Herrman's (1979) counsellor, López's rebellious lawyer emphasises non-legal solutions to client problems, as part of an ideology that accepts that there is more to legal redress than litigation. He stresses the significance of moves by such rebellious lawyers towards demystifying the law, and making it more accessible to their clients; especially in

[42] *Ibid*, p65.
[43] *Ibid*, p37.

respect of the enhanced client autonomy resulting from such concerns: "Helping people to see that they can identify, understand, and contribute to solving their own and others' problems is one way of helping them gain more control over the life that we share."[44]

The dichotomy is also addressed by Carroll Seron in a 1996 study of the work lives of solo and small-firm practitioners.[45] Seron asks whether these lawyers expect to be men and women of commerce or of law. She differentiates between lawyers as 'entrepreneurs' – those whose perspectives echo the call of commercialism; and lawyers as 'traditionalists' – those for whom the traditional professional norms of client-centred focus and dedicated, attentive service, define their perspectives.[46] Seron charts opposing lawyer attitudes towards their work lives characterised by either classification. For the entrepreneur, clients are consumers, with whom there is seldom need to establish a rapport. Such lawyers might consider that clients are concerned with the speed and cost of their 'product', which might be offered in standardised, packaged ways. Such lawyers may view even the lawyer-client relationship as "not sacred", and would accept participation by the client only within a delimited context controlled by the lawyer. [47] For the traditionalist, clients are clients, and the establishment of a lawyer/client rapport is essential. Such lawyers are concerned with service, quality, and individualised treatment. Standardised and packaged delivery is impractical, client participation is a necessity, the relationship is sacred. Even where routinised treatment is called for, the professional is still

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[44] *Ibid*, p70.
[45] C Seron, *The Business of Practicing Law,* (1996) Temple University Press.
[46] *Ibid* at p11. Again, this classification is not proposed as a mutually exclusive dichotomy. Seron describes a continuum of those who supply legal services, with the entrepreneurs on one extreme, and the traditionalists on the other, but with room in the analysis for an intermediary group – the experimenters, who might not demonstrate the essential commitments of either extreme, but who may be involved at different times with both corresponding perspectives.
[47] *Ibid*, p124.

essential to communicate and to ease concerns.[48] Despite her contention that postindustrialisation has upset the conventional claims to a distinction between this entrepreneurial commercialism and traditional professionalism,[49] this analysis is clearly compatible with Rosenthal's two model hypothesis.[50]

Austin Sarat and Stuart Scheingold provide further illumination. Writing in introduction to the notable 1998 collection of critical theory essays *Cause Lawyering: Political Commitments and Professional Responsibility,*[51] Sarat and Scheingold describe from the outset the dichotomy in the legal profession in general, and in respect of approaches to client service in particular, that is the focus of this thesis. They differentiate between the lawyer as "hired gun" – a neutral economic position described in terms of a "crude instrumentalism in which lawyers sell their services without regard to the ends to which those services are put,"[52] representing a market driven, commercialist conception of professionalism, and the "cause lawyer" – a position described in terms of moral commitments to legal professionalism involving the aim to share

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[48] *Ibid,* p142.
[49] Especially through the advent of newer organisational structures and the impact of high-technology on practice.
[50] A point worthy of clarification is that Seron's terminology is potentially confusing in respect of this analysis. Her 'traditionalist' is to be equated with the participatory model, and not the traditional alternative, in the sense that these lawyers are characterised by a concern for client-centred service where participation by the client in the interaction is a necessity. Her 'entrepreneur' respectively can be loosely equated with the traditional model, where client participation is accepted only under the controlling hand of the lawyer. However in other ways Seron's contribution is not so easily subsumed. Her emphasis on the commercial aspect of the attitude accompanying the traditional model, whereby clients are consumers with whom there is seldom any need for a rapport, and where the lawyer's primary concern is money is echoed to differing degrees by Carlin, Powell, Halliday and Nelson. But this attitude may need to be distinguished from a less malign and more professionally aloof attitude – "I'm the best judge of what you need" arising from Rosenthal, Simon, Gilkerson and Lopez's contributions. Accordingly the traditional attitude may need further elaboration, perhaps reflecting the difference between a 'paternalistic' and a 'cynical' attitude.
[51] A Sarat and S Scheingold, "Cause Lawyering and the Reproduction of Professional Authority: An Introduction" in A Sarat and S Scheingold (eds.), *Cause Lawyering: Political Commitments and Professional Responsibility* (1998) Oxford University Press.
[52] *Ibid,* p3.

with clients the responsibility for the ends the lawyer promotes in his representation.[53] This conception recognises that the role of the lawyer goes beyond the deployment of technical skill,[54] accepting that there is more to the lawyer-client relationship than service defined by economic commercialism. They define the hallmarks of either approach in terms that can be readily connoted with the dichotomy in approach as discussed, distinguishing between the traditional understandings of the lawyer-client relationship involving the loss or distortion of client meanings and contentions, and the resulting client mystification, disempowerment and alienation[55] (traditional), from the alternative where lawyers and clients become "part of a network of problem-solving practitioners," learn from one another and "conspire together" on behalf of remedies that serve the client's "needs and aspirations,"[56] (participatory). This differentiation can be summarised as the difference between lawyers as listeners and learners, and lawyers as translators,[57] and clearly accords with the other contributions previously discussed.

A number of recent UK contributions are also relevant to this discussion. Hazel Genn's landmark 1999 survey of people's experience of 'justiciable' problems and their advice seeking behaviours[58] describes two alternate client expectations of their lawyers: those seeking

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[53] Again the comments made in respect of Herrman et al. and Seron are relevant here. To begin, the appeal to the cause lawyer's personal morality and conceptions of ethical lawyering raise a number of questions as to the compatibility of this analysis and my participatory model that are not easily answered. Also the focus of the hired-gun upon economic rewards may provide further support for the cynical traditional attitude, but may be less easily identified with the more benign paternalism described by other contributors.
[54] *Ibid.*
[55] *Ibid,* p9.
[56] The quoted terminology is from G Lopez, *op cit.,* pp. 52 – 61, cited by the authors at pp9 and 10.
[57] *Ibid.*
[58] H Genn, *Paths to Justice,* (1999) Hart Publishing

empowerment and those wanting to be *saved.*[59] This study is different from those discussed so far in that it concerns *client* and not *lawyer* viewpoints.[60] Clients seeking empowerment desired information about how to enforce their rights – where to go, who to write to etc. They sought legal advice with a view to obtaining information about process or substantive explanations of the relevant law. Such information would then be utilised by the client in making their own decisions about their cases, or in actioning their problems themselves. Other clients wanted someone else to deal with their problems – to write difficult letters, make difficult phone calls etc. and to shoulder the burden of their problems. Genn observes that this dichotomy is related to both the type of presenting client problem and the personal competencies of the clients in question. In respect of the models of interaction, empowerment can readily be identified with the participatory model - empowerment requiring collaboration, good communication and a respect for client aims from the outset. Clients who want to be saved seem to be identifying and seeking to benefit from the hallmarks of the traditional model – an opportunity to put their case and trust into the hands of the professional who will then take responsibility for its resolution.

In 2003, reporting and analysing data obtained for an earlier study, Richard Moorhead, Alan Paterson and Avrom Sherr distinguish between 'client-alignment' and 'client-control' as alternative lawyer approaches to interaction found in different practice settings or deployed in resolution of different problem types.[61] The authors describe client-alignment or client-centeredness as an approach characterised by lawyer willingness to listen to and understand the client, to provide meaningful options, and to accept client involvement in strategic (case)

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[59] *Ibid,* p100

[60] I address this issue in further detail later on.

[61] R Moorhead, A Paterson & A Sherr, "What Clients Know: Client Perspectives and Legal Competence" in *International Journal of the Legal Profession* Vol 10 No 1, (2003) at page 10.

decision-making. Client-alignment is more than a tool for the elicitation of important information from the client – it is an approach to clients that embraces client aims. Client-alignment may represent the extreme of lawyer identification with the client, with client-control at the other extreme of the spectrum. Client-control is accordingly an attitude primarily characterised by an absence of client-alignment, whereby the lawyer asserts control over the interaction and the client's problem. Whether arising out of the lawyer's concern to "act as a restraint on client emotionalism"[62] or in the resistance by the lawyer of unreasonable client aspirations, or simply as method of habit or convenience, client-control prioritises lawyer judgements and assumptions about clients over client autonomy. The relevance to the models of interaction is again clear: client-alignment corresponds to the participatory model, client-control to the traditional alternative.

Jenny Johnstone and James Marson's 2005 survey of user perceptions of the quality of advice sought from non-legally qualified advisors for the Department of Constitutional Affairs[63] is the last contribution that I will discuss here. Almost half of the 58 clients interviewed by Johnstone and Marson about their experiences of advice reported that they had no desire to be actively involved in their cases, and would prefer their advisor to take full responsibility for dealing with it.[64] Such clients considered that their own best interests would be served by allowing their advisor broad control over their cases: "*...they are experienced...I'd rather leave it to them.*"[65] Conversely almost one third of the respondents reported that they wanted involvement in their

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[62] *Ibid,* p12.
[63] J Johnstone & J Marson, *Advice Agencies, Advisors and their Clients: Perceptions of Quality* (2005) DCA 10/2005
[64] *Ibid,* p31.
[65] *Ibid.*

cases: "*I want help with my rights and on the technicalities of the law or what I need to do, but I also want to take control of my situation and sort it out myself.*"[66] Johnstone and Marson describe this approach as one of joint enterprise and empowerment – of advisor "providing the client with the requisite knowledge to make an informed decision." The remainder of the sample sought a combination of the two approaches. Like Genn's (1999) analysis, this understanding is derived from client perceptions of advice seeking, and indeed both studies appear to be broadly compatible. In respect of the models of interaction, the approach described by those seeking to pass responsibility to their advisors is compatible with the traditional model, whereas the approach sought by those desiring active involvement and facilitation of their own decision-making is readily recognisable as the participatory model.

ABSTRACT MODELS AND ASSOCIATED PERSPECTIVES

Some of the contributions that have been discussed recognise in various ways a dichotomy in legal service either through descriptions of the abstract methods and mechanics of interactions between lawyers and clients as representations modelled on either side of the dichotomy, or as attitudes or perspectives (of both lawyers and clients) consistent with these models.

The range of emphases of the different conceptions serves to broaden and enrich the models as simple descriptions of interactions, as a closer examination of the different contributions reveals. To differing degrees, Carlin (1962), Galanter (1974), Herrman et al. (1979), Nelson (1988), Powell (1989), Abel (1989), Simon (1991), Gilkerson (1992), Lopez (1992), Sarat and

[66] *Ibid.*

Scheingold (1998) and Moorhead et al. (2003) each present analyses focused more broadly than Rosenthal's models, in that each emphasises to some degree a range of lawyer attitudes or viewpoints accompanying different styles of interaction. eg role-orientation, commitment to cooperation, concern for disclosure, desire for consensual definition of problem, aspiration to demystify law to enhance client autonomy, concern for client-centred competent service, aim to share responsibility for ends, facilitation of client autonomy. These contributions seem to highlight more than just the actual interactional method. They demonstrate how lawyer attitudes, and perceptions of clients, transcending the actual interaction have meaning in respect of this analysis.

It is proposed that a study of models of interaction in the relationship must include an understanding that these models are more than just opposing work styles or approaches to the interactions themselves. They are also descriptions of opposing attitudes and of ideologies, descriptions of specific relationships with specific consumers, and demonstrations of greater underlying issues: lawyer attitudes to their work, and structural relationships with their clients.

This proposed theoretical approach recognises the inherent relationship between the respective models and the associated lawyer attitudes. It sees for example the participatory model as a tool for the lawyer intent on prioritising client aims and client satisfaction over lawyer incentives or lawyer inhibitions. Similarly, the traditional approach is seen as a method for traditionally minded lawyers to prioritise their own concerns and interests over those of the client, or at least

to subject the desires, aims and satisfaction of the client to the interests or inhibitions of the lawyer.[67]

With this said, it is proposed that the models be understood not simply as descriptions of opposing practical approaches to professional interactions, but more broadly as descriptions of attitudinal or philosophical approaches of lawyers to the service of their clients, as expressed in the practical approach taken to the interaction. This approach should therefore allow that the participatory approach be classified in a range of different ways. After all, there is conceivably a range of behaviours within the interaction itself capable of supporting the participatory label. And even work styles not readily recognised as participatory might be included if it is understood that the primary determinant is the accompanying lawyer attitude rather than the mechanics of the interaction itself. For example, interactions that according to the modular analysis exhibit traditional characteristics might be viewed as more participatory than traditional where the overall circumstances of the situation imply general attitudes more consistent with the participatory ideology than with the traditional one. Lawyers working in-house for a specific client represent this argument. The lawyer and the client are, in some respects the same entity. They share common eventual aims: the aims of the business, and presumably there is less opportunity to view the in-house lawyer as a separately interested

[67] It is not suggested that lawyers associated with the traditional approach will inevitably provide poor service, or will always fail to act adequately for the client in pursuance of their own agendas. Rather, in comparison to the participatory alternative, it is thought that the traditional model lawyer will give greater weight to his own interests than his participatory counterpart, or will fail to prioritise client aims where they are potentially incompatible with his own. The ethos of the participatory model places utmost importance on full disclosure and communication between the parties to the interaction, highlighting the associated lawyer attitudes regarding concern for accurate identification of the client problem and determination that client desires are engaged. The traditional alternative is less preoccupied with such disclosure and communication, understanding that individual lawyers must retain predominant control over the specifics of any given interaction, thereby demonstrating lawyer-centred attitudes, perhaps, or incidentally, coinciding with client detriments in given situations.

party. We might assume that the lawyer attitude in such a situation will be extremely participatory, as his aims and his client's aims are identical. However, we might also expect that in pursuance of his employer/client's aims, such a lawyer may well adopt traditionally practical approaches.[68] Is such a situation to be understood as traditional or participatory? It is submitted that to analyse the methods divorced from the underlying rationales misses the fundamental fact that these models are expressions of underlying attitudes – of the self-images of lawyers, not descriptions which carry meaning in a vacuum.

With this said, other broader contributions can further illuminate this analysis. A theme of lamentation running through other profession-centred literature supports this argument. Anthony Kronman,[69] and Sol Linowitz and Martin Meyer[70] all display a nostalgia for the professionalism of the past, deploring modern trends towards bureaucratisation and commercialism in the legal profession.[71] The relevance to the modular analysis can be demonstrated when we view these concerns about the loss of professionalism of the past characterised by competence and public service[72] as representing expressions of the participatory perspective, and the trends identified and decried by these authors as representing economic, lawyer-centred attitudes of the traditional model. By accentuating the participatory ideology, and protesting the modern trends towards traditional consultations, these studies

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[68] This insight was gained from a short period of fieldwork observing a general practice lawyer as part of an undergraduate dissertation for the University of Birmingham.
[69] *The Lost Lawyer: Failing Ideals in the Legal Profession,* (1993) Cambridge, Mass.: Belknap Press of Harvard University.
[70] *The Betrayed Profession: Lawyering at the End of the Twentieth Century,* (1994) New Ysork: Scribner.
[71] See also Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society,* (1994) New York: Farrar, Straus & Giroux.
[72] Although not everyone would agree that these were ever motivating concerns: See Abel, *op cit.,* and J Auerbach, *Unequal Justice: Lawyers and social Change in Modern America,* (1976) Oxford University Press.

support the view of the participatory model as an ideological or self-imaged perspective. They suggest that lawyer attitudes and self-images define to a great extent the nature of their perspectives towards legal service.[73]

MODELS OF INTERACTION IN THE LAWYER'S GIFT

A further point of importance in respect of the dichotomy in approach and attitude arising from the contributions discussed above is the conditions upon which the models as descriptions of interactions and associated attitudes can be expected to be encountered. A strong correlation between these different models and certain identifiable client groups is worthy of mention at this stage – see especially Carlin (1962), Reed (1969), Galanter (1974), Heinz and Laumann (1994), Genn (1999) and Moorhead et al. (2003) – but will be elaborated upon in the next chapter. However another well supported view running through this literature seems to accept the controlling function of the lawyer and his power to direct and dictate the terms of the interaction, either explicitly through his own choice, or more implicitly by his overall attitude and perspective towards his role and legal service. Accordingly this thesis argues that not only do these different contributions inform our understanding of these approaches to legal service as being more than abstract descriptions of different interactions. They also suggest, either explicitly, or by implication, that *the lawyer is the primary determinant of which approach is employed in any given interaction.*

[73] These contributions do support the dichotomy as advanced, but suggest again that the terminology is inadequate. After all it seems somewhat peculiar to describe the modern trend towards the traditional, unless the ordinary meaning of the term is to be totally eclipsed by its technical connotation.

A closer examination of many of the contributions outlined above reveals a general consensus that the primary determinant of the approach taken in any given situation is *the lawyer's choice.* For example, the difference in approach to the consultation that Reed (1969) describes corresponds to the difference between 'knowledgeable' or 'dependent' clients as he termed them. (This will be discussed in more detail in chapter 2.) However in this context, Reed seems to suggest that the choice of approach to the consultation is not defined by any impartial judgment as to whether client X is sufficiently knowledgeable, but rather on the basis of the lawyers' choice as to which approach is the most suitable in general. Accordingly Reed supports the view of the determination of the style of the approach as lawyer-driven, albeit with the structural caveat that client characteristics to some extent guide the lawyer's decision.[74]

Rosenthal (1974) is more explicit in this respect, as he presents the two abstract models, the utilisation of which, he implies, depend upon little more than the lawyer's choice about which approach to take. He proposes the different models of interaction as specific differences in the lawyer's approach to individual consultations – characterised either by a belief that the interests of both parties are best served by the professional's assumption of broad control over the solutions to the problems brought to them by the client (traditional), or by a sharing of control over many of the decisions arising out of the relationship (participatory). Accordingly this analysis supports the view that the style of approach is contingent upon the lawyers' choice, not in respect of which abstract model to employ, but in respect of a choice of methods of practice, categorised broadly by Rosenthal on the traditional-participatory spectrum.

[74] Presumably some degree of client knowledge and intelligence is needed to participate.

Similarly Herrman et al.'s (1979) role orientation analysis represents a specific description of different lawyer self-images, the difference between those seeing themselves as counsellors or advocates describing their chosen approach to individual client consultations. Counsellors are characterised by a concern of the lawyer to ensure that the client participates, and bases his input on the relevant information. Advocates are characterised by a lawyer approach that both controls the client's actions, and seeks to act in the best interests of the client. This way of understanding and categorising the relationship specifically accepts that the differences between the approaches describe differences in the choices and self-images of lawyers.

The studies conducted by Halliday (1987), Nelson (1988), Powell (1989) and Abel (1989) are not concerned with individual lawyer-client interactions in the same way as the other contributions discussed here. These works focus more broadly on the collective organisation of lawyers and lawyer professionalism. Nevertheless these studies also support, by extension, a lawyer choice-based reasoning as a determinant of which broad approach to legal professionalism is adopted or identified with. Halliday's monopolistic or altruistic intent, and Powell's self-interest or subservience are descriptions of differing lawyer approaches to their work, and Nelson's inherent dualism and Abel's status anxiety confirm these understandings. These studies support the view of the difference in approach to individual lawyer-client interactions as the choice of the lawyer by highlighting how the choices and attitudes of individual lawyers define their approaches.

Gilkerson (1992) describes the difference between the lawyer as translator and transformer of client problem (traditional), and the lawyer as facilitator of the client's desired action

(participatory). The difference between these approaches is again derived from evaluation of the practical approaches taken to the interaction, rather than from an ideological decision on the part of the lawyer to provide one or the other of the approaches as described. Nevertheless, the difference between the translator and the facilitator is again a function of the lawyer. This analysis accepts that the eventual style (and categorisation) of the resolution of the client problem is determined by the lawyer's choice about what type of approach to employ in the interaction.

Lopez (1992) also supports this analysis. His descriptions of different lawyer approaches to their clients emphasise the importance of lawyer values and self-images. Lopez's analysis suggests that the client who *receives* either a regnant or rebellious approach to his consultation or relationship does so as a consequence of his lawyer's own self-image and predilection. Whether any given interaction will be conducted according to the regnant ideal, where the lawyer is dominant, taking self-prescribed measures to address self-identified needs of clients; or the rebellious ideal, involving closely collaborative relations and a concern by the lawyer to demystify the law making it more accessible with a view to enhancing client autonomy, is determined by the choice and attitude of the lawyer in respect of either of these two ideals.

Similarly, Seron (1996) echoes this understanding, describing the difference in approach to law work in general, and clients specifically, as differences in perspectives of the lawyer. The entrepreneurs are those whose perspectives echo the call of commercialism, who would accept participation by the client only within a delimited context controlled by the lawyer. The traditionalists are those for whom the traditional professional norms of client-centred focus and

dedicated, attentive service, define their perspectives. Accordingly Seron defines the approach to legal service as specifically contingent upon the perspective, self-image and choices of the lawyer. This analysis contends, therefore, that the style of service that any individual client receives is in the lawyer's gift.

Sarat and Scheingold's (1998) contribution again suggests that the primary difference between the styles of service they identify is the accompanying lawyer motivation or self-image. In simple terms, the difference between the cause lawyer as listener and learner and the hired gun as translator, is ultimately an expression of the lawyer's choice and perspective. For those lawyers who echo and endorse the commitment to legal professionalism involving the aim to share with clients the responsibility for the ends they both work towards, client service will presumably involve distinctly participatory approaches. While for those who identify with more traditional market-driven commercialism, employing a professional dominance approach to interaction that accepts the basic and fundamental necessity of translation and transformation, legal service as described by the traditional model is presumably frequently provided. Indeed many of the papers in this collection capture lawyer attempts to change the structures of their relationships with their clients so as to empower them.[75] This is indeed a choice – which acknowledges the centrality of structure in the production of good lawyering. It is accepted that these authors may not be concerned themselves with lawyers associated with the traditional model, however their choices do demonstrate the connection between lawyer attitudes and the

[75] For example by reducing fees, relocating offices, undertaking 'non-legal' work, participating in support groups, etc.

model of service provided to clients, and support the view that lawyer choices determine the eventual approach taken in the interaction.

Moorhead, Paterson and Sherr's (2003) contribution also recognises the centrality of lawyer choice in the determination of the approach to interaction. Although client-alignment may be more readily encountered in the context of corporate clients, the key determinant is the extent to which the lawyer either identifies with client aims (client-alignment) or seeks to mitigate or temper them (client-control).

Similarly Genn (1999) and Johnstone and Marson (2005) inform our dichotomy through understandings obtained from client perceptions of advice. Both recognise that empowerment, or the desire for active participation facilitating empowerment, are associated with a certain degree of personal competence of the client, and also are more likely or appropriate in the context of certain types of case. Like Reed's (1969) knowledgeable client analysis, Johnstone and Marson conclude that is difficult to expect a client lacking basic communication skills to be able to assume responsibility for his own case once his advisor has provided the necessary advice about the legal process. Neither study provides data about the incidence of clients obtaining the type of interaction or relationship that they were seeking, except insofar as general satisfaction with the consultation can be seen as an indication of satisfaction at the approach taken by the advisor in the interaction. In the context of the lawyer choice analysis

neither study suggests that the approach taken in any given interaction will be determined by anyone except the advisor – the best a dissatisfied client might do is seek a different advisor.[76]

It is accepted that Carlin (1962), Galanter (1974), and Heinz and Laumann's (1982) findings do not necessarily support the view of the determinant of the style of approach to legal service as the lawyer's choice, as they emphasise the structural correlation of client type to the lawyer's approach.[77] Indeed Heinz and Laumann argue that the profession is *externally determined* demonstrating that the social differentiation of the profession is shaped by the social differentiation of the client base,[78] and not on the basis of defining lawyer attitudes towards their work. This point, as also suggested to differing degrees by Reed (1969), Halliday (1987), Nelson (1988) and Powell (1989), will be explored fully in the next chapter.

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[76] Access to good pre-advice information, perhaps from friends or family members, may help clients approach a lawyer identified as more likely to deploy the type of approach being sought. Such an identification may be made soley on the basis of the practice setting. I discuss this issue in the next chapter.

[77] As do both Genn (1999) and Johnstone and Marson (2005), although like Reed (1969) these studies also support the lawyer choice analysis.

[78] J Heinz and E Laumann, *op cit*, p54: "The nature of clients served primarily determines the structure of social differentiation among fields."

CHAPTER 2 – CLIENTS: POWER, INFLUENCE AND CONTROL.

CLIENT POWER: A DICHOTOMY IN INFLUENCE

The previous chapter has already mentioned the correlation between the different lawyer approaches and certain genres of client. For example, Carlin (1962), Galanter (1974), Heinz and Laumann (1982), Genn (1999), Johnstone and Marson (2005) and to some extent Reed (1969), all suggest that aside from the question of the actual difference in interactional model, the differences in clients likely to receive service characterised by either model are identifiable. Depending on the theorist, rich, repeat-playing, corporate, knowledgeable, 'partner' clients are all identified as being likely to want or receive a certain lawyer attitude to interaction, broadly compatible with the participatory model. Whereas poor, one-shot, individual, pliant, 'expendable' clients are identified as being likely to encounter certain lawyer attitudes broadly compatible with the traditional model. This chapter accepts this correlation, and will argue further that it is client power and influence over their lawyers that determines the relationship,[79] and that this power is located, for the most part, but not exclusively at the rich, corporate extreme of the market.

I pointed out in the first chapter that Carlin's (1962) contribution demonstrates that with one-off, powerless clients the lawyer's choice defines the approach taken to the consultation. However Carlin's analysis is interesting for the light that it sheds on the (economic) status of

[79] A point explicitly made in many of the contributions discussed herein.

the client and how this impacts upon the relationship that he is likely to experience with the lawyer. Poor clients, or clients not financially connected to the lawyer, (clients as expendables), can be seen to have their interests subordinated by lawyers following the traditional approach. Other better-connected clients, (clients as partners), appear to be afforded the type of co-operation as appropriate under the participatory model. Indeed, under this analysis Carlin was not describing differences in the interaction in abstract, but rather different lawyer approaches to interactions on the basis of an identification by the lawyer of certain client characteristics: clients considered expendable receive an approach to their interaction broadly in accordance with the traditional model. Whereas clients identified as partners, either due to their own status/financial position, or because of empowerment resulting from a common source, are able to demand/command a greater degree of participation and involvement, broadly in accordance with the participatory model. This analysis therefore accepts that the status or source of the client is paramount in the context of the power of these clients to determine the lawyer's approach to their consultations, and that accordingly, there is more to the determination of the model employed in interaction than abstract lawyer choices divorced from the context of the clients they represent.

Indeed, this client determined view is supported by Reed's (1969) Florida survey, which distinguishes between two different forms of lawyer-client relationship: one simply based on client knowledge, the other on client dependence.[80] Again Reed was not describing abstract models of the interaction itself, but rather he was identifying how differing client characteristics dictate, to some extent, the different styles of interaction. The value of Reed's contribution in

[80] J P Reed, *op cit.*

this context is the identification of client characteristics and their impact upon lawyer choices regarding approaches to the interaction. Indeed he suggests that the lawyer's selection or choice of either approach may depend upon the individual circumstances for any given client. Presumably only knowledgeable clients are capable of real participation, and may be able to command it as a consequence of their knowledge. Dependent clients are unlikely to wield sufficient power under any analysis to impact determinately upon the lawyer's choice of approach.[81]

Galanter's (1974) contribution informs the dichotomy in approach to legal service, insofar as he also describes the different styles connoted with different genres of client. However the purpose of Galanter's article was not to advance different abstract approaches to interactions divorced from the context of reality. Rather, principally he presents an analysis demonstrating how differences in *client* characteristics - categorised on a repeat player/one shotter continuum, are related to great differences in access, outcomes, representation and the capacity to effect change in the legal system. One-shotters are individuals who have need for only "occasional recourse to the courts,"[82] whereas repeat players would be "engaged in many similar litigations over time."[83] Galanter describes such parties as the spouse seeking divorce, the auto-injury claimant, and the accused criminal as one-shotters; and such parties as the insurance or finance company or the prosecutor as repeat players. The major distinguishing difference between these two

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[81] This line of reasoning is supported to some extent by Genn (1999) and Johnstone and Marson's (2005) client studies, both of which identified individual client capabilities as drivers of their aspirations of advice inteactions. Presumably certain client characteristics will exclude the higher ideals of client autonomy, and to that extent the lawyer or advisor may not enjoy a totally unfettered choice about the approach to the interaction.

[82] M Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change", (1974) 9 *Law and Society Review,* 95.

[83] *Ibid.*

groups appears to be the level of risk that accompanies litigation. One-shotters are typically small groups or individuals, where the stakes represented by the tangible outcome of the case would be high relative to the total worth of the individual,[84] or conversely, so small and unmanageable that the cost of enforcing them outweighs the potential benefits.[85] The repeat players would tend to be larger units, for whom the stakes in any given case are smaller relative to total worth.[86] Galanter presents data revealing that repeat players, as a matter of course, tend to perform better than one-shotters. This can be understood as a result of some of the advantages detailed below:[87] "We might assume that repeat players (tending to be larger units) who can buy legal services more steadily, in larger quantities, in bulk (by retainer) and at higher rates, would get services of better quality,"[88] not only because they can employ greater (legal) talent to begin with, enjoy the benefits of greater continuity, more anticipatory and preventative work, and more experience, but crucially because the repeating nature of their work allows

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[84] The prospect of a prison sentence, or payment of fines or costs which are likely to be significant in terms of the average income.

[85] For example, the short weighted consumer, or the victim of minor crime.

[86] Galanter accepted that with regard to so called professional criminals, or taxpayers routinely engaged in dispute on an annual basis, the one-shotter/repeat player distinction is inadequate. Hence he suggested that the classification referred to a "continuum rather than a dichotomous pair"(at p. 98), and that an alternative means of differentiation focussed on those "whose resources permit at most a single crack at litigation"(ibid). Therefore, the pivotal question appears to boil down to one of money. Those individuals with sufficient funds might even be seen as quasi repeat players, even where the type of action envisaged would be more typical to a one-shotter, if it is clear that the individual in question is able (financially) to exhaust all avenues of action up to the highest appellate court, before recommencing a similar action from the outset.

[87] Galanter described some of the advantages enjoyed by repeat player over their one-shotter adversaries. Having presumably been involved in any type of litigation before, the repeat players have advance intelligence as to what to expect. As such they develop expertise, gain ready access to specialists, and enjoy the economies of scale associated with large-scale purchase. They are able to play the odds, minimising the long-term possibilities of loss, even at the expense of individual actions. Equally, as repeat players regularly encounter the reality of the law, they are able to "play for rules as well as gains"(at p98) through the processes of political lobbying. Furthermore, such repeat players develop "facilitative informal relations with institutional incumbents" (p98).

[88] *Ibid,* p114. This understanding is not limited to specifically legal arenas: in J Grossman, S Macaulay and H Kritzer "Do the Haves Still come out Ahead?" (1999) *Law & Society Review* 33, 4, the authors describe other systematic advantages of the repeat players, and offer a disturbing account of the use of arbitration as a structural tool for repeat players, whereby regulatory laws are effectively bypassed by contractual arbitration clauses that are imposed as a consequence of the inequality of the respective bargaining powers of the repeat players and their one-shot client/consumers.

them "more control over counsel."[89] In essence, Galanter shows how these structural advantages of the repeat players translate in broad terms to a greater control and power to influence and dictate the terms of legal service they realise that their one-shotter counterparts, typically, cannot match. His repeat-player/one-shotter distinction therefore expressly represents the different strategic power of the parties, in respect of the system as a whole, and their lawyers in particular.

As already discussed, Heinz and Laumann (1982) describe different general approaches to client service which accord in broad terms with the participatory/traditional dichotomy - lawyers for individuals tend to dominate their clients in decisions and choices about the nature of their work, while the lawyers for corporations tend to have the nature/choices regarding their work dictated to them by these clients.[90] While this understanding is capable of supporting the abstract dichotomy, it also introduces other structural issues not so easily accommodated under the analysis advanced in the previous chapter. For example, Heinz and Laumann also show that the profession is divided rather than stratified, with one hemisphere serving corporate clients and large organisations, the other serving private clients and individuals. Furthermore it is these differences in the types of clients served by the different hemispheres of the profession that account for the different styles of service.[91] Accordingly, the relative independence of the lawyers of the lower status individual client hemisphere, is derived from the fact that the individual client is more dependent upon the lawyer than the lawyer is upon any individual

[89] M Galanter, *op cit*, p114.
[90] J Heinz and E Laumann, *op cit*, p171.
[91] After surveying a range of different factors that might account for the dichotomy, including the doctrinal substance of the fields of practice, the intellectual challenge associated with different types of work, the social origins, career histories, or political affiliations of the lawyers, or the status associated with different types of law work, Heinz and Laumann conclude that the fundamental determinant is the nature of the client served. *Ibid*, p128.

client.[92] This allows for enhanced lawyer authority and empowerment in the encounter with the client. However lawyers located in the high status corporate client hemisphere are more dependent upon their regular, repeat-player clients, who themselves often wield considerable social[93] and economic influence and power. Large firm lawyers are accordingly subject to the dictates and demands of their clients to a greater extent than their counterparts in the lower status hemisphere. As such, the different general approaches to the interaction that Heinz and Laumann describe are determined not on the basis of lawyer attitudes or choices, but on the basis of the power of clients to demand certain types of service. Participatory service thus correlates to the influential and empowered clients of the corporate hemisphere, whereas traditional service correlates to the less influential, often dependent clients of the private hemisphere.

Powell (1989) describes the dichotomy in lawyer approach as the difference between a self interested, monopolistic tendency, and a subservience, reflecting the view of dominant clients. In defining one half of the dichotomy exclusively in terms of lawyer attitude (the self-interested monopolistic view) and the other in respect of externally applied constraints (the subservience to client dominance), Powell too expressly recognises the impact of certain client characteristics upon the freedom of the lawyer to determine the approach to the interaction, and that when dealing with such dominant clients, the lawyer is less free to dictate the terms of the

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[92] *Ibid*, p171.

[93] Aside from the issue of client financial influence impacting upon lawyer independence, Heinz and Laumann also demonstrate that status or prestige is stratified on the basis of client type, (p85.) This may serve therefore as an additional source power and influence of certain clients over their lawyers. The lawyer may be unwilling to relinquish the status associated with certain strata of clients, thereby further empowering such clients in respect of their power to dictate the terms of the relationship.

relationship, and the resulting interaction accords broadly with the participatory model.[94] Furthermore, it is illuminative to note the general structural differences in the client base in respect of the models as described. Like Heinz and Laumann's (1982) separate hemispheres, both Powell and to some extent Halliday (1987) emphasise how these different approaches to clients are readily associated with different types of client. The professional elite who service the corporations and other powerful clients may enjoy higher status in the profession, but are also less independent from these clients. The lower echelons of the profession who service small businesses and individuals, are significantly less dependent upon any single client, and accordingly are less constrained in respect of their own self-interested approaches. In the context of professional collective organisations, Powell and Halliday both demonstrate that the dependence upon the clientele of any particular lawyer directly affects the positions that they advocate in respect of the profession as a whole. Lawyers primarily engaged in private practice for individuals are free to pursue their own interests, for example addressing constraints upon lawyer advertising or soliciting. But lawyers for corporations or other powerful clients are more likely to identify with these client interests,[95] or be more accountable to these clients for the positions they take vis-à-vis the profession as a whole. Again client power to dictate the terms of the relationship, whether in respect of individual interactions, or even lawyer positions and approaches to the profession in general cannot be underestimated.

The controlling power of clients to dictate the approach to their legal service was also found by Nelson (1988). He explains how increasing competition and commercialism, especially at the

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[94] See T Halliday, *op cit.*
[95] M Powell, *op cit*, p241.

corporate extreme of practice,[96] characterised by regular turnover of personnel, decreased client loyalty, and increasing importance attached to financial imperatives, has undermined the traditional basis for self regulation in the profession, namely a commitment to public service as well as profit. What was once a 'big-time law firm' may now be little more than a 'big-time business,' resulting in the consumers (clients) shopping for the lowest price, or even internalising legal representation. Nelson demonstrates how commercialism impacts upon professionalism, eroding traditional commitments to factors other than client-consumer returns and satisfaction. Accordingly, firms embracing commercialism, or recognising that market-driven forces cannot be ignored, empower their important (financially) clients, whose loyalty to their lawyers is increasingly price elastic. The ever present possibility of business being taken elsewhere, or taken in-house, ensures client-centred service as a business viability imperative. Indeed Nelson argues that a lack of autonomy from clients is responsible for the shape of large firms today,[97] where dependence on large clients dictates to a great extent the range and style of service provided by these lawyers.[98] With this said it is clear why these firms act not as "agents of rationality and justice within the law,"[99] but rather as agents of private, corporate power - their powerful and influential clients.

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[96] Indeed Heinz and Laumann found that these commercialist pressures tend to impact in the corporate hemisphere more so than in the individual hemisphere. This is due mainly to the dependence of firms operating in the corporate sphere on their large clients, in comparison to the relative independence of lawyers from their clients in the individual hemisphere. J Heinz and E Laumann, *op cit*, from p128.

[97] R Nelson, *op cit*, p5.

[98] Indeed Heinz and Laumann observe that the "area of practice is shaped to accommodate (the) client's range of needs, broad or narrow" *op cit*, p35, describing how some large corporate firms even provide services in divorce, probate, etc. providing a one-stop-shop catering for all the needs of their wealthy and important clients.

[99] R Nelson, *op cit*, p280.

DIFFERENT CLIENTS, DIFFERENT MODELS

If Nelson (1988) shows how at the corporate extreme, client power and lawyer dependence represent two sides of the same coin, and account for the greater frequency of participatory encounters involving such clients and their lawyers, then studies focussed at the other, individual client extreme also demonstrate the importance of client power to the modular analysis.

If translation of the client problem into a legally recognised framework is a fundamental aspect of any law work,[100] then what Cain (1979) calls the transformative effects of such translation,[101] (where the real issues upon which the client desires action may be lost as the legal transformation bears little resemblance to the clients 'real world' problem) seem to be readily identifiable in the context of law at the margins – legal services provided to the indigent, dependent or other one-off cases brought by individuals. As Clark Cunningham (1989) observes "The client's inability to *speak* the language of the law prevents her from *knowing* her experience as a legal event."[102] While the client may not know if he has a good case or claim before talking to the lawyer, the act of coming to the lawyer in the first place demonstrates that he has some sense that he needs to invoke 'the law,' whatever it may be. The fact that the client may not recognise what specifically is the root of the legal problem at issue provides the lawyer with ample opportunity to influence the client's formulation of it in the form of the narrative that the lawyer allows the client to tell. Gilkerson (1992) argues that "how the lawyer elicits the

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[100] Cain describes the business of lawyering as translation of client problems into legal discourse and vice-versa, arguing that such a skill is the definitive practice of the lawyer. M Cain, (1979) *op cit.,* at p 342.
[101] *Ibid.*
[102] C Cunningham, *A Tale of Two Clients: Thinking About Law as Language,* (1989) 87 Michigan Law Review, at p2482.

client's story will influence what story the lawyer hears, which in turn will prescribe the legal strategy chosen and the form and effect of any legal remedy obtained."[103] The danger is that the client's perspective is lost (or transformed) in the process of translation of the problem into a legal context. Gilkerson explains how the lawyer transforms the client's narrative "into a story that best fits the story the law tells about a person in the client's general circumstance and position."[104] Cunningham's ethnography of an American poverty law practice also showed that during the course of translation, "the translator does inevitably change what the speaker says, a process in which meaning may be both lost and gained."[105] These transformations may be effected consciously or unconsciously.[106] In receiving the client's story, the lawyer may manipulate the telling of the story so that it conforms with the story the lawyer wants to hear;[107] or the lawyer simply may ignore information and details he believes are irrelevant to the legal problem as framed by the precedents or principles he sees implicated.[108] Through such filters as the lawyer's knowledge of, and previous encounters with, similar client narratives, the client's intended meanings of the narratives told to the lawyer may be lost. By focusing on the legal problem, the lawyer selectively hears and amplifies information pertinent to universalised narratives he believes are implicated by the client's story. Other aspects of the client's story are

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[103] C P Gilkerson, *op cit,* p898. Gilkerson cites Kim Lane Scheppele, *Foreword: Telling Stories,* (1989) 87 Michigan Law Review, 2073, as authority for this assertion.

[104] C P Gilkerson, *op cit,* p912. Gilkerson explains how this "fit" approach to litigation is exemplified in the extreme by class action lawsuits, where "reform-minded" lawyers find a seemingly persuasive legal problem, then go about the business of finding plaintiffs to establish a class.

[105] C Cunningham, *The Lawyer as Translator: Representation as Text: Towards an Ethnography of Legal Discourse,* (1992) 77 Cornell Law Review, 1298 - 1387 at p1299.

[106] Gilkerson explains: "The lawyer hears the story in her own narrative voice, arising from a perspective that is shaped by legal training and practice, as well as personal bias and history. In this way the lawyer filters the client's story through her own experiences and hears a story that may be different from the one the client intends to tell." C P Gilkerson, *op cit,* p903.

[107] Indeed, Gilkerson describes one lawyer as "bent on extracting the most efficient account of the client's story, hurriedly moving the client along her narrative stream, stopping to glean bits of information about the legal problem, casting away narrative irrelevancies about aspects of the client's life the lawyer perceives immaterial." *Ibid,* p898.

[108] L White, *Representing "The Real Deal,"* (1991) 45 Miami Law Review 278, at p301.

seen as irrelevant and are ignored as static impeding the client's narrative flow.[109] These descriptions must be understood to represent extremely traditional styles and perspectives, and can be accounted for, at least in part, by the realisation that such 'one-shot,' poor or dependent clients exert no real influence or control over their lawyers in this context.

Indeed, for many lawyers, the one-off or poor client represents little more than a file or case number. Gilkerson claims that "entanglement with the details of poor clients' lives is perceived as too costly in terms of time and energy."[110] In a criminal context, this seems to be born out by the idea that the lawyer who deals exclusively with legally aided clients tends to aspire towards routinisation of the majority of his caseload via guilty pleas.[111] Indeed Abraham Blumberg[112] points out that the continuing relationships of the defence attorney are formed not with their clients, but with the police, bail bondsmen, prosecutors, and other court personnel – the repeat-players. Hence natural loyalties are formed towards the latter at the expense of the former. Similarly, David Sudnow's early account of the non-zealous processing of criminal defendants by the American public defender's office paints a bleak picture of the defence lawyer's routine presumption of guilt and habitual prioritisation of relationships with, and loyalties towards

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[109] In A Sarat and W L F Felstiner, *Divorce Lawyers and their Clients,* (1995) Oxford University Press, the authors suggest that the lawyer will rarely pay attention to client narratives focusing on the relative fault of either party to a divorce. This information is seen as largely irrelevant to the issues of the divorce that the lawyer perceives to be important – the division of assets, the agreement of custody etc. The lawyer will usually disregard such information, or even interrupt so as to prevent discussion of it, despite the fact that such issues as blameworthiness or fault are often central, crucial issues that the client feels are especially relevant.

[110] C P Gilkerson, *op cit,* p894.

[111] M McConville and C Mirsky, *Understanding Defence of the Poor in State Courts: The Sociological Context of Nonadversarial Advocacy*, (1990): "Cost effective lawyering arrangements depend on routinized case processing and discourage individual lawyers (assigned to the poor) from providing them with adversarial advocacy." See also A Mulcahy, "The Justifications of Justice: Legal Practitioners' Accounts of Negotiated Case Settlements" (1994) *British Journal of Criminology* 34/4: 411-30; and M Travers, *The Reality of Law,* (1997) Dartmouth.

[112] A S Blumberg, "The Practice of Law as a Confidence Game: Organisational Co-operation of a Profession", (1967) *Law and Society Review,* p.15.

other courtroom regulars or "core personnel,"[113] even at the expense of the effective representation of individual 'clients.' To the extent that these assertions are accepted, clearly such interactions represent extremely traditional styles and perspectives. After all, where the lawyer considers that entanglement with the details is too costly, or that *in general* a guilty plea to the criminal charge faced by the client is the best course of action, the aims of the participatory model are eclipsed. Indeed, the tenets of participation and involvement are incompatible with the lawyer who has already decided on his advice before the individual problem is discussed.[114]

A pertinent illustration can be found in the lawyer's office that deals exclusively with indigent clients – the office of the 'American poverty lawyer'. It is usual for such lawyers to adopt an ardently traditional approach to consultation with their poor clients. Gilkerson (1992) asserts that "the core of the relationship, if established, is lawyer control and client compliance, lawyer dominance and client subordination"[115] – clearly behaviour consistent with the traditional model. Anthony Alfieri observes how potential clients of such poverty lawyers are routinised on arrival at the lawyer's office. They are usually asked a standard set of background questions aimed to categorise the client for the benefit of the lawyer. These questions may only scratch

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[113] D Sudnow, *The Public Defender*, (1965), reprinted in R Schwartz and J Skolnick (eds.) *Society and the Legal Order / Cases and Materials in the Sociology of Law,* (1970) Basic Books Inc. New York.

[114] Although it is accepted that this assertion regarding the lawyer who has made up his mind before the consultation is perhaps a little overstated, it is submitted that where, as a matter of course, the lawyer is accustomed to encouraging guilty pleas, or not giving ample time to poor clients, the idea of meaningful participation by the client is unattainable. Even where some degree of token participation is invited by the lawyer, this will be ineffectual where the lawyer does not intend his own input to be objective. The very notion of participatory co-operation hinges upon the mutuality and reciprocity of the relationship. If the lawyer allows for participation on the one hand, but during the course of this participation the role the lawyer plays is that of the advisor imposing his recommendations upon the pliable client, then is this really participation at all? Surely real participation can only be achieved where the lawyer actually facilitates achievement of the client's goals, rather than imposing his own upon the client.

[115] C P Gilkerson, *op cit,* p895.

the surface of the story or problem that the client desires to convey, and yet in all probability, the client will be given little if any opportunity to expand on the answers given, or respond with his own questions.[116] Indeed, it has been observed that "the gap between what poor people want to say, and what the lawyer wants to hear often seems enormous."[117] Such conduct is obviously in accord with the traditional model. Participation is considered to be an unnecessary luxury, and one reserved for those clients able to pay by the hour for the privilege. The poverty lawyer handles no such clients; instead only those who depend upon the lawyer, or the law practice, to provide whatever services that are undertaken, without charge. It is this factor which so influences the model employed in these interactions. The indigent clients are dependent upon the lawyers, and wield virtually no positive power in respect of the entire relationship.[118]

Jack Katz's significant 1982 study of different approaches towards the provision of legal services to the indigent informs this question. While he contends that routine treatment is not inevitable in this field, he argues that pressure to treat such problems without making much of their differences is systematically implied. However important as social or moral issues, the problems presented to the poverty lawyer arrive in the form of a stream of individual problems, each of which has been defined as insignificant in its social ramifications.[119] Katz describes the situation in which poor people's conduct will rarely affect the interests of more than a small

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[116] A V Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative,* (1991) 100 Yale Law Journal 2107, at pp2111-2113.

[117] L White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak,* (1988) 16 New York University Review, Law and Society Change 535, at p544.

[118] Under this analysis clients may sometimes wield 'negative' power – the ability not to continue the relationship or to seek outside help. However in the context of criminal charges against the indigent who depend on representation that is funded elsewhere, even this negative power may be curtailed by the realisation that their current representatives might be their last or only hope. In the context of civil representation and the indigent, the lawyer is often sought only after problems have reached 'crisis point' (Katz) the urgency of which may also serve to undermine any negative power such clients might exercise.

[119] J Katz, *Poor People's Lawyers in Transition,* (1982) Rutgers University Press, p18.

group of others. This is to be contrasted with the 'significant'[120] problems of the rich for which "a significant series of interrelated audiences stand more or less attentive to whatever emerges."[121] For the poor, legal assistance is often sought once problems have reached crisis point – for example eviction notice served, or utilities cut off. The typically one-shot nature of such problems leads to difficulties for the lawyer in making work for client X profitable as work for client Y, which impacts upon the service such clients ultimately receive. In contrast, rich client problems are readily understood by their lawyers to represent investments for similar encounters of the future, both substantively and in terms of loyalty and reputation.

In a later American study, Paul Tremblay describes the method employed in the distribution of resources by lawyers involved in the practice of poverty law.[122] He explains how potential clients are often screened out and sent away through a process known as "triage,"[123] a method of case selection necessitated by resource and time scarcity. Clients would usually be asked a battery of preliminary questions, and if the lawyer feels the case to be worthy and actionable, the case might be accepted. It is important to stress however, that the fact that the lawyer perceives a case to be meritorious does not equate to the lawyer having understood the problem from the client's perspective.[124]As such the very idea of the process should be understood to

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[120] In the strict empirical sense. Such problems are easily treated as having far-reaching significance in respect of all parties affected or potentially affected.

[121] J Katz, *op cit*, at p 20.

[122] P R Tremblay, *Toward a Community-Based Ethic for Legal Services Practice,* (1990) 37 UCLA Law Review 1101.

[123] "Triage (is) a practice of distinguishing among several clients in determining which should receive what level of service, acknowledging that each cannot receive an unlimited delivery of service", *Ibid,* p1104.

[124] Indeed there is a considerable literature demonstrating how the transfer of information from one party to another is always susceptible to psychological and other comprehension-based phenomona, (see for example S Freud, "The Dynamics of Transference" (1912) *Standard Edition,* 12: 99-208, Hogarth Press 1958; and A Watson, *Psychiatry for Lawyers,* (1968) International Universities Press) and in the context of legal services in particular commentators have cautioned that meanings are often lost and distorted in the process of elicitation of client

represent a triumph of traditional motivations, and a tool for fostering traditional client compliance. This is evidenced by the fact that clients who seek to elaborate on their stories or put questions of their own are often seen to be hostile or uncooperative, and thus are not represented, despite the fact that many appear to have genuine grounds for legal action.[125] Hence the poverty lawyer can be seen to actively discourage participation as defined in the participatory model, allowing participation only insofar as it provides him with (what he perceives to be) necessary information upon which to base his choice of action. Furthermore, this whole process of triage is only made possible by the dominant/subordinate relationship that exists between the poverty lawyer and the poor client, which in turn is only created as a result of the fact that both lawyer and client understand that the client is unable to provide any material compensation or contribution towards the cost of the action. As such, both parties understand that it is the lawyer who retains total control over the initiation, duration and direction of any consultation. This situation can be contrasted to that of the paying client, who at the least would be able to expect some degree of control over the initiation and direction of the consultation.

In *Tournament of Lawyers,*[126] Galanter and Palay provide yet more illustration of this point, this time from an alternative direction. They describe the world of big-corporation law firms, where clients "belong" to the firm, and where relations with such clients are "enduring"[127]. They

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narratives. See C Cunningham, (1992) *op cit*, W Simon, *op cit.*, C Gilkerson, *op cit,* A Alfieri, "Speaking Out of Turn: The Story of Josephine V.", (1991) *Georgetown Journal of Legal Ethics*, 4:619-53; and L White (1988) *op cit.*

[125] C P Gilkerson, *op cit,* p896.

[126] M Galanter and T Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm,* (1991) University of Chicago Press.

[127] *Ibid,* p5.

explain how, against this backdrop of familiarity and intimacy, client aims and needs are routinely looked after. This is because of the dependence of such lawyers upon such clients. Big-corporation lawyers will invariably act for repeat players. Indeed "many big-firm partners sit on the boards of their clients' companies."[128] The extreme is where the lawyer works "in-house" specifically for one major client. In such a situation, the only function of the lawyer is the achievement of the aims of the "client". The lawyer is dependent upon the client for all employment, and as such, other motivations impacting upon his behaviour towards the client are eclipsed by the loyalties owed to the client. In such a situation, traditional interaction is highly unlikely. The lawyer is effectively both the lawyer and the client, as he too is a part of the company that employs him. Writing of the USA in the 1960's, Erwin Smigel explains the point: "Today, a firm's ability to retain its independence is further strengthened because it has a number of clients, with no one client providing enough income to materially or consciously influence the law office's legal opinion."[129] Thus where the economics of the situation result in independence, the lawyer has much greater discretion as to how he might behave, or which model of interaction to employ. Smigel continued "This was not always true, for at their inception, many of these firms depended upon one major client, or at least upon a very few important ones", which he explained, made such firms "much more subject to a major clients' demands."[130]

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[128] M Mayer, "The Wall Street Lawyers, Part 2: Keepers of the Business Conscience" (1956) *Harper's Magazine,* 212 (1269) p50-56.

[129] E O Smigel, *The Wall Street Lawyer,* (1969) Indiana University Press, p344.

[130] *Ibid.* There is mounting evidence that Smigel's observations in respect of how in the past commercial pressures eroded law firm independence, increasingly describes the reality today. Perhaps the situation may now have turned full circle, and the high-water-mark of lawyer autonomy and self-determination in the corporate sphere is behind us. See Galanter and Palay, *op cit.*, Seron, *op cit.*, Powell, *op cit.* and Nelson, Trubeck and Solomon (eds.), *Lawyers' Ideals / Lawyers' Practices: Transformations in the American Legal Profession*, (1992) Cornell University Press.

There may be other sources of client power aside from simple economic importance. The specific context of practice may alter the distribution of client power among supposedly unimportant (individual) strata of the client base. Donald Landon's 1990 systematic analysis of the rural bar in the USA,[131] confirming Heinz and Laumann's (1982) findings of an external structuring of the profession,[132] suggests that in rural/small town settings,[133] individual clients are empowered through the "pivotal role of personal reputation."[134] The power of the dissatisfied to affect the lawyer via word-of-mouth – "knowing the speed with which information gets around town"[135] acts to constrain the lawyers' freedom of action in any individual situation: "A mistake of judgment in taking a case, (or) mishandling a client...can have an immediate and telling effect on the attorney's practice,"[136] especially as lawyers in these settings tend to work on the "edge of economic vulnerability."[137] Effectively, Landon demonstrates how client power, even in situations where individual clients do not exert specific controls upon their lawyers, can still determine to a great extent the lawyer's approach to his clients.

Similarly, in an English context, Maureen Cain (1974) found that against the measure of lawyer acceptance of client chosen outcomes, repeat-player clients faired significantly better than their one-shot counterparts. While this repeat-player/one-shotter distinction accounts primarily for the variation between firms rejecting or facilitating the client's chosen outcome, Cain offers

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[131] D D Landon, *Country Lawyers: The Impact of Context on Professional Practice*, (1990), Praeger, New York.
[132] *Ibid*, p16.
[133] Indeed Landon suggests that "community size is inversely related to the intensity of scrutiny" of local affairs. At p136.
[134] *Ibid*, p133.
[135] *Ibid*, p130.
[136] *Ibid*, p134.
[137] *Ibid*.

another "residual explanation" - the relative dependence/independence of the lawyer on the client base. Analysing deviant cases where client objectives were not accepted by their lawyers, Cain suggests that one of the lawyers in her sample, free from the countervailing pressures of professional integration, "accepted his clients' chosen outcomes as his objective...because *he needed to retain his reputation* amongst his relatively organized clientele."[138] This lawyer understood that workload continuity problems posed by the one off nature of the majority of his client problems, could be adequately addressed by building up a reputation.[139] Cain explains that this was possible "because his clients were part of loose knit but effective networks of relationships. Because he had a largely immigrant clientele he was in a position analogous to that of a lawyer in a small town where networks are complex and gossip channels effective."[140] Accordingly, clients empowered by their common source or interrelated networks are able to command more from their lawyers than their individual statuses might warrant.

MODELS OF INTERACTION AND CLIENT POWER

Contrasting the interactions described by those primarily concerned with lower status, poorer or less influential clients, with the interactions described by those concerned primarily with higher status, richer, influential, often corporate clients demonstrates the difference in the styles of interaction that these different client groups typically receive. Carlin (1962), Katz (1982), White (1988), Cunningham (1989), Tremblay (1990), Alfieri (1991) and Gilkerson (1992) all locate their researches in indigent or underprivileged practice settings. They each portray the

[138] M Cain, *op cit*, p344 and 346. Emphasis in original.
[139] *Ibid*, p338.
[140] *Ibid.*

interactions in such situations as fleeting, routinised, lawyer-driven, broker-dependent, and economically-defined.[141] There seems to be a general consensus that in the routine of such practice, the client's perspective is lost in the process of translation by the lawyer of the client problem into a legal context,[142] and that the lawyer-dominant / client-subordinate relationship is habitual. In contrast, Smigel (1969), Galanter (1974), Heinz and Laumann (1982), Halliday (1987), Nelson (1988), Powell (1989) and to some extent Moorhead et al. (2003) each describe interactions and relationships between lawyers serving clients at the other, higher status, wealthier and influential extreme. Such interactions tend to be characterised by enduring, familiar, cordial, client-driven relationships. Again, there appears to be a general consensus that such clients receive service that facilitates the achievement of their own goals.[143]

Clearly those authors concerned with low status clientele seem to be describing traditional style interactions, and those concerned with high status clientele seem to be describing participatory interactions. Following Galanter's (1974) approach, the type of client likely to receive participatory treatment is the repeat player, or the client who is important enough economically to the lawyer to justify collaboration. Carlin's (1967) "clients as partners" analysis can also be seen to support this hypothesis – the rich clients who share common concerns with the lawyer are treated as equals rather than as subordinates. In the alternative, the one-shotters or the

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[141] Johnstone and Marson's (2005) survey of client experiences of advice seeking was also located in underprivileged practice settings – the not for profit advice sector. Their findings about the high quality of advice present difficulties for this analysis that will be addressed in chapter 3.

[142] Indeed the homogenising effect of translation and transformation seem to be associated most frequently in respect to these poor/low status clients.

[143] There is an alternative view however. In "Defendants and One-Shotters Win After All: Compliance With Court Decisions in Civil Cases" *Law & Society Review,*(1991) 25,4, P Koppen and M Malsch present data revealing that repeat players may lose out in respect of enforcing court decisions against their one shot counterparts. A lack of reachable assets render many repeat player victories pyrrhic, whilst where one-shotters are successful against repeat players, they will rarely encounter similar problems.

"clients as expendables", or just poor people, are unlikely to ever make any significant impression upon the lawyers' willingness to deal with such clients in a participatory manner. The important point here is *the extent to which the client exerts any degree of control over the lawyer.*[144] Where for example, the lawyer understands that through the gossip channels of a small town, any adverse behaviour on his part would become public knowledge, the client is effectively empowered.[145] Similarly, where the inner-city lawyer is dependant upon closely connected sections of the community, such as ethnic groups,[146] the power of the dissatisfied to adversely affect the lawyer via the "grapevine" acts as a method of client control of the lawyer. Equally, where the lawyer is dependent financially on any particular client,[147] or perhaps upon an individual as a continuing source of clients,[148] or even because he works "in-house" for one specific "client", his freedom to behave as he sees fit is compromised by the existence of these prevailing dependencies or controls.

The argument made throughout the literature is that the presence or absence of dependence upon the clientele for whatever reason, is a crucial factor in assessing which model of interaction will be employed in the relationship. Lawyers representing the repeat players are likely to be far more dependent upon such clients than their colleagues representing the one-shotters. This dependence ensures that the repeat players are dealt with in a manner that results

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[144] I use the term control loosely. Perhaps a more appropriate analysis focuses on a spectrum of control at one end, and dependence at the other, with this point obtaining when the lawyer is either dependent upon the client, or the client controls the lawyer, or when the relationship is affected by any point in-between these two ends of the spectrum.

[145] See D D Landon, *op cit.*

[146] M Cain, *op cit.* One of the lawyers in this analysis was dependent upon sections of the ethnic minority community as a source of work.

[147] M Cain, *op cit,* used patronage as a variable in assessing lawyer behaviour in a deviant case analysis.

[148] One of the lawyers observed by Carlin was dependent upon a broker as a continuing source of clients.

in client satisfaction, which is likely to involve a participatory approach to the consultation. Lawyers working for one-shotter clients, however, do not need to ensure that the individual client is satisfied (the exception being lawyers who work in tightly-knit communities where word-of-mouth is sufficient to amalgamate all potential clients into one all-embracing repeat player!), because the individual is never important or significant enough to warrant special consideration. The lawyer knows that when client X leaves, client Y should arrive, and so on. Hence one would predict that the traditional model will be utilised more often, as it is more convenient for the lawyer to utilise it, and because these clients for the most part, lack the power or influence to demand otherwise.

Accordingly, it is argued, lawyers acting for poor, low status, one-shot clients will usually apply a traditional approach to interaction, not only because such clients will be less able to afford the extra cost associated with the extra time required by the participatory model, but more importantly because the lawyer is not in any way dependent upon such clients as individuals, and hence retains predominant control over the relationship. However, lawyers acting for richer, well connected, repeat player clients will necessarily apply more participatory approaches to interaction, as a result of their dependence upon such clients. Lawyer dependence neutralises lawyer control, perhaps shifting the balance of power to the client. In such a situation, participation is presumably the only option. In the research reported in Part II of this thesis, I treated these repeatedly verified findings as hypotheses to be tested. However, as will be seen I chose to conduct the analysis from the standpoint of the client rather than the standpoint of the lawyer.

DEVIANT CASES: CAUSE LAWYERS AND LAWYERS FOR CAUSES

In respect of differing lawyer approaches to the interaction, or the different perspectives associated with these approaches, the above chapter suggests that it is not that the *lawyer chooses*, but that the *client demands*, or more subtly, that the lawyer chooses only in the absence of potent or compelling client demands. But there is indeed a serious challenge to this understanding, generated and developed in reaction to what this dichotomy represents in reality, and born out of an appreciation that lawyer choice *is* a competent tool with which the ramifications of client money and status dictating the distribution of difference in legal service provision can be addressed. The emerging evidence about the creed of the 'cause lawyer,' grasps this nettle, and in so doing represents a challenge to the analysis advanced above.

A definition of cause lawyering is elusive. For some, "altruism and other-regardingness are at the core of what cause lawyers do,"[149] emphasising that the "morality of service" as opposed to self-service[150] is what characterises the cause lawyer: "most lawyers go off to seek personal gain in their salaries, relatively high social status, and intellectually interesting work... (but) some lawyers choose to make less money to work for the 'greater good' however they define it."[151] A less selfless understanding is advanced by Ronen Shamir and Sara Chinski, who accept that motivation by a sense of injustice is part of the story, but also suggest that professional self-interest and the need for economic survival, as in any professional context, also

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[149] A Sarat and S Scheingold, "Cause Lawyering and the Reproduction of Professional Authority: An Introduction" in A Sarat and S Scheingold (eds.), *Cause Lawyering: Political Commitments and Professional Responsibility* (1998) Oxford University Press. At p13.

[150] C Menkel-Meadow, "The Causes of Cause Lawyering: Towards an Understanding of the motivation and Commitment of Social Justice Lawyers," in A Sarat and S Scheingold (eds.) *op cit,* p32.

[151] *Ibid*, p51.

characterises these cause lawyers.[152] Others have stressed the similarities in the underlying ideological aims of the cause lawyers, rejecting the altruistic motivational analysis or the professional self interest explanations offered by Menkel-Meadow and Shamir and Chinski.[153] There may be a difference between cause lawyering and client lawyering, as some commentators have stressed the incompatibility of these two approaches: "cause lawyering entails a self-conscious choice to give priority to causes rather than to client service, as such."[154] There is no consensus on this point however, as Menkel-Meadow seems content to extend the concept as far as "the 'simple' cause of service to individuals in need."[155] In this sense 'defensive' individual protection lawyering and 'active' cause mobilisation lawyering might be understood to represent different facets of the same idea. Indeed, both Menkel-Meadow and Louise Trubeck and Elizabeth Kransberger seem to accept a "blurring of these distinctions"[156] between the traditional means of socially conscious lawyering (public interest law firms, law school clinics and legal services offices) and novel reinventions of private practice lawyering for those in need.[157] For the purposes of this thesis, specific purist 'cause' lawyering, where the cause is prioritised over the client, is not the central topic of concern. Rather, client lawyering at the margins – on behalf of the powerless, the indigent, or the disadvantaged etc. is more relevant in this analysis as it provides a location to view express

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[152] R Shamir and S Chinski, "Destruction of Houses and Construction of a Cause: Lawyers and Bedouins in the Israeli Courts," in A Sarat and S Scheingold (eds.), *op cit.*

[153] D Lev, "Lawyers' Causes in Indonesia and Malaysia" in A Sarat and S Scheingold (eds.), *op cit.* See also Sarat and Scheingold's introduction to the volume, distinguishing cause lawyers on the basis of "...a sense of commitment to particular ideals." At p 7.

[154] From Sarat and Scheingold's statement of definition of the cause lawyering project. See note 125, p 65, in A Sarat and S Scheingold (eds.), *op cit.*

[155] C Menkel-Meadow, *op* cit, p32.

[156] Ibid, p19.

[157] L Trubeck and E Kransberger, "Critical Lawyers: Social Justice and the Structures of Private Practice," p 201, in A Sarat and S Scheingold (eds.), *op cit.*

(participatory) commitments to clients in arenas where such attitudes would, according to economic/market-driven dictates, not be found in all but the minority of cases.[158]

Of specific relevance to this analysis are the methods deployed by these cause lawyers, however so defined, in the service of their clients. Menkel-Meadow describes the salient characteristics as: "...innovative collaborations with client groups...(and) less legalistic, more client-centred definitions of goals."[159] Ruth Buchanan and Louise Trubeck note that cause lawyering demands improvement of the lawyer-client relationship to work more effectively on behalf of subordinated groups. They summarise the central tenets of the approach, including such ideals as to *humanize* – resisting the reduction of client stories to legal categories and the marginalisation of client voices; to *collaborate* – encouraging participation of clients in practice decisions, and dismantling of the lawyer-client hierarchy; and to *strategize* – seeking to access client experiences regarding strategies for struggle and resistance.[160] Trubeck and Kransberger describe the cause lawyers as "change agents" who have created an "alternative [*participatory*] model for the delivery of legal services to traditionally subordinated groups."[161] This model is alternative not in the sense that it is a novel or innovative approach to legal services in general,[162] but because the location of this model, in spheres of practice servicing the

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[158] Even under economic analyses there is room for the powerless/indigent to enjoy quality relations with lawyers: some forms of contingent fee damage claims provide enormous potential rewards for successful lawyers, as do some forms of court sanctioned litigations, where points of law, of little value to the 'client' in the individual situation, provide the opportunity for massive potential fee awards for the costs incurred by the lawyers.

[159] C Menkel-Meadow, *op* cit, p36.

[160] R Buchanan and L Trubeck, *Resistances and Possibilities*, cited in L Trubeck and E Kransberger, *op cit*, p204.

[161] L Trubeck and E Kransberger, *op cit*, p205.

[162] Clearly the hallmarks of the approach itself – client-centred, and sensitive, participatory service – are frequently encountered in different spheres of practice, especially those serving the corporate and powerful 'haves'. Even the commitment to civic values, social justice and professional responsibility are, according to some commentators, not perspectives unique to the cause lawyers, see E Smigel, *op cit*; J Auerbach, *Unequal Justice: Lawyers and*

subordinated or the powerless, provides participatory lawyering to those who traditionally were unable to benefit from it, and certainly unable to demand it.

The important point is that these lawyers demonstrate a conscious commitment to provide particularly participatory approaches to service to those who would normally be excluded. By seeing their role as "a resource, not a decision-maker,"[163] and by expressly preferring client empowerment and autonomy over lawyer paternalism, these lawyers demonstrate that the power of clients to demand certain approaches to the service of their needs cannot fully account for the different lawyer approaches. Rather lawyer attitudes and choices can, in these circumstances at least, transcend the boundaries of the client determined understanding advanced in this chapter. Indeed the critical view running through this literature, and internalised and represented by the cause lawyers, recognises the dichotomy/duality in legal service, however so termed, in both abstract approaches to service, and more specifically to the correlation of these differing models to identifiable categories of clients. The movement thus represents a conscious attempt to plant and nurture the development of opposition to the dominant structures that fortify and perpetuate these norms of law in society. These lawyers understand that abstract theorising of different approaches to interactions with clients, divorced from external imperatives, may well provide conceptual analytical models for identification or labelling of general approaches to service,[164] but they are unlikely to be easily applicable to

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social Change in Modern America, (1976) Oxford University Press; and more recently both T Halliday, *op cit.*, and M Powell, *op cit.*

[163]Reported remark of a lawyer interviewed by L Trubeck and E Kransberger, *op cit*, p211.

[164] These descriptions may serve as measures of difference against which the ideals of service to the subordinated can be judged. For example the potential range of achievable outcomes for the client serviced zealously under the participatory model shown in Halliday's *Beyond Monopoly* demonstrates the power of the lawyers at the corporate extreme of the profession, in respect of their ability to influence legislation and government policy. This point is

genuine cases of need on individual bases, short of radical reinvention or transformation of the mechanisms and structures of legal service. The reorganisation of their practices, in respect of fee structures, office layouts, office locations and (legal) areas of speciality, thus result from a realisation that they cannot simply provide 'good' participatory relationships, experiences or outcomes for their clients without wholesale change, and that much of the present status-quo, either structurally or institutionally, seems to conspire to preclude anything resembling participatory inclinations or interactions to the groups identified as unreceiving. The practice of the cause lawyer therefore represents the structural solution. Many brave individuals have shown by conscientious example how, through *their own choices*, those typically ineligible can get more from the law than "a pat on the head and patronisation,"[165] - mechanical, unconsidered and routinised representation.

The cause lawyers are not alone in having recognised and sought to address the disparities of service described by the models of interaction and the correlation of these differing models to identifiable categories of clients. A number of recent UK studies have sought to examine the values and quality of advice in the not-for-profit (NFP) sector, primarily located in Citizen's Advice Bureaux or law centres. In *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*[166] Moorhead, Paterson and Sherr test assumptions embedded in the formal

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interesting when we consider the question of what *could* be achieved for any potential client by a lawyer prepared to deploy all his skills and resources in the zealous pursuit of specific client aims, or more general facilitation of client benefiting outcomes. On this point see M Cain and C Harrington (eds.) *Lawyers in a Postmodern World: Translation and Transgression,* (1994) New York University Press. This volume offers a theoretical framework that provides useful conceptual materials for developing critical studies of lawyers with a potential to contribute to struggles against domination.

[165]Reported remark of a lawyer interviewed by L Trubeck and E Kransberger, *op cit.*, p 213.

[166] R Moorhead, A Paterson & A Sherr "Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales" in *Law & Society Review* 2003 Vol 37 No 4, page 765

protections and values of the 'professional paradigm' of lawyers which asserts, inter alia, that qualified lawyers cost more and deliver higher quality than their non-qualified counterparts.[167] Moorhead et al contrast the claims of the professional model with the 'paraprofessional paradigm' of non-legally qualified advisors which emphasises the independence, responsiveness, holism, accessibility and willingness of the nonlawyer advisor approach. The authors challenge the traditional professional claims about both the quality and the cost of qualified legal advice, and present statistically significant findings that nonlawyers obtain higher client satisfaction ratings, better outcomes, and are more likely to be graded positively by peer reviewers than qualified lawyers.[168]

Johnstone and Marson's 2005 survey of client experiences of seeking non-legally qualified advice similarly found high levels of client satisfaction (49 of the 58 clients surveyed expressed overall satisfaction with their nonlawyer advisors) in a context in which the literature would have predicted routinisation and poor quality service. These findings confirm a number of earlier studies which identified specialisation,[169] procedural and substantive experience,[170] or the legal context[171] as key drivers to quality over and above the qualifications of the advisor in question.

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[167] The authors defined qualified lawyers as solicitors, barristers or legal executives. Advisors with other legal training would be classified as non-legally qualified.
[168] R Moorhead et al, "Contesting Professionalism" *op cit.* p 781
[169] H Genn and Y Genn, *The Effectiveness of Representation at Tribunals, Report to the Lord Chancellor*, (1989) London: Lord Chancellor's Department.
[170] H Kritzer, "The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World" (1999) 333 *Law & Society Review* 713
[171] W Bogart & N Vidmar, *Report to the Ontario Task Force on Independent Paralegals: An Empirical Profile of Independent Paralegals in the Province of Ontario,* (1989) Windsor Law School; M McConville, J Hodges, L Bridges & A Pavlovic, *Standing Accused, The Organisation and Practices of Criminal Defence Lawyers in Britain,* (1994) Oxford: Clarendon Press

These studies represent a challenge to the client power thesis in that there appear to be none of the likely bases of client power among the client groups serviced by the NFP sector. And yet Moorhead et al found that clients considered that nonlawyers were better than lawyers at paying attention to their needs, listening to what they had to say, treating them as if they mattered, affording them enough time, and doing what they wanted.[172] Accordingly, like the cause lawyers, a different explanation of the NFP sector willingness to provide such participatory model interactions is required. It may be that without the status of 'professional lawyer' and the corresponding claims of the professional paradigm, nonlawyers are less able to dictate the terms of interactions with clients, or clients are less willing to cede control. However there is evidence that different clients in the NFP sector do seek different model interactions,[173] and accordingly it is difficult to accept that high satisfaction findings are reflect a consequence of client control. Rather lawyer (or nonlawyer) choices about approaches to their work and their clients can account for these findings, and the higher incidence of quality and satisfaction in the NFP sector may simply reflect the ideologies commonly found in that sector, echoing the claims of the 'paraprofessional paradigm' which emphasises attentiveness, collaboration and communication. In this sense the NFP advice sector, like the cause lawyers, embodies the positive choices of its actors to provide participatory model interactions and service to those traditionally unable to benefit from them.

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[172] R Moorhead et al, "Contesting Professionalism" *op cit,* at p785.
[173] J Johnstone & J Marson, *op cit*, p31.

CONCLUSION: WHY THE MODELS MATTER

The model of practice deployed by a lawyer in interactions with clients has been written of as an inevitable consequence of the practice's structural characteristics (size of firm; type of client; source of clientele). More recently, the contributions of the cause lawyers and the NFP sector have revealed that it is possible for lawyers to make choices about practice settings and organisation which can benefit one-off and powerless clients. Indeed, in the UK the whole Law Centre movement was founded on this premise. This approach has been characterised as a participatory model, but it is more than that. It is an approach that self-consciously puts the client's own preferences as to method, and choice of outcomes at the centre of the delivery of the legal service.

In Part II of this thesis I report how I explored the type of service received by each of the clients whom I accompanied in their interactions with their lawyers. I also explore the relationship between the power of the clients and the type of service received. I achieve this by analysing the results of a 17 month ethnographic study of a group of clients in one English city. The theoretical research requirements as derived from a critique of the existing literature are presented in the next chapter, and the framework of the study itself detailed in Part II. A more reflexive and complete account of the research is presented in the chapter 9.

CHAPTER 3 – IDENTIFYING THE ALTERNATIVES: HOW TO AVOID REPLICATING LAWYERS' POWER IN THE RESEARCH PROCESS.

In this chapter I discuss various problems with the analyses advanced thus far. To begin, the first part will consider exceptions undermining either lawyer choice or client power as determinants of the relationship, demonstrating how norms of location, and the power of the profession will also impact upon lawyer choices and client power. In the second part of this chapter I offer a more specific critique of the lawyer choice / client power understandings, as viewpoints both predominantly formed to differing degrees through the experiences and perspectives of lawyers. I conclude with the argument that in order to address the shortcomings I have identified, it is necessary to generate an independent and contemporaneous account of client goals and experiences, unstructured by the input of their lawyers.

EXTERNAL SOURCES OF POWER

Chapter 1 discussed research premised on the power of the lawyer's choice (in respect of different approaches to the interaction) to define the relationship between lawyer and client. Chapter 2 offered an alternative understanding, under which client power to command different approaches to the interaction determines the relationship. In the main, both of these alternative conceptions describe how both lawyer choice and client power determine the approach to the interaction on the basis of factors internal to any given relationship. Under the lawyer choice

analysis, it is sufficient to consider the lawyer's perceptions of the individual relationship, as these perceptions define the approach eventually taken to the relationship. In this way the choices are integral to the relationship, as they represent lawyer attitudes internal to the relationship – lawyer views of their roles, their clients and themselves. Similarly, under the client power analysis, one must consider the structural relationship of the lawyer and client, as this informs the power dynamics between them, and thus the approach eventually taken in consultation. Again this analysis emphasises factors inherent and internal to any relationship – the interrelation between the lawyer and the client.

However in various ways these two solutions cannot entirely account for the differences, as other forms of constraint demonstrate that neither simple internal lawyer motivational or attitudinal explanations, nor client influences in respect of specific relations with lawyers regarding any individual interaction, properly account for factors affecting the relationship external to specific lawyer choices or client powers. In reality, certain external constraints transcend the analyses of the preceding chapters. Even powerful clients, or lawyers characterised by particularly participatory perspectives may find that certain factors outside of their direct interaction may impose constraints upon either party so as to undermine either lawyer choice or client power as determinants of the interaction itself. Indeed there are other sources of power aside from that wielded directly by the client, as there are other considerations affecting lawyer choices aside from those directly related to individual interactions.

NORMS OF LOCATION: COMMUNITY CONTEXT

The environment in which the lawyer functions may impose general constraints upon his choices of approach in individual situations. This point will clearly obtain to a greater extent in smaller, often rural locations, than in larger metropolitan environments; however even lawyers practicing in metropolitan locations may also rely on close, intimate and tightly-knit sections of the population, thereby accentuating the power of such client groups as a collective.[174] For example, any particular client may desire initiation of an action against a personal acquaintance, or professional colleague of the lawyer. Clearly such a situation may lead to a conflict between the lawyer's willingness or ability to act objectively for his client, and his personal feelings in respect of his relationship with the other party. Furthermore, any particular action may attract resentment or a backlash from the community as a whole. Landon (1990) explains how in some smaller communities, different attitudes accompany different forms of action.[175] Whereas it might be considered perfectly legitimate to enforce contractual obligations, a different view may be taken of those looking to 'cash in' on personal injury accident claims. A lawyer acting for an individual engaged in such unpopular litigation might find himself the subject of a hostile community response.[176] Extreme examples include one lawyer who represented a family in a civil rights matter against the school district: "It was the worst mistake of my career! The community held that against me for ten years!"[177] Also, another lawyer explained: "I took on a medical malpractice suit against the local doctor. It was a bad mistake. I think I'm finished in

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[174] Presumably both immigration law and corporate law, at different extremes of the spectrum, provide ample scope for the connectedness of many of the major actors.
[175] D D Landon, *op cit,* chapter 8.
[176] D H Pollitt, "Counsel for the Unpopular Cause: The Hazard of Being Undone" (1964) 43 *NCL Rev*1.
[177] D D Landon, *op cit,* p102.

this community."[178] Where the lawyer appreciates the potential power of his containing community to adversely affect him in this way, presumably his continued survival in practice will be prioritised over loyalties to any individual clients. Indeed it has been observed that "litigation is not only incompatible with the maintenance of continuing relationships, but with their subsequent restoration."[179] Legal action is by its very nature confrontational. Where there is a chance of an unpopular reaction to any given action, the lawyer knows that this may be permanent, and may be unwilling to risk potential ostracism from his community. Accordingly, in such small and intimate communities, both the power of individual clients, and the importance of lawyer choices in respect of specific interactions may both be secondary to the power of the containing community.

PROFESSIONAL CONTEXT

Norms of professional conduct may serve as an alternative source of power affecting the relationship between lawyer and client, as relationships with other professionals may impose constraints upon the lawyer, or interfere with the lawyer's choice in respect of his approach to interaction with any given client. Indeed, it has been commonplace to consider a profession such as law a 'community', the practitioners of which are alleged to share common values, codes of professional conduct specifying appropriate behaviour towards both clients and colleagues, and other common elements that contribute towards a sense of collective identity.[180]

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[178] *Ibid.*
[179] M Galanter, *op cit.,* p.113.
[180] W J Goode, R K Merton & M J Huntington, *The Professions in Modern Society,*(1957) Russell Sage Foundation. See also T Johnson, *Professions and Power,* (1972) London Macmillan, A Abbott, *The System of the*

Lawyers who function as part of this community face pressures from other members to conform to the accepted norms of such a community. In a criminal context, as already mentioned, Abraham Blumberg and David Sudnow describe lawyers habitually prioritising relationships with, and loyalties towards other courtroom regulars – police, opposing counsel, court staff, and judges, even at the expense of the effective representation of individual 'clients'.[181] Landon demonstrates how this argument is especially cogent in respect of small town settings where the legal professional community is often small and intimate.[182] "Attorneys often work with each other regularly, have cordial relations, and are frequently seen drinking coffee or playing golf together."[183] As continual encounters with other professionals are virtually assured, the motivations that apply to each interactional situation tend to narrow down to those that will make the next encounter comfortable. Therefore, when a client poses a problem that the lawyer perceives will require potentially unpopular solutions, the lawyer is inhibited from so acting by the risk of alienation of his professional peers.[184] Landon refers to the "norm of reciprocity"[185] amongst these professionals, resulting in a tit-for-tat outlook to interaction. Two of the lawyers he interviewed demonstrate: "If an attorney messes me up, I'll sing like a canary at coffee the next morning" and "If you take advantage of a lawyer's lapses or exploit something that reflects badly on him, he will get you the next time."[186] Katz (1982) also recognises these constraints in poverty law practice: "One (may) accept clients and take positions one thinks wrong, but one

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Professions, (1989), University of Chicago Press, H Becker, *op cit,* but c.f. M S Larson, *The Rise of Professionalism,* (1977) University of California .

[181] See A Blumberg, *op cit*, and D Sudnow, *op cit.*

[182] D D Landon, "Clients, Colleagues, and Community: The Shaping of Zealous Advocacy in Country Law Practice", (1981) *American Bar Foundation Research Journal*, 81-111.

[183] *Ibid,* p95.

[184] Landon quotes an attorney who explains this point: "When an attorney here violates these understandings, the word is quickly passed around. We begin dragging out the interrogatories and imposing the technical rules until the guy gets the message that that's not the way we do things around here." *Ibid,* p108.

[185] *Ibid,* p109.

[186] *Ibid.*

does not push matters beyond what adversaries and local courts consider appropriate boundaries."[187] A lawyer who heeds such warnings understands that norms of professional conduct impose strong constraints on the range of potential behaviour that any individual professional may employ in the service of his clients. Indeed if "...breaking the trust of a local colleague can have an immediate and telling effect on the attorney's practice,"[188] only the most professionally marginal[189] practitioners may be in a position to countenance the risks associated with the zealous pursuit of client objectives where these may conflict in substance or form with the norms of accepted practice.

Heinz and Laumann (1982) found, especially in specialist fields of practice, that client referrals from other lawyers were often significant sources of business. Whether due to the reputation of the lawyer, or to the particularly esoteric nature of certain practice specialisations, the interrelations within the profession as a whole will clearly impose constraints on individual lawyer approaches to the relationships with their clients, especially where the lawyer in question is dependent to any extent upon such referrals. This is not to say that the client will always lose in such a situation. Indeed my own small scale observations as part of an undergraduate dissertation for the University of Birmingham found that where individual clients are united by a common source of referral, the service provided to all may well reflect the lawyer's concern to maintain the favour of the referring agency.[190] Indeed, the importance

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[187] J Katz, *op cit,* p57.
[188] D D Landon, *op cit,* p99.
[189] M Cain, (1979) *op cit*, used professional marginalisation and integration as a variable in her analysis of different lawyers.
[190] D Jacobs, (1999) *Lawyer and Client: A Study of Factors Affecting Interaction in the Relationship*, unpublished dissertation for the University of Birmingham. The lawyer observed as part of this research received a significant amount of work through referrals from the HSBC bank. While individually these referred clients tended to bring

of individual practitioner reliance on the profession was emphasised by Cain (1979), who found that of the lawyers she observed, the one who emerged as the most prone to reject his clients' chosen outcome was "more dependant on the profession than on his clients."[191] This lawyer was professionally integrated, doing business with local high street law firms and others in neighbouring suburbs, and needing to "maintain the goodwill of the local County Court if he were to remain a success."[192] This professional integration, described by Cain as a "rather mixed blessing,"[193] directly affected the character of the services that this lawyer was prepared to offer to his clients. The important point in this analysis is that the lawyer was not willing to fight matters if there was a risk of this being regarded as unreasonable by fellow lawyers or court personnel. Accordingly, the more unconventional the clients' chosen outcome, the more likely that it be rejected by the professionally integrated lawyer. Norms of professional conduct thus impact directly upon the relationship between lawyer and client, and demonstrate that there are other sources of power outside of the individual lawyer-client relationship. Whether or not clients benefit from these external constraints on the lawyer, clearly such profession-centred considerations do undermine the view of the relationship as determined by either lawyer choices in respect of the interaction itself, or client power in individual situations.

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very one-shot problems to the lawyer, and would be unlikely to wield much influence, in practice the lawyer treated all of these clients as a collective. He explained to me how his primary aim in dealing with such clients was to ensure satisfaction. He was accustomed to discounting the price of his service to such clients: "As you're from the bank the fee will be X instead of Y." This is because he perceives that such clients from the bank, despite the one-shot nature of their problem, are effectively empowered by their common source, the effect of which serves to amalgamate all such clients, along with the bank, as one repeat-player. The lawyer explained how "I do give a bit more care, because they go back and tell the bank." By regularly discounting fees for such clients, and making individual clients aware that is what he is doing, he is attempting to ensure that the status-quo with the bank is preserved. Or, that as a result of his price discount gesture, any reports about his involvement which do reach the bank will be favourable, and hence that the flow of clients from the bank will continue. Therefore, the behaviour of the lawyer during the interaction is tempered by the outside consideration of the source of such clients.

[191] M Cain, *op cit,* p347.

[192] *Ibid.*

[193] *Ibid.* Presumably, clients would have benefited from the networks and contacts of the this lawyer, however he was also identified as most prone to reject his clients' chosen outcomes because they conflicted with professional conceptions of reasonableness.

PERSONAL LIFE PLANS[194]

Closely related to the power of the profession to constrain lawyer choices in individual situations is the impact of lawyer career-orientated behaviour. This is connected to the power of the profession precisely because lawyers realise the importance of the support of the profession, and the impact of lack of support in the profession, for the advancement of their careers. This is perhaps most evident in an American context, where judicial positions are often elected, but where "clubhouse ties" determine the opportunities for candidacy.[195] However the concern for career advancement is also apparent in an English context, where patronage and professional consensus dictate the mobility up the ladder of success. The argument being made here is that status and standing among one's professional peers depends not upon the competent treatment of clients, but on demonstration of loyalty and adherence to the accepted professional norms of behaviour. In terms of career advancement, it may be insufficient to be a 'good lawyer' in the simple sense, if in so being one 'makes waves' in the profession or alienates swathes of professional opinion. Thus the career minded lawyer understands that his priorities must lie with his peers, and not with his clients. Indeed Katz describes the once self-perpetuating nature of poverty law practice, where individual lawyers pragmatically understood the "process of building a career by accepting the way the local professional environment defines the problems

[194] As part of the discussion in Chapter 1 it was noted that some of the conceptions fitted less easily into the dichotomy than others, the difficulty being especially pronounced where moral and ethical perspectives are placed at the fore of the analysis. Both Herrman et al. and Sarat and Scheingold seemed to recognise that lawyers particularly characterised by strong morality-based convictions would seek to locate themselves in spheres of practice where their professional commitments could coincide with their personal values. Such understandings can challenge either lawyer or client determined analyses where the relevant factors are internal to any given relationship, as such motivations may serve to structure the relationship before any individual client ever approaches the lawyer.

[195] A Blumberg, (1967) *Criminal Justice,* Quadrangle Books, Chicago, chapter 6.

of the poor,"[196] explicitly recognising that personal motivations to 'make a difference' must be tempered by practical considerations in respect of the local profession if individual lawyers wish to retain viable practices.

Interestingly Cain's professionally integrated lawyer, more dependant upon the local profession and County Court personnel than on any individual clients, may well have had more than conformity in mind in his attempts to resist the more 'unreasonable' of his clients' chosen outcomes. Indeed this lawyer must have understood the potential power of the profession, both positively (in terms of the mutual support often need to speed up transactions between lawyers, or the connections with court staff useful for favourable court allocations;) but also negatively, (in respect of the difficulties likely to be encountered where relationships with other key players are uncooperative or hostile.) However this understanding might not have been so significant in shaping or constraining his behaviour towards individual clients but for the fact that he himself harboured ambitions to become a district judge.[197] This personal career aspiration illuminates his fidelity to professionally normative behaviour, and demonstrates how career concerns may override both lawyer choices and client powers in individual situations.

Blumberg's (1967) case study of a major American criminal court, based on data gathered over "nearly twenty years of work in almost every activity related to the administration of the criminal law,"[198] also recognised the impact of career-orientated behaviour. Most strikingly in a judicial context, he describes how the judge in a court of original jurisdiction "cannot avoid the

[196] J Katz, *op cit,* p62.
[197] From private conversation with the author.
[198] A Blumberg, *op cit,* at p xii.

legal, interpersonal and emotional dynamics of the small group of regulars...inevitably present in a criminal court."[199] Even though there may be no pressures on specific cases, the judge may not wish to offend those who have contributed to his past or may control his future when he comes up for reappointment or renomination. Indeed, being elected for a term of years, and not for life, these judges "must always maintain a keen sensitivity to the desires, requirements and interests of their political sponsors."[200] Clearly, any professional with an eye on his career will recognise that the predilections of those upon whom his career advancement rests – fellow professional colleagues – are important sources of power constraining his choices in individual situations.

CRITIQUE: LAWYER CENTRALITY AND CLIENT EXPERIENCE

I shall argue that much of the literature in this field has prioritised the voice of the lawyer, and accordingly represents specifically located experiences. Whether through methodologies that are themselves unable to provide any more than the lawyer's perception of the situation,[201] or because the selected subject of research has often itself served to amplify the voice of the lawyer, or prioritise the lawyer unduly in terms of the importance tacitly ascribed to the activities or associated interests of the lawyer,[202] the voices and experiences of lawyers seem to

[199] *Ibid*, p123.
[200] *Ibid*, p127.
[201] Data generated by questionnaire or interview is unable to transcend the boundaries of the recipient or interviewee's perceptions, and even where the these methodologies seek to explore more than just these explicit lawyer self-perceptions via elicitation of accounts that purport to represent more than the voice of the lawyer – client viewpoints, or other anecdotal offerings describing the wider context of the relationship etc., it must be recognised that subsequent understandings are still lawyer-driven, and lawyer-centred.
[202] For example, a significant proportion of the research in the field has been conducted by individuals who are themselves lawyers, or have had a legal background. Furthermore, many of the contributions to our understanding of the interaction itself, and the wider context of practice, have explicitly concerned themselves with lawyers –

be over represented in the contributions to our understanding of the subject of *lawyers and their clients*.[203]

I have been strongly influenced in formulating this critique by a number of works that I have loosely labelled *reflexive practice studies*. Among others, Simon (1991), Alfieri (1991), Cunningham (1992) and Lopez (1992) have presented autobiographical accounts of individual situations of interaction characterised by sensitive and reflexive self-examination. Whether through ethnographic observation and participation, or through the "scrutinising of materials, (a bundle of narratives) that together compose...the story,"[204] these contributions have demonstrated an awareness of this critique, often prompted by the announced dissatisfaction of clients – with their lawyers, their consultations and their outcomes, at the conclusion of the relationship. Returning to and re-analysing their own roles and approaches, these lawyers have gone to great lengths to recognise their own mistakes, and how their own roles served to marginalize their clients. Identifying how and why their initial approaches were lawyer-centred, and how such approaches may be best resisted and avoided in the future, these studies represent reflexive re-conceptions of law work and law practice, and accordingly explicitly recognise (albeit from the lawyer's own point of understanding) the enormous potential difference between styles of lawyer approach that I have described as the dichotomy between the models. These studies are valuable for their insights: alongside the cause lawyers, I believe that these

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their professional associations, their social and educational backgrounds, their power, their influence, their ideologies.

[203] Others have also recognised this failing: reviewing Richard Abel's *The Legal Profession in England and Wales*, and the three volumes in the series *Lawyers in Society*, Miek Berends observed that the predominant point of view represented is an internal (legal) view, and not a social-scientific one. Indeed he asserts that Abel's voice is implicitly legal, and parochially so – to the extent that the value of his contribution is significantly diminished. M Berends, "An Elusive Profession? *Lawyers in Society*" (1992) *Law & Society Review* 26, 1.

[204] A Alfieri, (1991) *op cit*, p2109.

studies light the path to the future of professionally responsible practice, and the resistance to client subordination in the relationship. These studies have influenced me because I identify with and endorse their manifest concern to make space for the voice of the client.

Despite the manifest desire evident in much of the literature to develop socially meaningful understandings about both *lawyers and clients*, my argument is that ultimately the body of literature discussed so far has largely failed to represent the voice of the client. In this way the research has itself replicated the problem it identifies. Many of the studies have undoubtedly sought to address perceived inadequacies in the system and their corresponding impact upon the normative requirements of justice or morality, marking an almost timeless consistency evident in much of the literature in this field. However, the limitations of these contributions have often emerged from their own notions of 'value' or 'good' in respect of how we might assess the quality of legal service, or the relationships between lawyers and their clients. For example, Carlin's classic studies *Lawyers on Their Own* and *Lawyer's Ethics* both attempt to account for the client to differing degrees – either expressly by interview, or by structural evaluation of "captivity to clients" by virtue of the relationship itself or by anecdote provided by the lawyer. The methodological criticism is self-evident, and has already been touched upon in previous chapters: the client's satisfaction with the work done by the lawyer cannot be independently examined after the interaction, because the client's inability to assess the quality or necessity of work done by the lawyer ensures that the lawyer structures reasonable expectation of outcome. Furthermore, where the client is explicitly accounted for by the lawyer – through anecdote or other second-hand reporting, the value of the understandings subsequently gained must be seen to represent the lawyer's view of their clients, and not necessarily the client's view of

themselves. It is precisely this situation that accounts for Carlin's eventual resolution of his sociological concerns. He seems to believe that we can frame questions about quality of service in the profession simply in terms of lawyer adherence to ethical practice – a position that I believe is the product of his overrepresentation of the lawyer in his understanding of the relationship.

Reed's (1969) questionnaire methodology falls foul of this criticism even more so. He obtained a population of 125 lawyers from legal directories, and his findings about different lawyer approaches to service were accordingly the product of lawyer generated, explained, and structured data. The voice of the client is ignored, and even the space for the client to speak is withheld, aside from through the experiences and perspectives of their lawyers that he surveys. And yet despite this, Reed is genuinely concerned with greater questions than lawyer perceptions of their work lives. Like so many of the contributions in the field, Reed's endeavour seeks to illuminate timeless questions of vital importance, concerning the creation of "legally indigent populations" in society, and the implications for justice arising from such understandings. This thesis endorses the questions, but argues that the approach to their resolution must recognise that their effective illumination demands and depends upon balanced representation of the client alongside the traditional focus on the lawyer.

Similarly, Herrman et al.'s (1979) contribution is an explicit example of both a lawyer centred focus, and methodology, as if in the belief that attorney perceptions about their own roles and their clients can inform more than a lawyer driven understanding of the course of the relationship. Utilising a structured interview of some 22 attorneys with experience in divorce

practice, Herrman et al. seek to examine the state of the client when he first approaches the lawyer, and the lawyer's attitude to, and perception of the process of divorce; with a view to evaluation of the impact of the outcomes in divorce proceedings upon all directly or potentially involved parties. Again the concern for greater questions than lawyer work patterns is clear – the study recognises that different approaches in the role orientation of the lawyer have greater connotations than the approach to the interaction itself. However, both the methodology and focus expressly fail to represent the client directly. The first question regarding clients on initiation of the interaction is presumably best answered by either observing them, or asking them, yet Herrman et al. seem content to rely on the lawyer for these vital inputs. The second question regarding lawyer attitudes and perspectives towards their work demonstrates the preoccupation with the lawyer that many of the 'lawyer's gift' theorists emphasise, following the taken-for-granted belief that lawyer choices are accurate determinants of the relationship. Ironically, Hermann et al. suggest that their research question is deceptively simple, asserting that "as an essential participant in a potentially difficult situation,"[205] the lawyer's impact upon the outcomes of divorce proceedings is worthy of investigation. This thesis accepts that the lawyer is an essential participant, and accordingly that his perceptions etc. are important in any examination of the outcomes from the relationship, however the obvious omission seems to concern the other essential participant in the relationship – the client.

More recently, Seron's (1996) study of the work lives of solo and small-firm practitioners further reveals the basis for my critique. Although explicitly concerned with the mechanics of practice of the lawyers she interviews, Seron is also interested in the impact of entrepreneurial

[205] M Herrman et al. *op cit*, p314.

and bureaucratic developments in the legal profession as they affect the delivery of legal service and hence justice in society. The methodology employed in the study sampled 1000 lawyers, stratified by area to ensure representation, then following a telephone survey to establish relevant or useful individuals, systematic (if not random) in-depth interviewing of these individuals with questions designed to "elicit answers that would disclose the ways practitioners construct a professional identity..."[206] In respect of this methodology, the study clearly supports the criticism of the overrepresentation of the lawyer. It is accepted that Seron's concern with different professional solutions to workload management problems and the impact of these on the provision of legal service may be best resolved by examining the lawyers as she does, however any assessment of the impact of these differences must reach wider than the narrow experiences and social understandings of these lawyers. Indeed, in this respect Seron seems to have fallen for the classic misapprehension that questions of social justice can be resolved along simple lines of access, as if justice for individuals simply depends upon an 'adequate' availability of lawyers, without more specific consideration of the needs and experiences of these individuals (clients) in any given situation. Indeed, somewhat ironically, Seron does recognise the significance of individuals in her study, emphasising the singular importance of the "role of individuals and their voluntary actions and voices in the way individuals bring meaning to their lives,"[207] and yet this understanding is confined to the lawyers without wider regard for the other set of individuals whose lives are fundamentally affected by their encounters with lawyers and the legal system – the clients.

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[206] C Seron, *op cit,* p154.
[207] *Ibid,* p151.

Like Seron, many of the endeavours emerging from the Chicago tradition of social research have also mistakenly believed that questions about justice can be resolved by the understanding that equality of access to lawyers (or lack of it) is the primary determinant of the justness of the system. Heinz and Laumann's (1982) landmark study for example, examining the sociology of the Chicago bar, found enormous differences across the spectrum of both lawyers and clients, and showed how these differences corresponded, so that lawyers at the top of their extreme tended to interact with clients at the top of theirs. Accordingly, they demonstrated gross inequalities in the substance and form of different classes of lawyer-client relationship, by showing how some groups of client would be accustomed to getting what they want more so than others. This situation is then connected to justice by the implication that getting what you want is justice. (Or through the belief that access to getting what you want is justice.) These understandings represent very internal legal perspectives. Firstly, getting what you want is not a stand alone variable. Secondly, equal justice is more than equal access to lawyers – the lawyer and the law cannot provide all the answers. It is accepted that Heinz and Laumann were concerned with clients – types, status, inequalities etc, however these concerns were limited as they emerge only through the lens of the lawyers that they interviewed. There is no space for client voices and experiences in this study, and the client's possibly divergent understandings of justice are similarly silenced. I accept that the justice-based analysis is useful to a point – I agree that manifest inequalities in access to certain types of service is an injustice, but I believe that *a more real understanding can only be developed once we consider individual client experiences in this analysis, or at least afford the client the same space as the lawyer.*

Halliday (1987), Nelson (1988) and Powell's (1989) and studies all grew out of Heinz and Laumann's initial Chicago investigation, and are perhaps even more susceptible to the criticism in this regard.[208] It is accepted that such endeavours do provide solid and needed contributions to our understanding that may in many respects be dependant upon such lawyer-centred data and methodologies. After all, it seems clear that the insights gained in these endeavours do inform and enrich our understanding as a whole, and that equally, there may not be sensible methodological alternatives – presumably if one seeks to illuminate the professional interrelationships of different spheres of legal practice, then the lawyer's story may well be the best place to start. However, I believe that what is missing from these understandings of the relationship is balance achieved by affording the client space to speak corresponding to that so clearly afforded to the lawyer.

Rosenthal (1974) interviewed both lawyers and clients as part of his personal injury evaluation, yet the lawyer structured criticism remains in that even interviewing clients after their consultations with their lawyers cannot remove the impact of the consultation from the client's viewpoint – as satisfaction following the consultation is not an independent variable divorced from the lawyer's input into the relationship. Rosenthal however did attempt to construct an independent variable, concerned not with client value-judgments as to quality or satisfaction of service, (which inevitably represent the lawyer's influence in structuring such client perceptions,) but with the empirically verifiable degree of client participation in the relationship. This approach is meritorious. The concern to transcend the lawyer-driven

[208] Halliday (1987) and Powell (1989) focus explicitly on lawyer associations and the politics of the organised bar more generally, demonstrating how the overt focus of much of the research has been explicitly lawyer centred. Nelson (1988) concerns himself with large law firms and the interrelationships between professionals, again supporting the lawyer-centrality view.

understandings by emphasising real issues other than lawyer or client perceptions is commendable, however conceptual problems remain. Cain (1979) argued that such research can only discover whether lawyers are doing a good or bad job in terms of common sense criteria, themselves embedded if not derived from the ideology of the lawyers themselves.[209] Even participation is not necessarily an analytically relevant measure. Just because a client has participated in the interaction may not mean that the interaction is beneficial, positive, competent etc.[210] Furthermore, the degree of client participation is itself, according to the lawyer choice analysis, still a function of the lawyer. Hence findings seeking to represent significantly more than a lawyer-driven understanding of the relationship will require greater independence from such a measure, achieved by accounting somehow for the client outside of the lawyer-contingent arena of the interaction.

Cain's (1979) methodology genuinely transcends many of these problems. The ethnographic method clearly provides far greater scope for the voice of the client than lawyer-centred research by interview or questionnaire. Furthermore Cain's measure of lawyer retention/rejection of client chosen outcomes allows that 'value' be ascribed outside of explicitly lawyer-formulated knowledges. In many respects Cain seeks to answer the same question as Rosenthal (1974) – was the client satisfied with the service already provided by the lawyer? Whereas Rosenthal's measure was participation, Cain uses the client's chosen outcome. The primary explanation for Cain's success in representing the client's voice where so many other similarly motivated studies have failed seems to me to be the methodology. By

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[209] M Cain, *op cit*, p332.
[210] Although Rosenthal's own findings that participation facilitates positive outcomes cannot be ignored.

observing actual interactions, Cain was not dependent upon the lawyers for her representations of the clients. By observing clients, she was thus able to include their voices and perspectives. In respect of the critique advanced here, the only relevant comment in this regard is that once again the lawyer's arena is the focus of the observations. Are these understandings still structured by the lawyer's office and the lawyer's input? Did the lawyer retain control over which interactions Cain was permitted to observe?

This view of methodology as a vital indicator of the value of the scope of research is further supported by other observation-based or ethnographic endeavours. For example, both Gilkerson's (1992) poverty law practice participant observation, and Cunningham's (1992) poverty law ethnography were obviously able to give a more embracing account of the client than any of the interview-based contributions, precisely because the act of participation provided both authors with the type of access to client voices and experiences that were so clearly lacking in some of the studies discussed above. Indeed studies such as these were able to reach beyond the simple lawyer-choice understandings advanced in the first chapter and to highlight from different perspectives the importance of client status and influence in determining the relationship. However there is still some conceptual space for the criticism. Both studies still represent the views of practicing lawyers. However sensitive or reflexive they might be, both Gilkerson and Cunningham still develop their understandings in the context of the lawyer's office, and through the lens of the lawyer's practice. Client voices and experiences are represented, but only insofar as the structures of law practice allow. As already mentioned, the actual interaction itself may be too far removed from the real locations of client illuminating data to usefully represent the client in his own terms, and accordingly, the focus on lawyer

work and law practice may detract even from the most methodologically receptive of approaches.

Of all the contributions discussed thus far, those that most effectively capture the client in his own terms are those I have termed the *reflexive practice* studies. Simon's (1991) presentation of his involvement with Mrs Jones's case, Alfieri's (1991) presentation of his involvement with Mrs Celeste's case, and Cunningham's (1992) presentation of his involvement with Mr Johnson's case all go to great lengths specifically to represent the client in his own terms, and not simply as the lawyers had initially perceived them. Combining methodologies including observations drawn from their own participation, alongside detailed textual analyses of court transcripts and depositions, these studies seek to tell the story of individual clients of poverty law practices over several year periods from the initial arrival in the lawyer's office to the eventual resolution of their cases. As Alfieri describes "In the years since, I have often revisited the story...What I have discovered is that the story Mrs Celeste told is not the story I originally heard nor the one I told in advocacy"[211] In all of these contributions, the lawyers were prompted by the realisation that their own roles and actions had effectively served to marginalise and subordinate the voices and experiences of their clients. Accordingly, following much introspection and reflexive examination, these lawyers have returned to their own roles in these cases, advancing alternatives to the traditional approaches that had (with hindsight) so obviously missed the concerns and needs of their clients. What emerges are novel conceptions of lawyering – "reconstructive practice" (Alfieri), or "rebellious lawyering" (Lopez) that seek to empower the client through recognition of the crucial meanings inherent in *their* narratives.

[211] A Alfieri, (1991) *op cit.*, p 2110.

These studies clearly do go further than the others. They recognise the importance of the client at every level in the process. However in respect of the critique, there is still conceptual space for the observation that these authors, sensitive as they are, are still lawyers. And the location of these studies is still the lawyer's office or arena – which as suggested, may detract from the independence of any client-centred focus because of the potentially lawyer-contaminated nature of research where the interaction is the starting point.

Sharing many of the concerns and the realisations of these reflexive practice studies are the studies of "cause lawyers" who themselves are motivated by their perceptions of inequality in different spheres of law practice, and characterised by the express desire to prioritise client empowerment and autonomy over lawyer control and paternalism. The studies cohabiting under the cause lawyer umbrella invariably already demonstrate a commitment at one level or another to make genuine space for the client to speak, recognising this as a fundamental prerequisite for competent service and client empowerment. These works are not immune to the critique however. In many ways, they transcend it precisely because they have already internalised it, and yet these studies remain focussed for the most part on cause *lawyers* and not cause *practice.* Trubeck and Kransberger (1998) for example, explore the ways that lawyers attempt transformative practice within the structures of private practice. Networking in three urban areas, they identified lawyers who seemed to have critically orientated practices based upon their reputations for providing services to disadvantaged individuals. These lawyers were then interviewed with a view to analysing how their commitments to client collaboration, and social justice were expressed in practice. Trubeck and Kransberger were clearly concerned with professional strategies for client empowerment, and with providing material with which other

professionals might appreciate the range of weaponry in the arsenal against traditional subordinating practice. Their understanding about the importance of client centrality is an inherent aspect of their position, but is not prioritised in their research. Rather, like many of the earlier works, the lawyer is the subject, and the lawyer's arena is the location. These studies demonstrate the importance of researcher commitment to client experience. If not for such commitment manifest in the cause lawyer ideology, then these studies may have contributed little to our understanding as a whole. Yet despite their methodologies, they do offer novel and compelling insights into the methods of client-centred practice.

Most recently a number of UK studies have grasped this nettle and explicitly examined client experiences and perspectives of advice seeking,[212] their lawyers or advisers,[213] and the legal system,[214] often with a view to informing our understanding of quality in the context of legal advice.

In *Lawyers - The Quality Agenda*[215] Sherr, Moorhead and Paterson sought to assess the competence and quality of legal aid advice as part of a legal aid franchising pilot study conducted in Birmingham in the early 1990s. They employed a range of methodologies including peer review of case papers against a set of transaction criteria devised as a benchmark of quality, and a survey of 100 clients whose cases had already been peer reviewed against the

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[212] H Genn, *op cit;* P Pleasence, *Causes of Action: Civil Law and Social Justice*, (2006) London: Legal Services Research Centre.
[213] R Moorhead, A Paterson & A Sherr, *Quality and Cost: Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot*, (2001) London: Legal Services Commission; J Johnstone & R Marson, *op cit.*
[214] R Gosling, *Survey of Litigants' Experiences and Satisfaction with the Small Claims Process*, (2006) London: Department for Constitutinal Affairs; R Moorhead, N Sefton & L Scanlan, *Just Satisfaction? What drives public and participant satisfaction with courts and tribunals?* (2008) London: Department for Constitutional Affairs.
[215] A Sherr, R Moorhead & A Paterson, *Lawyers – The Quality Agenda: Volumes I and II,* (1994) London: HMSO.

transaction criteria. To the extent that the questionnaire response rate allows for reliable findings (40%) Sherr et al found that client satisfaction data broadly correlated with peer review assessments[216] and reported that the transaction criteria (their preferred measure[217]) had been 'externally' verified on that basis. Indeed notwithstanding their assertion that the "client viewpoint has an important role in any quality assurance mechanism"[218] they also embrace the often repeated caveats that client derived data are "valuable but limited," can only go so far and may even be misleading[219] - a caution sounded in a range of contexts in a number of earlier studies.[220] Sherr et al. recognised the benefits of asking clients about their experiences – as a methodology for fleshing out the other more central quantitative findings or for their verification – although the primary focus of their research was not upon client derived data. Any inclusion of the client voice represents an improvement upon the norm of client silence in research in this field, however in respect of this critique, closed questionnaires that provide an inherently non-client structured space for clients to speak are unlikely to allow client experiences to be captured in their own terms. Additionally, the use of client data as the second or third string to the research bow hardly transcends the methodological critique, and besides, clients were surveyed once their cases had been disposed of by their lawyers and so were potentially already contaminated, there was no opportunity to examine any client experiences pre-lawyer contact.

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[216] *Ibid,* p82.
[217] "The normative base against which lawyer performance can be measured" at p17.
[218] *Ibid,* p52
[219] *Ibid.*
[220] For example S Domberger & A Sherr, "Economic Efficiency in the Provision of Legal Services: The Private Practitioner and the Law Centre," (1981) 1 *International Review of Law and Economics* 29; N Harris, *Quality and Effectiveness in Welfare Benefits and Related Work in Solicitors' Offices,* (1991) London: The Law Society.

Genn's 1999 *Paths to Justice* methodology is harder to impugn. She surveyed over 4000 private individuals and then interviewed over 1100 with a view to illuminating how people deal with 'justiciable' problems. Again Genn's focus was retrospective – she was necessarily interested in people's responses to justiciable problems that had arisen in the past, and accordingly her data cannot genuinely account for client experiences pre-contact with advice.[221] Her focus on clients however, from the bottom up, does transcend a number of the objections of this critique in that her study is genuinely client-centred and does provide real data about client relations with their lawyers that is not contingent upon lawyers. Indeed by focusing on client derived definitions of justiciable problems and client experiences of advice per se, Genn was able to avoid some of the pitfalls into which many of the other unmet need theorists have fallen – she rejects the contention that access to advice is the solution, recognising that access to poor quality advice facilitates little.

Genn's methodology is also employed by Pascoe Pleasence in the England and Wales Civil and Social Justice Survey.[222] Unlike Genn, Pleasence presents evidence of the general utility of advice in the resolution of justiciable problems, even without assessment of the quality of advice. The discussion above in respect of Genn's methodology pertains equally to Pleasence's studies, which were more extensive – Pleasence's combined data for the 2001 and 2004 surveys comprised almost 10,000 interviews with private individuals. Additionally, his pre-interview survey, though based on Genn's *Paths to Justice* study, contained a number of careful improvements designed to better account for "early stage decision-making." To some degree

[221] Clients can relate how they felt, what they wanted, where they went etc, but such accounts are non-contemporaneous.

[222] P Pleasence, *op cit.* Like the British Crime Survey, the Civil and Social Justice Survey will be now be repeated annually.

these changes are in recognition of the criticism of Genn's study advanced above about pre-contact experiences, although there remains scope to observe that the best starting point for obtaining client derived data pre-contact with advice would be to do so contemporaneously. Both Genn and Pleasence clearly make major contributions to our understanding of how clients see themselves and their lawyers, however I believe that the picture is still incomplete.

Against the backdrop of major changes to the legal aid arrangements in the 1990s and the subsequent Legal Services Commission franchising and contracting schemes, Moorhead, Sherr, Paterson and others further developed client focused methodologies as part of their review of the quality and cost of legal advice in *Quality and Cost: Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot.*[223] For this far reaching research the authors surpassed their methodologies for the earlier study for the Legal Aid Board,[224] utilising four distinct approaches - case review, peer review, client survey and model clients – that allowed for the formation of "strong 'triangulated' views of quality."[225] The case classification system involved the gathering of data about the time spent by the advisor, the level of advisor, the case outcome, disbursments incurred etc. The peer review involved assessment against pre-determined transaction criteria as in the *Quality Agenda* study. The client survey addressed over 3000 individuals whose cases had been assessed by case and peer review, with a response rate of 28% (867). The sheer size of this client survey may enhance its value above the *Quality Agenda* survey, however the response rate led the authors to acknowledge that care should be taken in making generalisations from a sample that may not be representative. The combination

[223] Moorhead et al, *Quality and Cost, op cit.*
[224] Sherr et al, *Lawyers – The Quality Agenda, op cit.*
[225] Moorhead et al, *Quality and Cost, op cit,* at p x.

of these methodologies is able to provide a fuller picture than any individually, however some of the methodological limitations advanced thus far obtain here too.

There is no doubt that the use of model clients in the *Quality and Cost* study represents a genuine advancement.[226] 45 'mystery shopper' visits were made with model clients reporting their experiences of issues of service delivery and client care. Substantive advice they received was also considered as part of the peer review assessment. Model clients were utilised because aside from respondents to the client survey, they were the only individuals with direct supplier contact able to report on their reception and treatment by a supplier. The authors explicitly recognise the importance of "first-hand experience" and also that even where responses are received from 'real' clients, such responses are subjective, affected by recall or perception, and susceptible to case outcome or advisor 'image management.'[227] Trained model clients were considered to be less likely to be affected by any of these influences. The aspirations behind the use of model clients are laudable. Methodologies that embrace client experiences as locations of vital data about relations with lawyers or advisors provide insights that less sensitive approaches are unable to replicate. In this sense *Quality and Cost* is a progressive study that sets the standard against which other studies will be measured.

Yet according to the authors, these model clients were used only to assess the early aspects of the service – "they were not a meaningful way of assessing the range of quality within

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[226] Despite general academic objections to covert research in general, two previous studies have deployed 'dummy' clients in small-scale socio-legal research to date: E Boucher, S Mortimer & D Armitt, *Housing Facts: A Rural Fiction?* (1989) Devon and Cornwall Housing Aid; F Wasoff, R Dobash & D Harcus, *The Impact of the Family Law (Scotland) Act 1985 on Solicitors' Divorce Practice,* (1990) Central Research Unit, Scottish Office.
[227] R Moorhead et al, *Contesting Professionalism, op cit,* p781.

individual contractees"[228] on the basis that client viewpoints tell us little about key issues for quality, such as whether the advice received was 'correct'. Clients may say they consider that it is important for their lawyers to spend enough time with them, but they do not know *when* the lawyer has spent enough time with them. Similarly they do not know when an outcome is reasonable, when a sentence is the best possible, when a contract has been properly executed. Accordingly 'better' measures of quality are required: case and peer review. Client derived data can then be contrasted with the more objective assessments – thereby either validating them or failing to do so. In the latter event, client derived data are distinguished as an inaccurate measure. For example, the authors found no marked disagreements between peer review and client satisfaction, however they also found no significant correlation between mean client satisfaction scores and mean peer review scores for each contractee – the conclusion: client satisfaction is not an accurate indicator of technical quality. Similarly the authors found a marked difference between model client and peer review views of quality – the conclusion: 'image management' by lawyers can encourage satisfaction unsupported by objective criteria. The difficulty with this hierarchical approach is that client derived data are valuable only insofar as they confirm (verify) 'stronger' results or allow for speculative explanations as to dissonance. They are not respected as intrinsically valuable data in their own right, and not afforded any more space in the analysis than is convenient in a study the primary focus of which is the 'stronger' more objective case and peer reviews.

[228] R Moorhead et al, *Quality and Cost, op cit,* p141.

Finally, Johnstone and Marson's (2005) survey of user perceptions of advice in the NFP sector sought to compare advisor and client perceptions of the client/advisor relationship.[229] The authors interviewed 47 advisors from 17 advice centres and 58 of their clients. The study was designed to "explore carefully with clients their own experiences and the potential meanings of terms such as quality and service."[230] This approach is perhaps the least susceptible to methodological criticisms made so far – perhaps by virtue of the stated aims of the study from the outset. One might argue that a relatively small-scale survey of advisors and clients ought not be preferred over the much larger scale client surveys; however it is the emphasis and focus on client experiences without the reliance on other 'stronger' data that distinguishes this study. Johnstone and Marson made no conscious attempt to 'verify' their client data, or to subsume it within a larger review of any objectively measurable indicators of quality, preferring to allow client voices to speak for themselves. The comparisons to advisor perceptions were accordingly designed not to inform the validity of either, but as an intrinsically useful exercise in revealing the differences in perceptions of each group. Such an approach allowed the study to generate qualitative conclusions about the aspects of the relationship that either (or both) group considered valuable, for example the knowledge and communications skills of advisors, alongside more traditional quantitative findings about satisfaction, unspoilt by reference to technical correctness. This study therefore gives clients a genuine voice, uncontaminated by the input of professional lawyers.

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[229] J Johnstone and J Marson, *op cit.*
[230] *Ibid* p 10 and 11.

In most studies of lawyers and clients, the voice of the client has been subordinated to an interest in what lawyers do or to how well they do it, to the point where the client has become the *theoretical second fiddle* in our understanding of what we self avowedly would like to be, and to be seen to be, an equal dyad. As indicated, the form of the research and analyses typically replicates the silencing of clients so often identified by the researchers themselves. Even where clients are given a strong focus, this has rarely been stthe eplicit purpose of research. To counter this, the voice and experience of the client requires equivalent space and attention to that of the lawyer. Accordingly, this thesis argues that it is necessary to be immersed in the clients' social situation and needs *before* one can usefully begin to examine the service relationship between lawyers and clients. It is important to look *with* clients, rather than simply *at* them, and the starting point in this regard is the realisation that the identification of client experiences and wants lies outside of the lawyer's gift. Methodologies clearly matter here, although surveying the range of approaches that come closest to achieving real representation of the client suggests that the overriding requirement facilitating success is not methodological, but *motivational.* A commitment on the part of the researcher, be it political or theoretical, to take the client seriously, and to afford him the space to speak is clearly the foundation without which the client's voice cannot be heard. Once this commitment is present, clearly some methodological approaches will facilitate the research more effectively than others.

This is not simply a question of methodology or technique however, although the methodological critique is real. Interviewing the lawyer is not enough – presumably if you ask or observe the lawyer, then only so much can emerge about the client. Observing the client in

the lawyer controlled context of the interaction is not enough – once inside the lawyer's arena, the client cannot be extricated from the lawyer's structural influence. Interviewing or observing the client after the decision to approach the lawyer is not enough – as client wants and needs begin outside of the relationship. Some of the contributions have grasped this nettle with varying degrees of success. The observation researches may write the client into the text, the client surveys do present genuine client experiences – albeit experiences that are compatible with questionnaire, the cause lawyers are clearly client-focussed at least to the point that they recognise that lawyer experiences cannot tell the whole story, and the reflexive practice studies clearly go to great efforts to capture the client's experiences as they themselves understood them. The most recent client surveys begin to correct the imbalance, however the feeling remains that even these studies do not quite catch the client in his own terms. After all, they still end up on the library shelf with the other books about lawyers, albeit with supposedly groundbreaking epitaphs promising to assist the lawyer to better help his clients. This thesis seeks more, aspiring to present a genuinely balanced understanding of the relationship, where *both lawyer and client are respected on their own terms, and in their own voices*.

CHAPTER 4 - METHODOLOGY

The precise location within this thesis of the substantive discussion about the research methodology and my experiences as researcher has been a source of considerable uncertainty. On the one hand it is important that the reader is presented with a sufficient account of the research design and methodology to be able to make sense of the data. On the other hand, I wanted to avoid discussing the individual cases or describing the difficulties I encountered before having presented the data. I wanted the reader to approach the narratives presented in the following chapters uncoloured by my own reflections. I wanted, as far as possible, to let client voices speak for themselves. These considerations, reflected in the prevailing convention in ethnographic fieldwork, have informed my decision to outline the research design at this stage, but to conduct all further discussion in chapter 9.

RESEARCH AIMS

I argue that researcher commitment to give client voices equal space in the research is a prerequisite to generating data that represents more than a lawyer-structured understanding of the relationship between lawyers and clients. Much of the research discussed so far has made contact with clients (if at all) in the lawyer's waiting room or office. More recent client surveys have begun to correct the imbalance, although client experiences are not captured contemporaneously. My aim in this study was to start with an independent, pre-contact understanding of how the client saw his/her problems and why s/he wanted the help of a

lawyer. I wanted, in Cain's (1979) terms, to understand "the client's chosen outcome" before any attempt was made by the pre-client himself, or any other, to re-interpret this choice in terms of some conception of the legally possible.

In order to effectively extricate the client from the lawyer structured influence of the interaction, it was necessary to get to know the client even before any initial approach was made to the lawyer. I had to be involved with the client before any decision was made to consult a lawyer, on the basis that client's wants and needs begin outside of the lawyer-client interaction. I needed to meet people who were likely to require legal assistance whatever form it might eventually take, and then to document their experiences of their encounters with lawyers. These aspirations clearly dictated a qualitative method.

RESEARCH DESIGN

Accessing *preclients* in sufficient numbers within a limited timeframe posed a number considerable difficulties.[231] My solution was to locate my research amongst a relatively (socially) organised group who could be relied upon to need recourse to legal advice – refugees and asylum seekers.

In September 2003 I commenced a 17 month ethnography of immigration and asylum clients located in the Birmingham area. In that period I gained access at various levels to the lives of

[231] Such as how and where to find them.

individuals embroiled at different stages of the asylum process. I documented their experiences - of their lives, their stories and their encounters with lawyers and the law, alongside my own reflexive responses to my observations. I sought to capture, as far as possible, genuine client understandings prior to the first point of contact with their lawyers, and to follow these clients on their journeys through the asylum process.

THE SAMPLE

The value in qualitative research is measured in the individual details, and not in the size of the sample. At the same time, I needed to access a wide enough range of different client experiences to be able to illuminate my starting hypotheses, or to hope to generate new ones. To begin I shadowed legal advisors at two local refugee charities with a view to gaining access to individual refugees. One rationale of the location of the research amongst a socially organised group was to facilitate chain referrals, and I was introduced to the majority of the 44 refugees eventually comprising my sample by existing research subjects. No attempt was made to structure or engineer the sample from the outset. For the most part, I included any refugee who was willing to be involved.

LAWYERS AND ADVISORS[232]

Prior to embarking upon the fieldwork, I had not encountered the recent UK literature examining the quality of legal advice provided by non-legally qualified advisors,[233] and client

[232] I am grateful to Professor Joanna Shapland for her identification of the relevance of this area.

experiences of such advice.[234] This literature is clearly relevant in an immigration context where many of the charities and NGOs providing advice services to refugees employ nonlawyers.[235] As this research was not designed to shed light in this area the sample was not engineered, and the incidence of observed advice by nonlawyers was low. Nevertheless the client experiences of nonlawyer advice that I encountered contain insights in the context of the existing literature which are discussed in chapter 7.

Much of this thesis employs the term *lawyer* in the abstract sense in reference to any individual engaged in the provision of legal advice, encompassing both lawyers and advisors. In places, particularly in my discussion of the nonlawyer literature, I explicitly use the term *advisor* to facilitate distinguishing between lawyers and advisors. It is noteworthy that none of the individual clients I observed were cognisant of the status of their lawyers/advisors, or of the implications of such a status, referring in all cases to their lawyers/advisors as lawyers.[236] In the accounts presented in chapters 5 and 6 I continue to use the term lawyer in keeping with the client perspectives I seek to represent, although where advice was provided explicitly by an advisor, this is made clear in the narrative. In my later analysis of these accounts I also continue to use the term *lawyer* in the generic sense except where the analysis explicitly addresses the lawyer/nonlawyer distinction.

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[233] Moorhead et al, *Quality and Cost, op cit.*
[234] Johnstone and Marson, *op cit*
[235] I follow Moorhead et al's *Quality and Cost* categorisation: lawyers are lawyers, barristers or legal executives; nonlawyers are everyone else, including individuals with legal training etc below the 'professional' threshold.
[236] Even where advisors referred clients to lawyers because they were unable (unauthorised) to deal with cases that had progressed beyond a certain point – these were the sole reserve of qualified lawyers or advisors who had obtained OISC level 3 qualifications – clients still tended to identify the referring advisor as a lawyer: "The lawyer at the Refugee Centre sent me to see you."

PRESENTING THE DATA

In the following chapters I present the stories of 14 of the 44 refugees I observed, selected purposively to reveal the range of their different experiences, and organised in respect of a striking dichotomy in client attitudes and approaches to their dealings with their lawyers that emerged in an entirely unanticipated way from the fieldwork. This is, in my view, an example of grounded theory.[237] I began the study with two hypotheses, both based on the distinction between participatory and traditional approaches that lawyers adopted towards their clients. I anticipated that the participatory approach would yield (1) more successful case outcomes, and (2) more client satisfaction with the service received. In the course of my observations in the field, a third variable emerged – client empowerment – that ultimately surpassed both the participation hypotheses, although they too were validated by the results.

I have addressed client empowerment from two directions. One approach, and the subject of the next chapter, evident primarily in refugees who were socially isolated, lacking access to advice and emotional support, was characterised by a recognition by the individual of the precariousness of their (legal) positions, and their dependence upon the skills of their lawyers in obtaining satisfactory outcomes. Their attitudes towards and during interactions with their lawyers were often accordingly deferential, respectful, and trusting, acknowledging their own inequality in the relationship, and their reliance on their lawyers. Most had recently arrived in the area without useful contacts, and were unable to access technical advice about their cases

[237] B Glaser and A Strauss, *op cit.* If I began this research without an understanding of, let alone a belief in, the possibility of new, unanticipated knowledge emerging from ethnographic fieldwork, my experience in this study has convinced me that this method can generate not just nuanced and detailed information, but also new theory itself.

aside from that offered by their lawyers. Faced with the daunting realities of the refusal of asylum, deportation and destitution, and often lacking the confidence or the means to assert themselves, these individuals were often desperate for any assistance they could get, promoting and reinforcing their dependence upon their lawyers, and their subordinate attitudes during consultations. I have called these refugees 'powerless clients.'

The second approach, and the subject of the chapter 6, was evident among well connected groups of refugees whose developed social networks provided individuals with access to shared knowledge and experience that served to empower them in their relationships with their lawyers. Rather than relying on their lawyer's professional knowledge of the immigration process and the (legal) significance of individual client circumstances, refugees who approached their lawyers with a well developed understanding of the legal process and the merits of their own cases were able to act strategically in the best interests of their cases. In the extreme, one sophisticated network of refugees which facilitated the sharing of successful advice and experience refined through numerous encounters with the law allowed individual refugees access to highly astute advice embracing every element of the application process. Such individuals could thus make the informed choices about which lawyer to approach, what issues to stress, and what attitudes to adopt during the interaction that would most enhance their prospects. These individuals often recognised the necessity of their lawyers as gatekeepers to the legal process, but were less prepared to rely on or accept legal advice that was not consistent with their own informed assessments of their cases. I have called these refugees 'empowered clients.'

CHAPTER 5 - POWERLESS CLIENTS

I have argued in the Part I that hitherto in sociological discussions of lawyer-client relations the client's perspective has been under explored, or explored only after the 'problem' had been defined in 'legal' terms. Moreover, in spite of some excellent recent work on client experiences of encounters with legal advice, the predominant voice that has emerged in the literature has been the voice of the lawyer. This thesis has therefore sought to identify and present client perspectives on the relationship. This intention required a method that would enable me to encounter clients *before* they met with their lawyers and were subjected to their lawyers' structural influences – to allow me to establish client expectations and chosen outcomes independently of their lawyers' input, and to give a voice to client experiences in their own terms.

These aspirations determined both the choice of the ethnographic method in this research, and also the client group – asylum seekers. I needed to find *pre-clients* who could be relied upon to resort to law and legal advice at some point in the future, but were also socially connected, in groups or networks, as individuals would be impossible to trace pre-contact.

I began the research with two hypotheses derived from the theory advanced in the previous chapter. Firstly, that clients would be more likely to obtain successful outcomes if the lawyer they engaged adopted a participatory approach to the relationship. Second, that clients' satisfaction would be better if they used a lawyer who adopted a participatory approach.

In the course of the fieldwork I came to the realisation that this conception was incomplete. Clients come to the interaction with their lawyers not as isolated individuals but as *social* beings. As such they brought with them various degrees of social (and cultural) capital. This understanding led to the formulation of a third hypothesis: that the clients I observed derived social capital, primarily from their connection to a loose knit network that carried information about which lawyers would be sympathetic and/or effective, and in some cases about which arguments and evidence to propose and emphasise to their lawyers, based on a prior, network-borne knowledge of what or who 'works'. These individuals were more likely to go to lawyers using the participatory model, and also to present their cases to their lawyers in a way more likely to lead to a successful outcome. They would accordingly obtain more successful outcomes and report greater satisfaction with their lawyers.

As with any qualitative methodology, my classifications of the models of interaction I observed, and of the 'power' of the clients in each case are inexact. The degree to which such classifications 'fit' and are consistent in the sample is bound to vary on the basis of the circumstances of each individual case. For this reason, in the data presented in the support of each hypothesis *I have included in each instance the strong or typical case(s) and also the deviant and limiting cases which I had most difficulty in classifying.*

In classifying the model of each interaction, I had regard to the overall flavour of the interaction and the relationship, as much as to the specific hallmarks of either model. In general I classified interactions as participatory where the lawyer provided a service tailored specifically to the individual client, and I was guided in the classification where the lawyer exhibited any of the

following strong indicators: respect for the client; willingness to receive the client's story in his/her own words; willingness to explain the law/case prospects/legal process to the client; willingness to accept client participation in the interaction; willingness to accept client instructions or chosen outcomes; willingness to spend time in interaction. Traditional interactions were classified either on the basis of the absence or opposite of participatory hallmarks, or where the service delivered was routinised and disinterested.

In classifying clients as either powerless or empowered, the primary determinant that I used was the degree to which each individual was able to access useful information about lawyers and the law prior to their encounters with lawyers. In general, empowered clients were able to obtain valuable information through their social connections with networks of other individuals whose knowledge and experience of asylum lawyers and immigration law served to radically enhance the prospects of individual cases. In contrast, although some powerless clients enjoyed better social contacts than others, even the most connected were not privy to the type of knowledge or power that might have significantly affected their encounters with their lawyers. Of the 44 refugees I became acquainted with over the course of my research, I classified 18 as empowered and 26 as powerless in their contacts with their lawyers.

In this chapter I present seven accounts of the experiences of powerless clients who were all unable to access useful advice and support about their cases in advance of their encounters with their lawyers. These accounts have been purposively selected to express the range of different client experiences in respect of the model of the interaction, client satisfaction, and the outcomes of the cases in question, and to represent the similar experiences of other refugees I

observed. The details and contexts of the client experiences described below are presented in Table 1.

Table 1: Accounts Presented in Chapter 5

Client	Interaction	Outcome	Satisfaction	Country of Origin	Total Cases*
Luthesi	Participatory	Success	Yes	Somalia	1
Wasim	Participatory	Failure	Yes	Iraq	1
Middar	Participatory	Failure	No	Algeria	1
Jacob	Traditional	Success	Yes	Sudan	3
Milton	Traditional	Success	No	Zimbabwe	1
Dominic	Traditional	Failure	Yes	Algeria	1
Baako	Traditional	Failure	No	DRC	18

Two of these clients, Luthesi and Baako, were engaged in appeals against unsuccessful asylum applications. Luthesi engaged a lawyer who adopted a participatory approach to the interaction, and Baako engaged a lawyer who adopted a traditional approach. The outcomes and client satisfaction in these cases support the hypotheses about participatory interactions, and in this sense these cases are both 'normal' cases.

Two of these clients, Wasim and Milton, I have classified as 'intermediate' cases. Wasim sought to bring an action against the police for wrongful arrest, and his account is included as an example that I observed of a participatory model interaction that did not result in an overtly successful outcome. Wasim's case is an 'intermediate' case in respect of the participatory hypotheses in the sense that though his case was unsuccessful, he still reported satisfaction with

* Including those 'powerless clients' included in the sample whose accounts are not presented in the chapter, with the same characteristics across all variables bar country of origin.

his lawyer. Milton was at the initial stage of his application for asylum, and his case is included as the only one in which a successful outcome did not result in client satisfaction. Milton' case is intermediate in that his case was successful under a traditional model interaction, but he remained dissatisfied, notwithstanding his success.

Two of these clients, Middar and Jacob, were also engaged in appeals against unsuccessful asylum applications, and experienced respectively participatory and traditional model interactions. These cases are both 'limiting' in respect of the participatory hypotheses, in that Middar, who experienced a participatory interaction, was unsuccessful in his case and dissatisfied with his lawyer. Jacob, who experienced a traditional model interaction, was successful in his case, and satisfied with his lawyer.

The final client, Dominic, was engaged in an appeal against an unsuccessful asylum application, and his case is included as the only example of an unsuccessful outcome in a traditional model context that resulted in client satisfaction. I have classified his case as 'deviant' in the sense that his satisfaction cannot be accounted for by the hypothesised impact of client participation in the relationship.

ASYLUM LAW AND PROCEDURE: AN OVERVIEW

Under section 3(2) of the Immigration Act 1971 the Secretary of State can issue instructions and guidance in the form of the Immigration Rules. No fewer than 12 changes to the Immigration Rules were issued during my 17 months in the field between September 2003 and

February 2005, many of which directly affected the everyday lives of individual asylum seekers.

Facing spiraling costs, growing public concern, and a relentless campaign from some sections of the press against the perceived abuses of the immigration process, the government responded with the Asylum and Immigration Act 2004, its third attempt at primary immigration legislation since taking office in 1997, which received Royal Assent in July 2004, with various provisions taking effect from September 2004 onwards.

Before September 2004, the asylum process was governed by the Immigration and Asylum Appeals (Procedure) Rules 2003 and the Nationality, Immigration and Asylum Act 2002. Applicants would register their claims on entry into the UK or at some later stage, and thereby obtain access to National Asylum Support Service (NASS) accommodation and subsistence. Applicants would be allocated an appointment for interview by a Home Office caseworker. Interviews would usually be scheduled within 6 months of registration, although many refugees waited considerably longer. Applicants would be notified of the caseworker decision in writing.

Where asylum was granted, the award could take a number of different forms. The best possible (refugee) outcome was Indefinite Leave to Remain in the UK (ILR) an award of which entitled the recipient to settle immediate family members in the UK. Exceptional Leave to Remain (ELR) was a lesser award that was either time-limited or subject to further review at a later

stage, and did not entitle the recipient to settle family members in the UK.[238] Similarly, Humanitarian Protection (HP) was a time-limited award that did not entitle the recipient to settle family in the UK. Discretionary Leave to Remain (DLR) could carry any combination of the entitlements of the other awards, but was reserved for 'exceptional' cases that would otherwise fail.[239]

Applicants who were refused asylum at first instance had a number of appellate options under the 2002 Act. Under the two-tier system, initial appeals in law or fact could be submitted (by case papers or in person) to an appeal adjudicator. Appeals against the adjudicator's decision could then be submitted to the appeals tribunal. Further appeals were available, with leave, to the High Court and subsequently to the Court of Appeal.

Applicants were free to seek state funded legal assistance from lawyers or advisors capable of accessing the Community Legal Services remuneration scheme, and legal aid entitlements were automatic up to and including appeals to the tribunal. Responsibility for successful applicants would be transferred to Local Authorities, while unsuccessful applicants could conceivably continue receiving NASS support for long periods following their refusals.

The Asylum and Immigration Act introduced sweeping changes designed to curb escalating costs, reduce the number of successful applications and facilitate removal of unsuccessful applicants. Many of these changes had yet to come into force before the end of the fieldwork in

[238] Awards of ELR were discouraged by the Immigration Rules from mid 2003 onwards, in favour of awards of Humanitarian Protection.
[239] I did not encounter any refugees who had been awarded DLR.

February 2005, although interim progression measures were provided in the Immigration Rules. The primary changes were:

- The creation of a criminal offence of entry into the UK or attendance at an asylum interview without valid identity documentation.
- The creation of a number of statutory presumptions about credibility, for example a presumption against the credibility of applicants who could have made applications in safe countries en route to the UK.
- The removal of all support rights for childless failed asylum seekers.
- The imposition of rigorous funding restrictions and merits testing on legal aid in asylum cases, and the requirement for prior authorisation for public funding in asylum appeals.
- A number of provisions imposing reporting, residential, and electronic tagging requirements on asylum seekers.
- The creation of the Immigration and Nationality Directorate (IND) of the Home Office with responsibility for all immigration matters.
- A fundamental overhaul of asylum appeals procedures, abolition of the two-tier (adjudicator and tribunal) appeal process, creation of a unified Asylum and Immigration Tribunal, and a reduction in the time limits for submission of appeals.
- Removal of the appellate jurisdiction of the High Court over appeals from the tribunal, except in very limited circumstances.

Concurrent changes in the CLS immigration franchising scheme reduced the number of providers able to access CLS funding for asylum advice.

Asylum seekers first applying after September 2004 thus faced an increasingly tougher and tighter regime. From the outset their appellate and advice options were both reduced, the timeframes shortened, and the removal mechanisms ramped up.

The individuals whose stories I present in the following chapters experienced a variety of different legal frameworks depending upon the date of their first applications for asylum. Some enjoyed the full range of advice and appeal options under the 2002 Act, some the full restrictions of the 2004 Act, while others experienced various hybrid interim arrangements.

I use the term *caseworker* to denote a Home Office or IND decision-maker of first instance applications; *adjudicator* to denote a first stage appeal decision-maker under the 2002 Act; and *tribunal* to denote either a second stage appeal tribunal under the 2002 Act or the Asylum and Immigration Tribunal established under the 2004 Act.

LUTHESI

I first met Luthesi, a 25 year old refugee from Somalia, shortly after he had been refused asylum in the UK in July 2004. On arrival in the UK he claimed asylum and was allocated temporary accommodation in a tower block on the outskirts of Birmingham pending a decision on his application. We were introduced by Hamed, an Iranian refugee with whom I was well acquainted, who lived in an adjacent flat in the same tower block. Hamed knew that I was keen to meet refugees in the process of asylum applications, and Luthesi was apparently willing to receive any support he could get.

We met in Hamed's flat, where Luthesi showed me his refusal letter and told me his story. He was born and raised in a farming village in the northern Somaliland province. Like the majority of his village, Luthesi is a member of the Benadiri clan – a minority underclass in the Somaliland region. One Friday afternoon just after prayers, when many people were gathered outside the Mosque, soldiers descended on the village rounding up men of fighting age and marching them to an internment camp some miles away. There was much resistance from the villagers as the soldiers arrived, but some people were shot and others badly beaten, and the villagers quickly succumbed.

Fearful for his safety and mindful of his wife and baby, Luthesi escaped from the camp several hours after arriving there. There were hundreds of men already packed into the small camp when they arrived, with very few soldiers to keep guard. Shortly after the new arrivals were

admitted, Luthesi and several others saw an opportunity and escaped, returning to their village that night. Three men and one woman had been killed in the struggle with the soldiers, and many more many were unaccounted for. Rumours had circulated in the village about similar incidents elsewhere, and those remaining were now terrified that the soldiers would return to loot and rape. Luthesi's wife was particularly concerned that soldiers would return looking for the escapees. The next day he left his home and began a journey that eventually brought him to the UK several weeks later.

Luthesi's application for asylum was rejected because he had failed to convince the caseworker either of the truth of his account, or of the threat that faced him in Somalia. The caseworker had questioned why Luthesi had needed to flee having escaped from the camp, and believed that Luthesi's narrative revealed financial motivations for remaining in the UK. Regardless, latest Foreign Office reports had assessed Somaliland as being effectively administered by local groups offering sufficient protection to minorities for refugees to be returned there.

When I met him, Luthesi had already made an appointment to see a lawyer at the Immigration Advice Service, a private firm dealing with a large volume of immigration work in Birmingham. He had received a list of approved local immigration practitioners with his refusal letter, and had selected the IAS by chance. He agreed that I could accompany him to the consultation, the following account of which is drawn from my contemporaneous notes.

Consultation # 1

Aisha, the receptionist recognises me from across the busy room, and calls us to the front of the queue. I explain that I have come for an appointment with Luthesi, and she checks the list and tells us that we will see Mr Ahktar, a lawyer I had interviewed early in my field work who had assisted me in making initial contacts with refugees. We wait almost half an hour before he appears in the waiting room and leads us through to the consultation rooms. He remembers me and is keen to hear how my research is progressing. We sit down, and Mr Ahktar introduces himself to Luthesi and invites him to explain his problem. Luthesi begins by thumbing through the papers he has brought with him, anticipating that the lawyer will want to read the rejection letter, but Mr Ahktar stops him, suggesting that they begin with the story in Luthesi's own words.

Luthesi tells of the raid on his village, his capture and escape, and journey to Europe. He is clear and detailed in his account. Mr Ahktar makes brief notes as he listens, and then clarifies various points once Luthesi has finished. Luthesi remembers the date of the raid and he coherently describes the appearance and location of the interment camp. Only once Mr Ahktar seems satisfied that he has correctly understood all the details does he finally address the rejection letter. When he finishes reading it, he checks that Luthesi understands the grounds for refusal, taking him individually through each point. He elicits Luthesi's responses to each, continuing to make notes as he does so. Luthesi does not understand why his story has been doubted. He insists that he was honest about every detail, and he is adamant that return to Somalia would place him in serious danger. He explains that he cannot face the prospect of

living in perpetual fear of attack, and that he is convinced that his escape would have been noticed and that he would be made an example of if he were to return.

Mr Ahktar asks Luthesi why he thinks his village was raided, and why he thinks the soldiers would return. Luthesi explains that in the neighbouring provinces these sorts of incidents are common, but that before the raid on his village he had heard rumours that fighting was spreading into Somaliland. His village is poor, the people mostly Benadiri – a vulnerable and powerless minority who have suffered greatly throughout the country. Luthesi is unsure whether the raid was part of a general escalation in the civil conflict in Somalia, or a direct reprisal for a particular event. He believes that he made these details clear during his original interview, and cannot understand why he was disbelieved. Mr Ahktar ascertains what evidence Luthesi had produced in support of his application. Luthesi has no passport, but he did bring his Somali identification papers, and pictures of his family and home. He had no other evidence in support of his application, and though the Home Office caseworker had apparently suggested that this was not unusual as evidence can be hard to come by, the adjudicator had taken a different view.

Luthesi seems very clear about the merits of his case. He is unconcerned about the rejection and is confident that the truth will out. He believes that he is entitled to asylum in the UK, and he desperately wants his wife and daughter to join him here. Mr Ahktar asks if Luthesi believes that his wife and daughter are in danger if they remain in Somalia. Luthesi thinks that they are in danger. They have no one to provide for them or to protect them, and since Luthesi's departure there have been other incidents in the village. Luthesi concedes that women and

children were not the focus of the original raid, and that their lives may not be in danger, but he does not know what the future may hold, and as he cannot return he wants to bring them here to the UK. Mr Ahktar instructs Luthesi that he will need a statement from his wife, as it is important to support the appeal with as much evidence as possible. He explains that the statement must include an account of the raid and the capture of the men, Luthesi's return and subsequent departure, and the other incidents since then. The statement must be sworn before a notary or other public official and sent to Luthesi as soon as possible. Luthesi is unsure about whether this is possible. His wife does not read or write well, and there is no notary in the village. They discuss the problem and Mr Ahktar reassures Luthesi that his wife will find someone to help her. He writes a list of the details required in the statement, and gives it to Luthesi, who agrees to convince his wife.

Mr Ahktar also has other suggestions. He has heard similar stories of round ups by gangs in Somalia, and wonders if any corroborating evidence can be found to bolster Luthesi's account. He undertakes to make some enquiries to see what he can come up with. He is also concerned by the need to address the contention that the Somaliland region is generally safe for the return of refugees. He explains that there are presumptions about the likely success of asylum applicants of different nationalities reflecting the known conditions in each country. Although Home Office guidelines require that all cases are decided on their own merits, the onus is on the applicant if their case raises issues that do not conform to the preestablished reports. With this said, Mr Ahktar asks if Luthesi knows of any international organisation that was active in his region, or any other source of information. Luthesi is not aware of any such organisation, nor any other location of information. Mr Ahktar makes a note, and reassures Luthesi that it does

not matter and that he will try to find something. He is mindful of the appeal deadline and, their respective tasks assigned, he suggests that they meet again the following week. He urges Luthesi to do all that he can to ensure that he has the statement from his wife by then.

Changing tack, Mr Ahktar asks if Luthesi has any other problems that he can help with. He checks that NASS payments have not been stopped, and Luthesi confirms that he is still receiving them, and agrees to keep the lawyer informed of any developments. Mr Ahktar then escorts us back to the reception area, where he directs the receptionist to issue an appointment for ten days time. Luthesi thanks Mr Ahktar, who remarks to me jokingly that now I have seen a real lawyer. Luthesi tells me as we leave how lucky he is to have found such a kind lawyer, and how he is sure that he will win his appeal and bring his family to the UK. He agrees that I can return with him for the next appointment.

Consultation #2

I did not see Luthesi again until we met in the waiting room before for the next consultation. He is clearly pleased with himself, and he shows me the statement from his wife that had arrived the previous day. Mr Ahktar again collects us from the reception, and leads us to a consultation room. After a brief exchange of pleasantries Luthesi presents the statement, explaining that his wife had been unable to find a notary, but had eventually persuaded an Imam from a neighbouring town to help her. He had written the statement, and witnessed it for her. Mr Ahktar asks Luthesi to translate the statement sentence by sentence. Luthesi does so, struggling

with some of the English in places, and Mr Ahktar is satisfied that it contains the necessary elements. He leaves the room, returning shortly afterwards with a photocopy and an authorised translation request form which he completes and asks Luthesi to sign.

Mr Ahktar then presents the fruits of his own enquiries. He shows Luthesi a recent *Amnesty International* report documenting increasingly common outbreaks of violence in Somaliland, including verified acts of kidnapping and murder. Two particular incidents described graphically in the report bear striking similarities to the raid and round-up in Luthesi's village, and though no place name is specified, the approximate date of one of the accounts is the same as the date reported by Luthesi the previous week. Mr Ahktar is smiling as he explains this, and Luthesi also smiles broadly when he sees the lawyer's expression. The lawyer also presents a report from *Medicins Sans Frontieres* which includes references to conditions in internment camps in the Mudug and Nugaal regions of Somalia, and speculation that the civil conflict is spreading into the neighbouring region of Somaliland. MSF doctors in Somalia also record that they have seen evidence of escalating violence against minority groups in towns and villages in the south of Somaliland, and are concerned about growing instability in the region. Mr Ahktar is confident that the similarities between these reports and Luthesi's story seriously enhance the credibility of his claim, and provide evidence with which to respond to the contention that Somaliland is safe for the return of refugees.

Mr Ahktar assembles the papers then begins to draft the appeal, reading each sentence aloud to Luthesi, who nods in agreement or suggests further details. Once they have finished, the lawyer reviews it from the beginning with Luthesi, who is clearly grateful for the lawyer's support and

pleased with his summation of the case. Mr Ahktar promises to file the appeal as soon as he receives the translation of Luthesi's wife's statement, and instructs Luthesi to inform him of any further developments. As they shake hands, he undertakes to contact Luthesi as soon as he receives notice of the appeal date, and reassures him that the case has a good chance.

Outcomes

Luthesi was granted Indefinite Leave to Remain in the UK (ILR) two months after submitting his appeal. The adjudicator had been impressed with the evidence adduced in support of the application, and accepted that recent developments in his region and his previous encounter with those actively involved in civil disorder provided sufficiently compelling evidence that he could not safely be returned home. As the Somaliland region was generally considered the most stable in Somalia, relocation elsewhere in the country was deemed to be inappropriate given his Benadiri origins. I met Luthesi again several weeks after his appeal had been successful. He had been joined in the UK by his wife and daughter, and he told me how Mr Ahktar had helped him to secure their visas and journey to the UK. They had been relocated to a council property in a residential development with a large Somali community, and Luthesi had found casual work as a doorman in a city centre nightclub.

He remained extremely positive about his experiences with his lawyer and the system, and grateful for his new life in the UK.

Comment

Luthesi understood that having failed in his application for asylum, he required the services of a lawyer to appeal against the decision. Though he had little specific knowledge of the immigration system, he believed in the integrity of the law and remained confident of his eventual success, despite the original rejection of his application. Luthesi's attitude towards his interaction with Mr Ahktar was positive and optimistic. As an intelligent and articulate individual, he was able to participate in the relationship, and to understand the issues that were implicated. However as a refugee in a foreign country with little support behind him he was reliant upon a lawyer whose remit would be dictated by the Legal Aid Scheme.

Luthesi enjoyed an extremely reciprocal and inclusive relationship with Mr Ahktar, characterised by integrity, cooperation and respect. Mr Ahktar was careful to ensure that Luthesi understood the issues, and that he approved the approach to the appeal, and Luthesi found the relationship to be enabling and positive throughout. This approach to the interaction clearly bears a strong resemblance to the participatory model described in the literature, and Luthesi's experience confirms many of the benefits thought to be associated with this approach to the relationship, not least a successful outcome.

Luthesi regarded Mr Ahktar highly, respecting him for his diligence and his kindness, and his success in his appeal. Despite his lack of prior knowledge about what to expect from a lawyer, Luthesi appreciated that he received a quality service and was grateful to Mr Ahktar for this. Aside from with Luthesi, I encountered Mr Ahktar a number of times during the course of the

research. I approached his firm for assistance in contacting refugees at the outset, and he agreed to meet me and provided a number of contacts with refugee support groups in the city. I was very impressed by his handling of Luthesi's case, and subsequent visits with other refugees also confirmed this impression. On one occasion he explained his philosophy - motivated by a deep religious conviction he believed that it was incumbent upon him to do his best to assist the refugees whom he encountered, and to treat them with integrity and respect. On this basis, towards the end of my fieldwork I recommended Mr Ahktar to individuals who were experiencing difficulties with their cases and had asked me for help finding a lawyer.

Luthesi's experience was not typical of the other refugees that I observed. Very few others enjoyed genuinely participatory relationships with their lawyers, and none to the extent that Luthesi did with Mr Ahktar. Mr Ahktar's competence in addressing the appeal and his sensitivity in his interaction with Luthesi clearly facilitated Luthesi's eventual success and his satisfaction with all aspects of his (appellate) encounter with the law, and his case is thus a rare example of a 'dependent' client who enjoyed a quality interaction, complete satisfaction, and a happy ending.

WASIM

Wasim was 33 years old when he was granted asylum in 2001, having fled from persecution in Iraq. He is Kurdish, and was tortured by Saddam's secret police before making his escape to the UK. Both Wasim's feet were badly injured in his ordeal, and he now walks unsteadily with a pronounced limp. He sometimes uses a stick or a crutch, and cannot stand for long periods. He has received incapacity benefit since he was awarded ILR in 2001.

There are many other Kurdish refugees in the Birmingham area and Wasim enjoys close ties with a large group of young Kurdish men who seem to spend much of their time in cafes in the city centre. As Wasim does not work, he is one of the most often present, and seems to be well known amongst the group. He is older than many of the other men, and having been in the UK for some time understands aspects of life here that newcomers find baffling or daunting. He likes to give advice, but lacks the employment connections that many of his fellow refugees seek.

In September 2004, Wasim was stopped by two policemen while walking through the city centre one evening on his way from a bar to meet some friends in a nightclub. He had been without his crutch and was walking erratically. According to Wasim, the policemen misinterpreted his limp for intoxication, and then reacted badly to his indignation at their mistake. After a brief exchange he was arrested. Wasim protested his innocence and demanded his rights during the journey to the police station, and one of the policemen warned him about

making trouble for himself or anyone else and threatened him that assault charges could be easily improvised. Wasim was detained in the police station overnight, before being cautioned and released the following day.

Wasim was very angry about his experience. He says he is very grateful to the UK for giving him refuge and saving his life, and he considers this country to be a good country with good laws. But his experience with the police challenged these views and left him shaken and distressed. Shortly afterwards he decided to find a lawyer with a view to seeking recompense for the way he was treated. Following a referral from a receptionist at a city centre immigration firm, Wasim approached a small firm in the Sparkbrook area of the city. I did not witness the consultation, but Wasim reports that after hearing his complaint the lawyer refused to assist him. Having accepted the caution, Wasim had admitted the offence and so the lawyer could see no mileage in the case.

I had first been introduced to Wasim in a Digbeth café in late 2003 by another Kurdish refugee whom I was accompanying to a consultation in the city centre. We had met on several occasions since then, and I chanced across him again a few days after his meeting with the lawyer from Sparkbrook. He knew a little about my research and was keen to tell me about his experience, and he asked me to accompany him the following week to see a different lawyer recommended by a friend. The following account of that encounter is drawn from my contemporaneous notes.

Consultation

I arrive with Wasim for the appointment at the Alum Rock offices of Parker Laing Solicitors, and we are promptly collected from the neat reception area by Mr Richards, a well presented lawyer in his early thirties, who leads us through to his office. Wasim introduces us, and quickly summarises his background and current circumstances, then recounts in detail the incident with the police. He is articulate and intelligent and the lawyer listens patiently, arms folded as Wasim tells his story. He shakes his head, frowning, disapproving as Wasim tells of his arrest and the threat made by the policeman. His demeanour conveys an attitude of sympathy and support that is clearly heartening for Wasim. Mr Richards asks how Wasim wants to proceed, and what he is hoping to achieve. Wasim explains that he has thought carefully about this, and that though he is slightly concerned about reprisals from the police, he has seen terrible things before in Iraq and he wants to stand up to these things in Britain. He should not have been stopped because he was not drunk, and he should not have been threatened for protesting. He wants the police to apologise and to compensate him.

Mr Richards poses a number of questions, clarifying Wasim's recollections of the conversation in the police car, and his arrival at the police station. He asks Wasim if he had been drinking before he was approached by the policemen, and if he had been in trouble with the police in the UK before. Wasim admits that he had been drinking, but explains that he was not drunk, and that it was the mistake of the policeman in confusing his disability for drunkenness that had initiated the incident. He accepts that he was perhaps too confrontational in his response to their approach, but this was because he was offended by their error. Mr Richards asks why Wasim

accepted the caution if he felt so strongly about matter. Wasim says he was disorientated and anxious after being detained in a cell for some time, and that he had began to feel like he was back in Iraq. He says he was unaware that he had a choice whether or not to accept the caution, or that by doing so he was conceding the charge made against him. He was frightened and could not concentrate and just wanted to go home.

The lawyer deliberates for a few moments before outlining the options to Wasim. He begins by commiserating with Wasim for his experience, and by expressing his agreement that something should be done about it. He is respectful and supportive and Wasim seems very satisfied by his comments. Mr Richards advises that there are various mechanisms for raising complaints against the police. One can formally complain to the station Superintendent, and then if necessary to the Independent Police Complaints Commission. Alternatively an unlawful arrest and caution could theoretically be challenged through the courts, although this would be likely to be drawn out and expensive. The lawyer explains the benefits of pursuing a complaint, emphasising the potential corrective affect that such an approach could generate. He assures Wasim that senior policemen are very concerned to avoid scandal and have the authority to respond to wrongdoing. They are also keen to properly address complaints to avoid the attention of the IPCC. Wasim asks if he will receive compensation and an apology, and if the policemen will be disciplined. The lawyer leans back in his chair and considers before explaining that the IPCC can award compensation, and recommend disciplinary action, but Wasim has only his own testimony against the police, and no other supporting evidence. He agrees that Wasim should not have been stopped or threatened, but points out the difficulty of proving his allegations. A complaint made to the police might uncover the problem and address

it from within, but would be unlikely to be publicly upheld, because Wasim would have difficulty proving it legally. Having accepted the caution and admitted the offence, he had effectively justified the arrest. At this stage it would be hard to re-examine the grounds for the arrest, or to action any threats made subsequently without supporting evidence.

Wasim summates the lawyer advice: he will not receive any compensation or apology. Mr Richards confirms this. He tells Wasim that he has seen a number of similar cases before, and that the police know what they are doing and are careful to cover their tracks. The best advice for Wasim, if he is certain that he wants to proceed, is to make a complaint to the police and hope that this has some effect for the future. Wasim asks if the policemen themselves will know that he has made the complaint. The lawyer considers the question for a short time, before answering that he is not certain, but that he would not rule out the possibility. He pauses, the inference of unpleasant implications clearly received by Wasim, who asks if the lawyer thinks that he should not make the complaint. Mr Richards advises that it all depends on how strongly Wasim feels about the incident. He suggests that Wasim should take some time to think whether he really does want to proceed, and if so he should make a new appointment and return.

Wasim seems satisfied with this conclusion. He rises from the chair, thanking the lawyer, shaking hands gratefully. Mr Richards wishes him well for the future, and escorts us back to the reception area, where Wasim again thanks him profusely.

Outcome

Wasim did not return to see Mr Richards, and has taken no further action on the matter. On the way home from the consultation he had seemed surprisingly satisfied considering his original aspirations for compensation, and to speak out against corruption. He told me that he respected Mr Richards, that he was a truthful man and that he trusted what he had told him. It was going to be impossible to prove what had happened, and so was not worth the risk of provoking one of the policemen. Wasim explained to me that Mr Richards had believed his story, and had agreed that something ought to be done. Wasim confided that he suspected that the lawyer had felt sorry for him, and had suggested making a complaint because there were no other options. But a complaint was not worth the trouble if the policemen might find out, and if compensation was unlikely, so there was nothing else to be done. He said this pragmatically, almost contentedly, as if having explored all the options he could now put the whole business behind him.

Comment

Wasim's experience with the police left him feeling victimised and mistreated, and he understood that he required the assistance of a lawyer in addressing this. Having lived for some time in the UK, he was familiar with the general (legal) principles that were implicated – freedom from arbitrary arrest, due process requirements in the police and compensation for damages suffered – and he was keen to assert his rights. Through his network of other mostly

Kurdish refugees, Wasim had encountered 'insider' information about the immigration process, but regarding any action against the police he was not so knowledgeable. In this respect he was dependent upon his lawyers for advice and information about suitable approaches to his case, and he approached them recognising this dependence. During consultations he was articulate and coherent, and able to usefully contribute to the process.

His first encounter with the lawyer from Sparkbrook left him feeling aggravated that he had been dismissed and his case had not been taken seriously. The lawyer had refused to help, and had not been inclined to ensure that Wasim understood this refusal. The encounter with Mr Richards was wholly different, characterised by cooperation and reciprocity and other hallmarks of a quality participatory model. Wasim very much appreciated Mr Richards' approach to the consultation, finding the encounter to be enabling, positive and respectful.

The differences between these two experiences are interesting. Despite producing identical legal outcomes – no action was ever brought following either consultation – they clearly made very different impressions on Wasim. Both lawyers apparently recognised that actioning a wrongful arrest claim was problematic, and neither seemed inclined to follow up Wasim's allegations that he was threatened by the police. The first lawyer had bluntly refused to proceed. Mr Richards however included Wasim in the decision-making process, explaining the difficulties with the case, and offering an alternative action in the form of a complaint against the police. Wasim's experience with Mr Richards had been respectful and empowering, affording him the dignity of being taken seriously, and the catharsis of a sympathetic ear.

Wasim decided not to pursue a complaint for two reasons. Firstly he was concerned about potential repercussions from the police – a concern that Mr Richards did not allay. Secondly, having understood that recognition of his experience in the form of either an apology or compensation would be unlikely to result from a complaint, Wasim could not see the value in pursuing it. Notwithstanding his original aspirations in approaching the lawyer, Wasim was satisfied with his experience and his outcome. Either because he accepted Mr Richards' analysis of the issues, and thus that his case was weak, or because he achieved some form of closure on his experience as a result of his interaction with the lawyer, Wasim was content to take no further action over the incident.

Mr Richards' attitude towards the consultation was patient and inclusive, and is all the more admirable considering that no fee was collected (or even discussed). He was careful to ensure that Wasim understood his experience in a legal context, and the difficulties should he proceed with any action, and he specifically addressed Wasim's concerns in his advice. (Wasim originally explained that he wanted to speak out against police abuse because of his experiences in Iraq, and Mr Richards emphasised the potential corrective action of a complaint to the superintendent.) However various questions remain unanswered following the consultation. A cynical assessment of the lawyer's motivation in his approach to Wasim's problem suggests that though he was keen to include Wasim in the process, he was not keen to actually get involved in the case. Given Wasim's inability to offer any material remuneration for legal services, and the Legal Aid funding climate, alongside the well documented importance to legal professionals of the maintenance of continuous relationships with the police, Mr Richards may have been unwilling to act in such a potentially awkward case. His advice to Wasim, including

the implication of the potential repercussions of a complaint, and the suggestion that Wasim go away and carefully consider his position, could be seen as tools with which to discourage Wasim from proceeding. At the time, I could not avoid the conclusion that his case was more meritorious than the lawyers accepted. Discrimination on the basis of disability, wrongful arrest and a lack of due process extending as far as Wasim's failure to understand that in accepting a caution he was admitting the offence are serious and actionable allegations, even on the facts as described by Wasim.

Wasim's experience is unusual in respect of the other encounters that I observed, and is notable for its insight into the benefits resulting from a respectful and participatory model of the interaction. Whether the outcome is seen as positive or negative, Wasim remained impressed by Mr Richards, and satisfied with his handling of the case.

MIDDAR

I first met Middar, a 26 year old refugee from Algeria, in October 2004 when Shajdad, a refugee from Afghanistan with whom I had become acquainted was allocated NASS accommodation in the same house as Middar. Middar was initially suspicious of me, but after several encounters he became less reserved. His application for asylum had been rejected in June 2004, but it was not until he was informed that his NASS support payments were to cease in October that he asked me to look at his papers and to give him advice about an appeal.

Middar had entered the UK in 2001 on a student visa procured on false Italian identification. He had studied English in an adult education college in London, and worked part time cleaning office blocks, before he was arrested in July 2003 by the police for use of a false instrument, convicted, and imprisoned for six months. On his release he was served with a deportation order, and he then claimed asylum in the UK on the basis that he had initially fled Algeria because he had been subjected to persecution as an ethnic Berber.

His application was rejected in June 2004, the caseworker having found numerous inconsistencies in his account of his ill treatment in Algeria, and having questioned the timing of his asylum application, and his motivations for not making an application on his arrival in the UK some years previously. Country of Origin information that ethnic Berbers, though the subject of some discrimination in parts of Algeria, were not considered to be at risk from persecution in other 'safe areas' had also been cited by the caseworker. I explained to Middar

that I was not a lawyer, but I examined his papers and helped him to understand the grounds of the refusal. The lawyer that had assisted him in making his original application had refused to act in an appeal, and had informed Middar that there was no realistic prospect of his succeeding in challenging the caseworker's conclusions. Middar had accepted this advice, and had not sought an alternative opinion, but when his NASS support payments ceased some months later, the prospect of being evicted from his NASS accommodation, and deported from the country finally stirred him to action.

I advised Middar to seek legal advice as soon as possible. I told him that I thought that NASS payments could be reinstated and eviction delayed once an appeal had been lodged. He was unsure as to where he would find a lawyer, and particular that he would only see a 'white' lawyer, and I suggested that he approach Mrs Stollar, a lawyer working in the Birmingham Refugee Council whom I had met on two previous occasions with other refugees. I gave Middar the telephone number, and he called the BRC and made an appointment for the following week. He agreed that I could accompany him, and we met in the city centre shortly before the consultation. The following account is drawn from my contemporaneous notes.

Consultation #1

I lead Middar up the stairs into the waiting area, and introduce him to Aisha, the receptionist whom I have met on several previous occasions. We wait for a few minutes before Mrs Stollar collects us from the reception and leads us to her desk in the open plan office. She is in her

early 40s, with a kind face and a warm and sympathetic manner. She asks me about how my research is progressing, and we discuss it for several minutes. She then introduces herself to Middar, and asks him to explain his story and how she can assist him.

Middar is nervous and does not express himself well. He begins by explaining that he needs to have his NASS support reinstated and that he is worried about being evicted from his house. He tells her about his previous lawyer's assessment of his chances for an appeal, and becomes very emotional as he explains that he must not be returned to Algeria. Mrs Stollar gently probes both Middar and myself for the salient details, making notes as she does so. Middar is monosyllabic in his answers to her questions, but eventually she elicits his account of the events surrounding his departure from Algeria, repeating back his story and confirming that she has understood. His account is fragmented and hard to follow. He refers to incidents from his childhood, then to incidents when he was posted at a barracks during his national service. As Mrs Stollar draws a chronology on her paper, she asks Middar for further details of the dates of his arrival in the UK, and for the events in his life since he left the army in 2000. Middar then explains that he came to the UK from Italy, and eventually reveals details about his imprisonment in the UK. After almost twenty minutes, Mrs Stollar looks through the papers that Middar has brought with him. She spends some time reading the reasons for the refusal of his asylum application, before asking him if he has any other papers relating to his conviction, and subsequent notice of deportation. Middar does not have any other paperwork, and explains that he had been represented at that time by a lawyer in London. Once he had applied for asylum and been relocated to Birmingham, he had seen a different lawyer who had attempted to obtain Middar's papers from the London lawyer without success. Mrs Stollar makes a note of this, before

moving on to explain to Middar the basis of the refusal of his application. She asks him what he wants her to accomplish for him. He explains that I have told him that his NASS benefits can be reinstated, and he reiterates his fear of being returned to Algeria. He tells her that she must win an appeal for him in order to save his life.

Mrs Stollar explains the difficulties that Middar now faces. She begins by confirming that NASS support can be reinstated pending an appeal decision, but informs Middar that the timeframe within which his appeal against the refusal of his asylum application could have been lodged has now passed, and that accordingly he is no longer entitled to submit an appeal. He again describes his previous lawyer's refusal to act in an appeal, and explains that he did not know that any time limits existed. She sympathises with him, but explains that regardless of his circumstances, an appeal could only now be submitted if permission was granted on the basis of extraordinary circumstances. She suggests that it will be difficult for Middar to satisfy an adjudicator that his circumstances are extraordinary. Middar appreciates the implications of his lawyer's advice and breaks down at the desk. I comfort him, but Mrs Stollar has further bad news. Because a deportation order was served in 2003, and no appeal against this was submitted, there is no requirement for the Home Office to serve an additional notice on Middar, and he is now liable to be removed from the UK and returned to Algeria without further warning. She suggests that he might consider whether he is interested in joining the Voluntary Assisted Return scheme and accepting payment in exchange for removal. She counsels him that this way he can take some control of his own situation, and not live with the constant apprehension of a knock at the door. He is adamant that he will be killed if he is return to Algeria, and threatens to take his own life before he allows himself to be forcibly returned.

Mrs Stollar again peruses Middar's paperwork. After several minutes of thought, she questions Middar about the deportation notice that was served on him in 2003. He denies ever having received such a notice, and she then suggests that it may be possible to buy Middar some time by asking the Home Office to confirm that the notice was served in a correct manner. She explains that she will make enquiries with Middar's previous lawyers, and also with the Home Office. She undertakes to do this as quickly as possible, and asks Middar to be ready to return to see her again as soon as she contacts him. She informs him that she cannot request that his NASS support is reinstated at this time, but that she may be able to do so at a later stage. He is terrified of the prospect of return to Algeria. He asks her what he can do if he is deported before her enquiries are completed. She considers this, and then writes a letter addressed 'To Whom It May Concern' on BRC letterhead explaining that she is in the process of submitting an appeal on Middar's behalf, and that he must not be removed from the jurisdiction until the appeal has been resolved. She advises him to keep the letter with him at all times, and to produce it if any move is made to take him into custody. She cautions him that there is no guarantee that the letter will have any effect, but that this is the best that she can do at this stage.

Consultation #2

Mrs Stollar telephones me three days later to report her progress. She has been unable to reach Middar on his mobile, and asks me to either ask him to call her, or to explain to him that neither of his previous lawyers have a copy of any deportation notice served on Middar, and that she has asked the Home Office to prove that a notice was in fact served. She confides to me that very often the Home Office is disorganised and unable to produce documents that have been

properly served. In Middar's case, if the Home Office cannot provide proof that the notice was served, she can require that a new deportation notice is served, and Middar will accordingly be within the timeframe for an appeal against this notice. She confirms that as soon as she has heard from the Home Office, she will contact Middar.

Ten days later Middar and I return to the BRC to see Mrs Stollar. As she suspected, the Home Office has been unable to demonstrate that a deportation notice was correctly served in 2003, and a new notice has thus been given. Both Middar and Mrs Stollar have received copies, and Mrs Stollar now wants to appeal against the notice, using the opportunity to challenge both the deportation and the refusal to grant Middar asylum. She begins by explaining the developments to Middar, and confirming with him that she will now contact NASS to ensure that his support payments are reinstated pending the outcome of his appeal. She gives him a new letter which confirms that an appeal has been submitted, and advises him to keep it close at all times, just in case an attempt is made to deport him before his appeal is entered on to the system.

Mrs Stollar is candid with Middar. She does not think that the appeal is likely to succeed. She has given considerable thought to his case, and has identified grounds upon which he might be able to challenge the caseworker's original decision about his asylum application, and a further ground upon which she can challenge the validity of the deportation. However she wants Middar to understand from the outset that the prospects of either of these challenges succeeding are low. He is unhappy with this prognosis. He asks her what is the purpose of submitting an appeal that will not succeed. He is concerned that as he is only entitled to appeal once, if this appeal is unsuccessful he will not be able to make a further attempt. He challenges her to

submit an appeal that will be successful. She calmly explains the position. The main purpose of submitting this appeal is to allow Middar more time before any deportation action is taken against him, and to ensure that his NASS benefits are reinstated in the short term. She reminds him that this was the reason that he came to see her in the first place. She undertakes to do the best that she can for his appeal, but suggests that on the facts there are not really good grounds upon which an appeal can be based.

She explains the bases that she had identified. She suggests that the caseworker's assessment that Middar had answered questions inconsistently during his interview, and that his credibility was undermined by his failure to have claimed asylum on his arrival in the UK could be challenged by arguing that Middar had been confused during his interview, and that he was suffering psychologically from the effects of persecution in Algeria and imprisonment in the UK. She explains this argument to Middar, and confirms with him that he is content for her proceed on this basis. Once he has understood and agreed, she gives him an address of a psychologist in the city centre with whom she has made an appointment for Middar. She explains that the evidence from such a professional will give weight to the argument that she intends to make. The validity of the deportation can be challenged in a similar way. She explains that the Country of Origin report for Algeria documents the interrogation of failed asylum seekers on their return to the country. Ordinarily such interrogation does not prevent the return of refugees to Algeria, however should the psychologist's report reveal that Middar is suffering form any degree of mental illness or impairment, then an argument could be made that returning him to face interrogation would amount to exposing him to inhumane treatment. Middar understands these proposals, but does not accept that he is suffering from any mental

impairment. He asks Mrs Stollar how she has arrived at this approach – explaining that he has never suffered from any form of mental problem. She explains that she has suggested this approach in the absence of any other, and that although she is not confident of success, at least it will buy Middar time to make other arrangements. She explains that the account of his experiences that he had given to the caseworker at interview, and to her at the previous consultation had been such that she did not understand why he was seeking asylum in the UK. However his obvious fear of returning to Algeria had made her consider whether he had been affected by his experiences in a way that might now support his appeal. Middar accepted this suggestion, and signed various forms authorising the appeal. He agreed to attend the appointment with the psychologist, and to return to the BRC if Mrs Stollar needed further information. Otherwise, she would submit the appeal once she had received the report form the psychologist, and keep him informed of any developments.

Outcomes

The psychologist's report did suggest that Middar was in fact suffering from various conditions, and Mrs Stollar submitted the appeal along the lines discussed at the second consultation. However in March 2005 the appeal was rejected, Middar's contradictory testimony before the tribunal having sealed his fate.[240] His de facto legal options were now exhausted. The tribunal had rejected the contention that Middar's psychological state accounted for the inconsistencies

[240] Leave to appeal from the tribunal was now required, and the credibility findings against Middar by both the caseworker and the tribunal would not have survived the strict new merits tests for legal aid for appeals.

in his submissions to the Home Office, upholding the caseworker's decision about his general credibility. The argument that returning him to face interrogation in Algeria amounted to inhumane treatment was also rejected on the grounds that any psychological condition that he suffered was not sufficiently serious to warrant protection from interrogation.

After establishing that there was no further recourse to law, Middar left his NASS accommodation and began an illegal life in the UK. He found work in a restaurant kitchen in a suburb of Birmingham, and accommodation in a shared house provided by his employer. As of January 2006 he continued to live and work in Birmingham, but I lost contact with him after his mobile telephone number was disconnected in March 2006.

Comment

Following the rejection of his original application in July 2004, Middar had consulted his lawyer about an appeal, but the lawyer had refused to act for him believing that the case was hopeless. At that time Middar did not seek further advice, and approached Mrs Stollar only once his NASS support payments had ceased. His primary motivation was the reinstatement of his payments and the avoidance of eviction from his NASS accommodation, but he recognised that these outcomes were ultimately contingent upon permission to remain in the UK.

Middar's encounters with Mrs Stollar were characterised by sensitivity, respect and inclusiveness, and can clearly been seen to accord to the participatory model. From the outset

the lawyer made consistent efforts to elicit Middar's story in his own words, to ensure that her understanding was correct, and to allow him to express his own aspirations for his case, despite his communication difficulties. In the first consultation she was honest and realistic about his prospects, refusing to give him false encouragement, and even went as far as writing him a letter in an attempt to stave off the threat of deportation. She then actioned his case extremely quickly, sensitive to the urgency of the threat of deportation. Her experience of dealing with the Home Office allowed her to identify a legal solution for Middar, and though this was unlikely to result in permission to remain in the UK, it was a way of delaying his removal, reinstating NASS support, and obtaining an appeal that was otherwise out of time. The second consultation also exhibited the participatory hallmarks of the first, and despite what the previous lawyer had described as a hopeless case, Mrs Stollar had obviously given thought to Middar's options and was ready with possible legal solutions to his problems. His doubts about her proposed approach were addressed, and a genuine appeal was submitted. Mrs Stollar was careful to explain that she was not optimistic about the outcome, but that she could see no other arguments that might have a chance of success. Middar again questioned the wisdom of wasting his last legal opportunity, and the lawyer addressed this concern reminding him that if nothing else the approach would buy him time to make other arrangements – the closest I ever came to hearing a lawyer advise a client to make preparations to embark on an underground existence in the UK.

Despite receiving the respectful and legally competent service that he did, Middar was eventually dissatisfied with his contact with Mrs Stollar. After each of the consultations he expressed his hope that his appeal would succeed, and recognised that his lawyer was doing the

best that she could for him, although I do not think that he appreciated the creativity of her efforts on his behalf, or that her willingness to take on his case was unusual, even in the face of his previous lawyer's refusal. For Middar, the eventual failure of his appeal was a failure of his lawyer, and the limitations of his own case were not significant. He seemed to view his entire contact with lawyers and the law as one single experience in which he had been 'let down' by those whose responsibility it was to have delivered for him. His failure to gain permission to remain in the UK thus determined his dissatisfaction with his lawyers, and the quality service that he received from Mrs Stollar was eclipsed by his bitterness at the failure of his appeal.

JACOB

I first encountered Jacob at the NASS offices in Birmingham city centre in the autumn of 2004. At the time, a NASS caseworker was attempting to explain to him that since his asylum application had been rejected, his support payments could not be reinstated before an appeal had been lodged, and that he therefore needed to find a lawyer before NASS could help him. Jacob was clearly having difficulty understanding, and the caseworker repeated herself slowly several times before giving Jacob a list of approved local immigration advice providers. I was accompanying Farouk, an Iranian refugee who was experiencing problems obtaining council accommodation after having been awarded ILR, to ascertain whether NASS could help with his predicament. As we observed the encounter, I indicated my interest in Jacob to Farouk, who approached him and introduced himself once the caseworker had finished. Jacob speaks very little English, but he and Farouk managed a brief exchange in Arabic, after which Farouk introduced me to Jacob, who agreed that I could accompany him to see a lawyer. He waited in the NASS reception while Farouk's case was quickly dismissed, after which we went together to the offices of the Immigration and Nationality Legal Services (INLS), a firm situated close by in the city centre that Jacob had selected from the list. On the journey, we conversed with difficulty in English, and the facts of Jacob's story that I outline below were ascertained primarily from the documentation that Jacob allowed me to read while we waited to see the lawyer, and also through Farouk, whose hesitant Arabic was better than Jacob's English.

Jacob is a 22 year old refugee from Sudan. He lived in Yambio, the capital of the Western Equatoria province in the south of the country, and is a member of the Dongola tribe and a practising Christian. He is tall and muscular and his face is scarified with three parallel lines used by his tribe to denote their allegiance to the Holy Trinity. In February 2004 he was arrested by southern Sudanese police and detained for two months without trial on suspicion of murder in the notorious Rumbek Prison in southern Sudan after he was falsely implicated by rival tribesmen. Conditions in the prison were abysmal, with poor sanitary facilities, widespread abuse of prisoners, and inadequate food and water. Jacob was visited by family members several times during the first weeks of his incarceration, and relied on them to bring him food and water. His release was eventually secured unofficially through the intervention of a family friend – a minister in a prominent church in Yambio - but he was warned that he would face arrest again if he was apprehended, and advised to leave the country. Contacts in the Red Cross helped to arrange his escape, and his subsequent journey to Europe and the UK.

Jacob did not understand why his benefits had been withdrawn, nor the significance of or reasons for the refusal of his application for asylum. Farouk was able to establish that Jacob could not read the refusal decision in English, and had not received it in his own language. In fact he was declined refuge in the UK because he could not demonstrate that he was at risk in Sudan as a consequence of his ethnicity, gender, sexuality, political beliefs or any other basis that would ground an award of asylum. The adjudicator had accepted that as an individual facing imprisonment in Sudan, Jacob could be entitled to Humanitarian Protection (and thus ILR), as conditions in Sudanese prisons, and particularly in Rumbek prison, were considered by Home Office immigration guidelines to amount to torture and inhuman treatment in many

cases. However Humanitarian Protection had been declined on the grounds that the threat of prosecution and imprisonment arose because of his involvement in 'serious non-political crime' in Sudan – Jacob had been imprisoned on suspicion of murder – and that he was accordingly excluded from the protection of the Refugee Convention.

When we arrived at the INLS offices, the receptionist ascertained the nature of Jacob's problem and offered him an appointment the following week. Jacob was keen to proceed faster, and the receptionist agreed that we could wait for a cancellation if we wanted to. While we sat in the reception area I read Jacob's case papers and we talked as well as possible although even with Farouk as translator, mutual comprehension was difficult. After almost an hour, Farouk left to meet a friend, and a lawyer, Mrs Beaman, escorted us from the reception to her office. The following account of the consultation is drawn from my contemporaneous notes.

Consultation

The office is small and sparely furnished. Mrs Beaman invites us to sit, and takes her place behind the cluttered desk. She introduces herself, and asks which of us is Jacob. He does not respond, and I explain to the lawyer that his English is not good. She asks Jacob slowly where he is from, and what language he speaks, and he explains in halting English that he is Sudanese, and that he speaks Sudanese Arabic. She then addresses me, assuming that I am a translator, and I interrupt and correct her. She seems irritated, asking me if we did not explain before we made an appointment that we would need a translator, and I explain that Jacob did not have an

appointment and that we had arrived and waited today. She then explains that she cannot help without a translator, and telephones the receptionist, explaining the problem and asking if an Arabic translator can be found. She then explains to me that we can either make another appointment, or wait to see if the receptionist has any success. I attempt to explain this to Jacob, but he does not understand me, and the lawyer does not assist me. After a third attempt, I lead Jacob back to the reception.

By mid afternoon, several hours later, an Arabic translator has arrived for an appointment with a different client. Mrs Beaman happens to come out into the reception, and seeing Jacob and myself still waiting, she asks the translator if he will help briefly with Jacob. He agrees, and approaches us, introducing himself. After a brief and slightly awkward exchange he explains to Mrs Beaman that he cannot properly translate for Jacob, because he speaks Sudanese 'Juba' Arabic which is considerably different to Arabic, but he agrees to try once he has finished with his other client. Mrs Beaman consents, and 45 minutes later the three of us are seated again in the lawyer's office. The translator speaks for some time with Jacob before explaining that his NASS support has been withdrawn. Jacob hands over his papers, and Mrs Beaman reads them as Jacob and the translator continue to converse. Once she has finished reading she explains to the translator that she will help with an appeal, as she believes that Jacob has a good case that has been badly decided. The translator explains this to Jacob, who nods in agreement. Mrs Beaman then asks Jacob to explain how and why he was arrested. Jacob speaks with the translator for some time before the translator explains that a rival family that harboured a grudge against Jacob and his family misled the police into believing that Jacob had been involved in various local crimes. He was approached by several policemen who offered to

ignore the complaints in exchange for money, but who arrested him after he was unable to raise an acceptable bribe. Mrs Beaman notes this answer, before asking what Jacob remembers about his account of his arrest to the Home Office during his original application. After another faltering conversation, the translator explains that Jacob was asked many questions about his arrest, and the crimes he was allegedly involved with, and that Jacob believes that he explained all during his interview. Jacob leafs through his paperwork, and presents letters from his church and a Red Cross relief worker in Rumbek, speaking quickly to the translator as he does so. The translator explains that all the details of Jacob's imprisonment and escape are described in the letters. The lawyer informs the translator that the facts of the case are not disputed by the Home Office, and that the details of Jacob's story are not important for his appeal. The translators relays this to Jacob, who does not respond.

Mrs Beaman explains that she can prepare the appeal from this point, and that she will simply need Jacob to sign the relevant authorities, maybe to return for a further appointment at a later stage, and to attend the tribunal hearing. She undertakes to inform him as soon as a date has been fixed. She then produces several forms which she explains through the translator are authorisations for her to act on behalf of Jacob, and he signs each one. She promises to ensure that NASS benefits are reinstated pending the outcome of the appeal, and directs Jacob to return in one week if he is still not receiving support. After photocopying all of his papers, she escorts us back to the reception. Before he departs, the translator assists me in exchanging telephone numbers with Jacob, and in offering any further assistance that I can. Jacob is grateful, and agrees to keep in touch.

Outcomes

I saw Jacob several times in the weeks following the consultation with Mrs Beaman, each time with Farouk as imperfect translator, although Jacob's English had improved noticeably. His NASS benefits were reinstated the same week that we saw the lawyer, and six weeks after his appeal hearing in January 2005 he received the decision letter informing him that he had been successful in his appeal and had been granted Humanitarian Protection in the UK. The letter again arrived in English, and Jacob contacted Farouk and myself for help in interpreting it. He was delighted once he understood, and extremely grateful. Mrs Beaman had successfully challenged Jacob's exclusion from the protection of the Convention on the grounds that such exclusions could only be made where there were 'serious reasons for believing' that individuals had been involved with the type of criminal behaviour to which the exclusions applied. As in Jacob's case their was insufficient evidence upon which to form such a belief, and because the truth of his account of his imprisonment and escape had been accepted during the original application, the tribunal had agreed with Mrs Beaman's contention and overturned the original decision.

Comment

Jacob's main concern in approaching a lawyer was to reinstate his NASS benefits. He appeared to have no knowledge of the immigration system, and from our conversation before the consultation, I believe that he did not understand that he had been refused asylum, or the

implications of such a refusal. Jacob's attitude towards the interaction with his lawyer was hard to gauge because of the lack of meaningful conversation, but he seemed to recognise that he needed the services of a lawyer in dealing with NASS, he did not seem to mind waiting without explanation, and seemed grateful for any assistance that he received. During the consultation he was deferential and polite and appeared to be willing to hand over his problem to the lawyer.

The consultation was brief, and his involvement in his appeal was minimal. The issue that had brought him to the lawyer (NASS benefits) was only touched upon fleetingly at the end of the consultation, when Mrs Beaman took responsibility for resolving it without reference to Jacob at all. Similarly she addressed the appeal with almost no input from Jacob, having apparently gained the understanding that she needed from the paperwork, and a few specific questions. When Jacob did attempt to actively contribute by referring to the letters he had brought from Sudan confirming his story, Mrs Beaman dismissed this input as irrelevant to the appeal and ignored it. Jacob seemed embarrassed for having made a mistake, and did not attempt to assert himself again during the consultation, but did not appear to resent her assessment, and seemed content remain passive. Clearly the language difficulties reinforced Jacob's lack of engagement with process, but notwithstanding this the lawyer did not strive to include him.

In many ways the entire interaction appears to conform to an extremely traditional model of the lawyer-relationship, under which the lawyer assumes responsibility for the identification and resolution of the client's problem. Jacob did not 'tell his story' to Mrs Beaman, and was not offered the opportunity of doing so. He did not participate in the decision-making process, either to comment on or approve the lawyer's approach to the appeal, and he did not receive

'advice' about his options or an explanation of his lawyer's assessment of his case. I did not observe the appeal hearing at the tribunal but Jacob later told me that he had only spoken to confirm his name. I believe that the first time that Jacob understood the grounds upon which the appeal had been submitted and succeeded was when the decision letter was explained to him by Farouk many weeks after the original consultation. Even accounting for the language barriers, Mrs Beaman appeared to make very little effort to include Jacob in the process, relying instead on her own assessment of the case. This approach did not seem to trouble Jacob, who was very happy when he again succeeded in obtaining NASS support payments, and who consistently spoke highly of the lawyer, grateful for her help.

That the appeal succeeded following such a consultation is a testament to Mrs Beaman's skill in identifying and actioning the legal issues. She was clearly sufficiently knowledgeable of immigration regulations and procedures to realise quickly the flaw in the original decision, and wasted no time after having made this assessment on other less relevant details. Whether Jacob's willingness to put the problem in her hands was due to his own lack of understanding of the real issues and the process, or due to his own lack of appreciation of any alternative approach is difficult to assess. He did explain through Farouk some weeks after the consultation that he believed that lawyers were very smart people and that he would never argue with his lawyer, and perhaps this attitude allowed Mrs Beaman to conduct the consultation and the case as she did. However as an observer, I did not get the impression that Jacob had any real input into her approach to the consultation, or that she would have tolerated any attempt by him to vary the terms of the relationship, even if he had been so minded.

This encounter is unusual amongst the others that I observed, as a rare example of a traditional interaction that produced a positive outcome and a satisfied client. Whereas many of the others also involved traditional lawyer approaches to their clients, very few resulted in successful appeals, or demonstrated such particular (legal) skill and competence on the part of the lawyers involved. It is hard to speculate as to whether Mrs Beaman approached the consultation in this manner from the outset, or whether she adopted this approach as a result of having understood that the appeal could succeed independent of Jacob's contribution.[241] However notwithstanding the success of Jacob's case, the pressures and time constraints of immigration practise, and the translation difficulties in this instance, it is hard to reconcile Jacob's lack of basic understanding about the failure of his original application or the approach to his appeal with any sensible conception of responsible lawyering.

Jacob's case highlights the extent of the reliance on their lawyers by some clients, and their lack of control or influence over their encounters with the law. Clearly Jacob's eventual success was achieved as a result of Mrs Beaman's proficiency, and though his experience may not have demonstrated the quality hallmarks of participation and co-operation, Jacob was nonetheless delighted with the outcome.

[241] Mrs Beaman refused to be interviewed after the consultation, or to discuss the case informally, citing client confidentiality concerns and explaining that she was very busy, and I did not observe her again during the course of the research.

MILTON

I first met Milton in early 2004 in the NASS accommodation that he shared with Charles, an asylum seeker from the Gambia. Charles had just been notified that he had been awarded Indefinite Leave to Remain in the UK, and had contacted me so that I could see his decision letter and celebrate with him. Milton had at that time only recently entered the UK and claimed asylum, and had just been allocated a room in the shared house with Charles and two other refugees. Milton observed my interaction with Charles from his seat in the living room, and then introduced himself. He asked me how I had met Charles, and about my involvement in his case. Charles answered these questions for me, overstating my input and exaggerating my impact on his success. Milton went to his room and returned with his documents.

Milton, a 29 year old refugee from Zimbabwe, had recently claimed asylum in the UK on the basis that his political beliefs and activities had placed him in danger. He was born in Mutoko, a large town 100km from the capital Harare, where he had been an active member of the opposition Movement for Democratic Change. Milton told me how he hated the oppression of the people of Zimbabwe and the corruption of Mugabe's Zanu-PF party. One year ago in March 2003 he had helped to organise and coordinate a national 'stayaway' in protest at Mugabe's 're-election' in 2002 and at the politically motivated imprisonment of MDC leader Morgan Tsvangirai on charges of the attempted assassination of Mugabe.

Milton was coherent and articulate in his narrative. He was clearly intelligent and politically aware. He described the violent reprisals from government forces following successful stayaway campaigns in March and June 2003, and the ensuing round-ups and imprisonment of vocal MDC activists. In his home Mutoko, he told me how restriction of the sale of food was employed as a political weapon, so that 'listed' troublemakers or active MDC supporters were prevented from purchasing basic supplies. In the autumn of 2003 following his contribution to a large demonstration in the town centre, Milton evaded arrest and escaped across the border into Mozambique. From there he made his way across Africa into southern Europe, eventually arriving in the UK some three months later in early 2004. He was not apprehended on entry into the UK, and made his way to a police station in Milton Keynes where he claimed asylum. He was placed in emergency accommodation for 10 days and then transferred to the shared house in Birmingham, where he had been living for almost one month prior to our meeting.

Milton had been given the standard list of local immigration practitioners and had already consulted two different lawyers. He explained to me how the first had kept him waiting for three hours only to allow him less than five minutes for an interview. Milton had been unimpressed with the lawyer and thoroughly dissatisfied with the standard of service, and had immediately sought different advice. He had approached a different lawyer, also from the list, who had been more punctual but little more willing to provide a level of service that Milton deemed acceptable. Nevertheless Milton had allowed this lawyer to help him to formulate the statement that he had submitted to the Home Office in advance of the initial interview with a caseworker.

When we met, Milton had just been notified of the date of his interview, in some 5 weeks time. He planned to return to his lawyer 'to prepare a strategy' for the interview, and agreed that I could accompany him. The following accounts of that encounter, and a subsequent visit to a third lawyer, are drawn from my contemporaneous notes. I also attempted to attend the Home Office interview with Milton, and we travelled together to the interview centre in Liverpool. However the caseworker refused to allow me to be present during the interview, despite Milton' approval, and I rely instead on Milton' account of his experience. My account of a brief visit to a fourth lawyer after Milton had received a decision on his case from the Home Office is drawn from my contemporaneous notes.

Consultation #1

The reception at the Immigration Consultancy Service, a small legal aid firm on the outskirts of Birmingham city centre, is small and already busy when we arrive together at 9.30am. There are no seats remaining, and we wait in a makeshift queue to speak to the receptionist behind a perspex panel in the wall. She recognises Milton and is unwilling to let him see his lawyer or even to make an appointment for him to do so on another day. She explains through the gap at the bottom of the screen that Milton' statement has already been submitted, and that nothing will happen now until he has a date for the interview. Milton informs her that he has already received a date, and that he wants to talk to Mr Cragg, the lawyer, about the interview. The receptionist asks to copy the letter giving notice of the interview date, but notices from the coverletter that ICS had already received it and had themselves forwarded a copy to Milton.

Milton is vocal and persistent in his request to see Mr Cragg, and the receptionist eventually gives in but tells Milton that he is not a priority and will have to wait until a space is available.

Just before 1.00pm the reception remains full, and Mr Cragg passes through on his way out of the building. Milton apprehends him, asking how much longer he will have to wait to be seen. Mr Cragg is carrying a briefcase and looks slightly dishevelled. He is short, middle-aged and does not appreciate being delayed. With a vacant expression he informs Milton that he is on his way to a meeting, and that the receptionist will answer his questions. Milton persists, unhappy at having been kept waiting and unsatisfied with Mr Cragg's dismissal. Mr Cragg looks at his watch and reluctantly asks Milton what it is he wants. Milton explains that he has a date for his interview, and that he wants to discuss the procedure and the case strategy. Mr Cragg refuses to be drawn in. He curtly informs Milton that they have already discussed the procedure for the interview day, and that Milton must make his own way to Liverpool and ensure that he arrives in good time. Mr Cragg or someone else from the ICS will try to attend subject to other overriding commitments. No strategy is required, Milton is just to answer the questions that are put to him. Milton begins asking Mr Cragg about the strength of his case and his likely prospects. Mr Cragg tells Milton that he does not have time to discuss the case anymore and that he has to go now because he is late for a meeting. The receptionist has observed the encounter and knocks on the window beckoning Milton. She then tells him that he has now seen Mr Cragg and that there is no need for a further meeting. Milton colourfully objects, deriding the 'meeting' that has just taken place and making his views on the standard of service plain. After a brief exchange in which the receptionist informs him that he is free to seek advice elsewhere, Milton and I leave the building.

Consultation #2

Milton was scathing about the encounter with Mr Cragg, and about his experiences with lawyers in general since his arrival in the UK. However he remained set in his intention to discuss the strategy for his interview, and informed me that he would now find another lawyer. He agreed that I could accompany him, and we returned together to his house so that he could arrange a new appointment by telephone. Two days later we arrived together at the offices of the Refugee Advice Service, a charity dealing with all aspects of refugee welfare including legal services, situated in a predominantly Asian residential suburb of Birmingham.

Milton' appointment is at 9.30am with Miss Bashir, a legal advisor. We arrive together at 9.15am and are directed by the receptionist straight to Miss Bashir's desk in the open plan office. Milton introduces us and Miss Bashir confirms that she is happy for me to be present. She is in her early 20s and is friendly and welcoming. Milton is holding his papers, and begins explaining his position, and Miss Bashir takes the paperwork from Milton as he tells his story. After a few minutes, having scanned the documents while listening to Milton, Miss Bashir observes that Milton's statement has already been submitted to the Home Office, and asks Milton what he is now looking for.

Milton explains that he is unhappy with his lawyer, and that he wants someone to represent him who will take his concerns seriously. Miss Bashir reads the statement again more carefully, and summarises Milton's position. She explains that his case seems fairly strong, and that the statement has been well prepared. She seems somewhat perplexed by Milton's dissatisfaction,

asking him again what he wants. He describes the recent encounter with Mr Cragg, emphasising his desire to be treated with respect and to have his concerns about the strategy for his interview addressed. Miss Bashir is unwilling to explore Milton's dissatisfaction with Mr Cragg, but is prepared to talk about the strength of his case. She tells him that the Home Office already recognises the difficulties for political dissidents in Zimbabwe, and that assuming that he is able to satisfy the Home Office about the truth of his story, there is a good chance that he will be allowed to remain in the UK. She asks him about the existence of any evidence supporting his story, and he draws her attention to his MDC membership form, and two flyers promoting the national stayaway and the anti-Mugabe demonstration in Mutoko that he had helped to organise. Miss Bashir is impressed with these, and reiterates that she believes that his case is strong.

Buoyed by her encouragement, Milton attempts to talk Miss Bashir through the statement that Mr Cragg submitted to the Home Office. However she stops him quickly, explaining that there is no point going over it now as there is no option to change it prior to the interview. He again asserts his desire to prepare a strategy in advance of the interview, and suggests that in order to do this Miss Bashir will have to discuss the statement with him. She dismisses this, commenting that the statement looks good, and that Milton will not need a strategy aside from being clear and honest at the interview. Milton is clearly unhappy with this suggestion, shaking his head and explaining again that his lawyer ought to be willing to spend enough time on his case to be able to advise him on his best strategy. Miss Bashir disagrees, explaining that she has many other appointments today, and that she is too busy to go over ground that has already been covered. However she placates Milton somewhat by offering to represent him at the

interview if he is sure that he is unhappy with Mr Cragg. She suggests that they could discuss the statement together prior to the interview if time allows. Milton considers this for a moment and then agrees. Miss Bashir then copies some of his documents, and gives him a number of forms to sign. She checks that he is still living at the same address as detailed on his interview appointment letter, and informs him that she will contact him before the interview if she needs to speak to him again. Otherwise they would meet just before the interview in Liverpool. Milton still has more questions, but Miss Bashir politely explains that she has other appointments. She rises, shakes his hand and escorts us back to the reception.

As we leave the building Milton expresses mixed feelings about his new lawyer. He compares her favourably to Mr Cragg, but still has the feeling that he is not being taken sufficiently seriously, or receiving the time and attention that his case merits. He agrees to let me know if Miss Bashir calls him back for a further appointment before the interview.

Home Office Interview

I saw Milton several times in the month following the encounter with Miss Bashir, and he telephoned me at least twice each week. He became increasing nervous as his interview date drew nearer, and more and more frustrated with his new lawyer, who had not contacted him, or returned his calls. He regularly called me seeking reassurance about his position, and my opinion as to whether he should be looking for a new representative for his interview. When we met one week before the interview he explained that he had decided to change lawyers again, as

Miss Bashir had still not contacted him or returned his calls, but on the journey to Liverpool on the morning of the interview day, he told me that he had been unsuccessful in finding anyone else to take his case on.

We arrive at the interview centre in good time, and Milton presents himself at the reception. We are directed to a busy waiting area, and after about twenty minutes a caseworker calls Milton' name. He stands up, and the caseworker comes over to us and explains that Milton is due to be interviewed shortly, but that his representative has just telephoned to explain that she will be unable to attend. Milton is outraged, but the caseworker reassures him that many people are unrepresented at interview, and that the presence of a representative is not likely to make any real difference during his interview. He offers to reschedule the interview if Milton is adamant that he wishes to be represented, but advises that Milton agree to go ahead today as it is better for him to get the interview out of the way. Milton seems somewhat stunned by Miss Bashir's non-appearance, and is unsure what to do. He asks if I can accompany him, but the caseworker refuses to allow me to once he establishes that I am not registered as a representative, and even more so once I explain that I am involved in research. Milton seems defeated at this stage, but agrees that he will go ahead with the interview. I take a seat in the waiting area as Milton follows the caseworker to an interview room.

After just over an hour Milton returns to the waiting area. He looks much brighter and he gives me an account of the interview over coffee and in the car on the journey home. His overall impression is that the interview went well, and that the caseworker was sympathetic to his position. He was asked to tell his story in his own words, and was given the opportunity to

present and explain his supporting evidence. The caseworker asked many questions about Milton's story and his statement that had already been submitted, taking notes throughout. Milton is sure that he was clear and consistent in all of his answers, and that the caseworker understood and believed him. At the end of the interview the caseworker wished him luck and Milton is sure that this is a good sign.

Milton's relief at his positive interview experience is tempered by his anger at Miss Bashir for failing to attend. His account of the interview on the journey home is continually interrupted by his reflections on the failures of his legal representative, both to have engaged with him prior to the interview, and particularly for her non-attendance on the day. By the time we reach Birmingham he is convinced that should his asylum claim fail he will bring an action against Miss Bashir for her conduct in his case.

Outcomes

Almost two months following the interview, Milton received notification of the Home Office decision that his application for asylum in the UK had been unsuccessful because he had not demonstrated to the satisfaction of the caseworker that his political activities in Zimbabwe were such that he now warranted asylum. However the caseworker had accepted that as a consequence of his membership of the MDC, and the fact that he had made an unsuccessful application for asylum in the UK, there was a realistic prospect that Milton would face a serious risk to life or person arising from unlawful killing or torture, or inhuman or degrading treatment

should he be returned to Zimbabwe. Accordingly Milton had been granted Humanitarian Protection in the UK which entitled him to remain in the country for a period of five years, or until such time as the political situation in Zimbabwe no longer gave rise to concerns about the risks that Milton would face on his return.

Milton's relief that he would not face return to Zimbabwe was tempered by his feelings of injustice at the failure of his asylum claim. As a single man without family or dependents in Zimbabwe, the effective differences between asylum and Humanitarian Protection were not pronounced.[242] However Milton felt that the rejection of his asylum claim represented a rejection of the validity of his experiences in Zimbabwe, and of the veracity of his decision to flee to the UK. These feelings, combined with his continuing dissatisfaction with his treatment at the hands of the lawyers that he had encountered, served as the basis for his decision to seek further legal advice about the possibility of challenging the decision about his asylum claim, and about any claim that he might make against his previous legal representatives.

I saw Milton on two occasions after he received the decision from the Home Office, but lost contact with him after he was moved from his NASS accommodation and re-housed by social services shortly after being granted Humanitarian Protection. We met again by chance in the city centre almost one year later, went for a drink together, and Milton told me about his experiences over the previous year. He had found it very difficult to find regular work, but had spent time doing a variety of different jobs ranging from selling flowers to cleaning windows.

[242] The main difference being that an award of Indefinite Leave to Remain (asylum) automatically gives rise to the right to bring family dependents into the UK, whereas HP does not.

He had sought to challenge his asylum decision, and to address the shortcomings of his legal representation, but had been unable to find a lawyer who was willing to entertain him on either point. He was bitter and disillusioned about his experiences with the law, and blamed his lawyers for his 'unsuccessful' asylum claim. He spoke disparagingly about the lawyers that he had encountered, and what he understood to be the norms of immigration practice. He resented having been treated 'like a commodity and not a human being,' and having never been able to command the type of relationship with his lawyer that he believed would have made a difference to the outcome of his case.

In March 2006, against a political backdrop of national hysteria regarding immigration, the UK government attempted to return some 10,000 Zimbabwean nationals residing in the UK under Humanitarian Protection, or other limited leave to remain provisions back to Zimbabwe in advance of presidential elections in June 2006. The prospect of this influx gave rise to a number of contradictory statements from Zimbabwean government representatives, and many of the 'removals' were successfully challenged in the UK courts. By this time I had again lost contact with Milton, and I am unaware if he was amongst those returned to Zimbabwe.

Comment

Milton was unhappy with his interactions with each of the lawyers that he encountered. He was a big personality with considerable confidence in his own opinions, who felt that he deserved more than the routinised treatment that he received. Of all the individuals I observed, he was

the only one for whom a 'successful' legal outcome did not give rise to satisfaction about his experiences of interaction with the law. Milton would perhaps argue that he was not successful in his claim for asylum, and my uncertainty about his eventual fate supports this. However in real terms a grant of Humanitarian Protection in 2004 did equate to a grant of ILR except insofar as it did not extend to entitling the individual to bring family members into the UK, which in Milton' case was not a consideration.

Each of Milton's encounters with his lawyers can clearly be seen as an example of traditional model lawyer-client interactions. The first lawyer that Milton approached had kept him waiting for several hours only to eventually spend five minutes with him. Milton terminated the relationship following this interaction, in response to his perception of the inadequacy of this level of service, and presumably because he believed that he would find a better standard elsewhere. In fact, his second lawyer, Mr Cragg, did at first do better, although Milton's summary of that encounter was that Mr Cragg wrote the statement that was submitted to the Home Office, with little reference to Milton's own assessment of the importance of different parts of his narrative. That Miss Bashir considered the statement to be well written may be a testament to Mr Cragg's skill, or perhaps to Miss Bashir's incapability, but either way, Milton did not receive the type of participatory involvement in the process that he so desired. Milton's second encounter with Mr Cragg revealed that the lawyer was not prepared to discuss interview strategy, case strength or to devote any further time to Milton's case. This interaction could hardly have been less participatory under any analysis. Whereas others that I observed might have accepted their lawyer's views about the value of 'strategising,' Milton remained resolute in his own opinion about the importance of being properly prepared for his interview. This,

coupled with his anger at Mr Cragg's 'rudeness' in dismissing him prompted him to seek the alternative representation that he found in the form of Miss Bashir.

The consultation with Miss Bashir was also an example of an extremely traditional model interaction. She was prepared to briefly discuss Milton's prospects of success, and to provide some reassurance about the work that Mr Cragg had already done, but she was not prepared to address either of Milton's main concerns to plan his interview strategy, or to air his dissatisfaction with Mr Cragg. Perhaps his decision to engage her was as a result of her willingness to help him in comparison to Mr Cragg, although from the outset Milton's concerns about her commitment to his case were manifest. Her subsequent refusal to reply to his calls, and eventual failure to attend his interview in Liverpool despite her assurance that she would do so only served to confirm his unfavourable view of the service that he received, and clearly help to identify the relationship in traditional model terms.

The legal aid funding regime clearly played a part in the approaches taken by both of Milton's lawyers. Mr Cragg would no doubt have been aware that no additional work done for Milton after submission of his statement would attract any remuneration, except for attendance at his interview. Similarly, Miss Bashir's refusal to return Milton's calls could also be understood in this context, as could her willingness to represent him at interview, but subsequent failure to do so.[243] Indeed her explanation that once submitted, Milton's statement could not be amended was misleading, as additional statements can be submitted in advance of interview. However,

[243] A number of the practitioners that I interviewed explained that attendance at Home Office interviews is often considered to be an inefficient use of resources by immigration practitioners, especially where the interviews are being conducted some distance away, as the fee scales do not reflect the opportunity cost of the time taken in transit.

no further legal aid remuneration is available for such additional statements save in exceptional circumstances. Milton's subsequent failure to engage any lawyer either to appeal against his asylum refusal (in the face of the award of HP) or to support him in an action against Miss Bashir, is unsurprising given the lack of public funding for these actions.

Milton's overall dissatisfaction with his lawyers was ultimately a function of his understanding of, and objection to these norms of immigration practice, and his belief that he ought to have been able to receive a better quality of service. In this sense his dissatisfaction was enhanced by his own intelligence and expectations, and represented an objection to the traditional model of interaction in an immigration context. [244]

[244] That he blamed the lawyers for the outcome of his case is unsurprising given his feelings of marginalisation, although my own assessment is that he would have been unlikely to have succeeded in obtaining ILR in the face of an apparent policy to grant HP and not ILR to Zimbabwean refugees. Furthermore, given that he was successful in obtaining HP, it seems unlikely to me that Miss Bashir's attendance at the interview in Liverpool would have made any significant difference to the outcome of his case.

DOMINIC

Dominic is 35 years old. He is attractive, softly spoken and well educated. He is an only child, and has never married. He qualified as a veterinary surgeon in Algiers, Algeria in 1996 and joined a small practice in the Biskra region in northern Algeria, a rural area where he lived with his mother. He speaks Arabic and French fluently, and his English is fair. In 2001 he bought the veterinary practice when the owner retired, investing everything he owned in new equipment and instruments. As one of few other vets in a well-farmed region, business was good and Dominic lived comfortably. He often travelled to his patients, but had been working in the practice one afternoon in April 2003 when he was visited by three armed men. They entered unannounced and explained that they were rebel fighters and wished to take Dominic to their camp in the mountains to attend to wounded horses. On arrival in the camp, Dominic was shocked to find several men with bullet and shrapnel wounds, mostly to their arms or legs. He was informed that there were no injured animals, but that as they had been unable to find a doctor, they wanted him to treat the men. He did what he could, and when he had finished he was taken back to the practice.

Three days later the men returned, telling Dominic that he was needed again as an explosion in the camp had injured many men. Dominic saw no alternative and took what supplies and treatments he had and went with the soldiers. He spent that day in the rebel camp, and late that night was taken to a different camp some hours drive away. On arrival Dominic found many men with terrible injuries in a makeshift hospital. He attended as best he could dressing and

stitching, but several of the men had bullet wounds in the chest and stomach and he did not know how to treat them except to tranquillise them. In the morning when he had done all he could, one of the soldiers took him back to the first camp, and he was eventually returned to the practice.

Dominic says that he was badly shaken by this experience. He had agreed to go because he had feared to refuse, and he was sure that the soldiers would return again before long. One week later they did, the now familiar soldier describing further wounds and advising him to bring supplies for several days. This time Dominic told the soldier that he had appointments that afternoon, and that he could not come. The soldier agreed to return to the practice that evening and warned Dominic that if he did not cooperate they would find him and kill him. The soldiers left, and Dominic returned home and explained all to his mother. He packed clothing and personal effects, and went to the home of a family friend some miles away. Late that night his mother telephoned anxious and distraught. She reported that soldiers had come to the house looking for him, and on learning that he was not there had told her that they would kill him when they found him. Early next morning he returned home, where his mother begged him to save his life and to flee. He gathered his possessions and valuables and said goodbye to his mother. He then drove to the practice for some documents and instruments, only to find that it had been set alight the night before and now lay ruined, smoking.

Dominic travelled across Algeria to Morocco, where he eventually secured transport into Europe and on to the UK. In May 2003 he claimed asylum in a police station in Dover. He was transferred to the immigration centre in the city, and was allocated temporary accommodation

in Birmingham. Dominic received £37 weekly from NASS which he collected from a post office near his apartment. After three weeks he had spent the remainder of the money he had brought with him from Algeria, and was finding it increasingly difficult to manage. He had led a solitary life since his arrival in Birmingham, knowing no one around him and having little to do. He often wandered the city centre in the daytime, walking the mile from his apartment, familiarising himself with the city and looking for work.

In late June 2003 Dominic was notified that his application for asylum in the UK had been refused. The adjudicator had not accepted that Dominic's life was in danger as a consequence of his refusal to help the rebels, and citing the Country of Origin Report assessment that rebel forces were not known to be active in Biskra or the surrounding region, questioned the truth of Dominic's account. The application had also been rejected on the basis that even if Dominic's story was accepted, there were regions in Algeria under the control of government forces that were therefore considered safe for Dominic to return to. The adjudicator had had some difficulty in understanding why Dominic had left Algeria altogether when he had could have escaped the rebels' reach in Algiers. His NASS benefits were withdrawn following the decision, forcing him to work longer hours at the warehouse where he had found work packing fruit.

I first met Dominic when he came to the MRC looking for assistance in reinstating his NASS benefits. His lawyer had apparently submitted an appeal two weeks before, but Dominic was still not receiving NASS payments. An advisor at the MRC telephoned the lawyer's office for the appeal reference details, and a NASS caseworker agreed to reinstate payments pending the

outcome of the appeal. Dominic was very receptive to my interest in his case, and he told me his story over coffee that afternoon. He was extremely anxious that his appeal would succeed, as he was determined not to return to Algeria. I had not encountered his lawyer, Mr Razzaq, during the course of my research, and I asked him about his experience preparing the appeal. He seemed confused by my question, and it emerged during our discussion that the extent of his contact with the lawyer had been a five minute consultation during which time he had given over his documents and signed a number of forms. Dominic assumed that he would be given the opportunity to make a further statement when the appeal was heard, and that the lawyer would contact him should he need further details. Dominic did not seem troubled by this process, and he confided to me that a friend from the warehouse where he was working had recommended the lawyer, who was known to win many more cases than he lost.

I saw Dominic several times in the weeks following out first meeting. His appeal had been heard in the absence of both Dominic himself and his lawyer, and was rejected in late July 2003, although he did not learn of this for over six weeks. He had been anxious about progress, and we had attempted to contact Mr Razzaq together several times, but the office always seemed to be locked and phone calls went unanswered. Dominic realised that something was wrong when his NASS support was again withdrawn and he received a notice advising him that he was to now leave the UK or be deported back to Algeria. He telephoned me in a panic one morning and we went again to the lawyer's office only to find it locked and deserted. After first hearing his account of the consultation, I had discussed the matter with Mr Watkins, the legal advisor at the MRC, who had agreed that it was unusual, but had suggested that I should not

interfere. Unsure of how else I could now help, and regretting my earlier inaction, I suggested to Dominic that we go together to see Mr Watkins at the MRC.

Mr Watkins read the deportation notice, and recalled that I had discussed the case with him previously. He had never encountered Mr Razzaq, and had not heard of similar complaints from other clients, but he telephoned the lawyer's office, and getting no reply he called first NASS and then the immigration department at the Home Office to ascertain the position. He was informed that the appeal had been rejected in July, and that as no further appeal to the tribunal had been entered within the 30 day deadline, the deportation process had been initiated. A copy of the appeal rejection was faxed to the Refugee Council. It was very brief and simply upheld the original refusal on the grounds that no new arguments or evidence had been put forward. Mr Watkins was sympathetic to Dominic, who took the news in stunned disbelief, shaking his head slowly back and forth, but there were other appointments waiting, and Mr Watkins explained that he was not registered to give appeals advice anyway. He cautioned Dominic that the appeal to the IAT was usually the last option in immigration cases, and that he was not sure that anything else could be done. Furthermore, NASS benefits could not be reinstated once a deportation notice had been served. He referred us to the Refugee and Asylum Support Network (RASuN), a charitable organisation employing immigration lawyers in the city, suggesting that they might be able to help.

The RASuN office was situated in a converted residential property on a busy street in a predominantly Asian suburb some three miles from the city centre. We waited briefly in a sparse reception room before we were directed through into a large open plan office where

several people were seated behind desks busy with different activities. A middle aged man looked up as we entered and gestured us towards him. He introduced himself as Mr Carrick, a lawyer, and asked us how he could help. Dominic gave him the appeal rejection that had been faxed to the MRC, and the deportation notice, and explained that he had only just learned of the outcome because his lawyer had disappeared. Mr Carrick listened to Dominic as he glanced over the paperwork and searched for something amidst the piles of papers on his desk. He started to explain to Dominic that having missed the deadline for an appeal to the tribunal, Dominic would now need leave to submit an appeal, or to appeal to the High Court. Dominic interrupted, and explained that he suspected that his lawyer had not done the appeal properly, as they had never even discussed the case together. Mr Carrick listened as Dominic gave an account of his original consultation with Mr Razzaq and subsequent failure to contact him.

Mr Carrick was not optimistic about Dominic's prospects, as bad legal advice was not a ground for a further appeal. He explained that he would not usually be able to do anything at this stage in a case, but he conceded that Dominic's case was interesting, especially as on the basis of his account of the consultation with Mr Razzaq, it seemed that he had lost his right to a genuine appeal because of a failure of his lawyer. This was different from a case of bad advice about the merits of an approach to an appeal, and might constitute a breach of Dominic's right to a fair trial. However, looking through the paperwork Mr Carrick noted that the appeal had been properly initiated, and suggested that having engaged the lawyer Dominic was ultimately responsible for his actions in furthering the case, and that on that basis he would most probably fail in any attempt to re-examine the decision. Regardless of this, any challenge to the validity of the adjudicator's decision would usually have to be lodged within 30 days of the judgment,

which had now elapsed as Dominic had never received the details at the time. With regards to NASS support payments, it was unlikely that these could be reinstated unless Dominic was given leave to submit a further appeal. With this said, Mr Carrick informed us that he was too busy at present to help Dominic anyway, and actually had to leave for another appointment elsewhere, and advised that Dominic's best option was to find someone to help him to submit an application to the High Court to overturn the appeal decision or to direct that the appeal be reheard on the grounds that his human rights had been violated.

I had remained silent to this point in the conversation,[245] when Mr Carrick asked me casually about my connection to Dominic. I introduced myself, and briefly outlined my research, and he quickly suggested that I should help Dominic with the application. He then stood up, explaining again that he had to leave. Dominic seemed happy with this solution, but I was far more realistic in my assessment of my capabilities, and pressed Mr Carrick to reconsider or at least to refer us to an alternative lawyer. He dismissed my concerns, explaining that assembling an application would be straightforward and that a lawyer would be more likely to get involved once the court had agreed to hear the application. He extracted a bundle of papers from a pile on his desk, an unrelated application for judicial review of an appeal decision, and quickly talked me through the required elements and procedures. He photocopied the contents page and gave it to me, along with a number of relevant blank forms. He explained that the application should be made out in Dominic's name and that it should declare that he was acting for himself

[245] I was accustomed to introducing myself and revealing my purpose at the first opportunity once a consultation had commenced, however on this occasion I had not yet done so. This was partly due to the speed at which the consultation began once we entered the lawyer's office. My concerns and experiences of informing the lawyers I encountered in interactions of my identity are discussed further in chapter 9.

without legal representation. I reluctantly took the paperwork, and we thanked the lawyer and followed him out of the office.

We spent several hours writing up the arguments, compiling the paperwork and copying and assembling the bundles.[246] We posted the completed application, in triplicate, according to Mr Carrick's instructions, and each retained one further copy. Dominic repeatedly expressed his gratitude, concerned that he was imposing upon me and that I must have other responsibilities aside from helping him. But he was subdued, having understood the lawyer's misgivings about his case and the obstacles to the success of this application. He told me that he was now intent upon moving out of his NASS accommodation and disappearing before he could be deported, and I agreed that he could use my address at the university on the application.

Outcomes

Dominic moved out of his apartment and went into hiding on the day following the encounter with Mr Carrick. In mid September 2003 I received notice that he had been refused leave to submit the application for judicial review, as the application had been made outside of the deadline, and without adhering to the proper procedure. Thus his final chance had failed, and with it his hopes of discontinuing his illegal underground existence. His fruit packing earnings had been sufficient for his needs when NASS had provided accommodation and support, but the withdrawal of these benefits and the prospect of paying rent meant that Dominic needed to increase his income. He worked long hours at the warehouse, and stayed for some months on

[246] I am grateful to the School of Law at the Univeristy of Birmingham for the use of the photocopier.

the sofas of various acquaintances, before finally managing to save enough money for a security deposit on a small rented bedsit near the city centre.

Living illegally in the UK, Dominic was always cautious and avoided all contact with official institutions. He became heavily reliant on a few close friends, whose support and accommodation stopped him from choosing between homelessness and desperate poverty. He quit the job in the warehouse in June 2004, after he and a friend found work fitting carpets in Coventry. They were paid in cash for each fitting, and Dominic earned more than he had at the warehouse despite working fewer hours. He rented a shared house with two other carpet fitters which was a considerable improvement on the bedsit in Birmingham. His immediate needs were secured by his income, and he bought a cheap old car in September. The prospect of being apprehended and deported always worried him, and he obtained several false identifications that he hoped would pass scrutiny in an emergency. With more time to relax he often drove to Birmingham to see friends, but he became increasingly depressed at his lack of prospects and his life in the shadows.

Today Dominic still lives in Coventry, and still works fitting carpets. He now seems reconciled to his position – a stark contrast to his comfortable life in Algeria, and is less anxious about living illegally. He is settled in Coventry and has many friends in similar circumstances. The Home Office still holds his passport but he remains determined not to return to Algeria. He has not worked as a vet since arriving in the UK, and is resigned to never doing so again. His long term prospects are obviously troubling, and he feels powerless and unable to take control of his future.

Comment

Dominic's case was one of the most troubling of all that I encountered, and reveals serious flaws both in the professionalism of his lawyer, and in the immigration process itself.

Dominic approached Mr Razzaq because he understood that he needed the assistance of a lawyer in appealing against his asylum refusal, and he came to the MRC seeking help in reinstating his NASS benefits. Dominic had no useful knowledge of the immigration process, or what to expect from his interaction with a lawyer, and this was surely a factor in his unfortunate relationship with Mr Razzaq. Dominic is very unassuming and modest. He does not like to make a fuss, or to protest, and he is trusting and optimistic. During interactions he was deferential and never challenged the type of service that he received.

Dominic's interaction with Mr Razzaq can at best be described as an extremely traditional encounter, where the lawyer took responsibility for the identification of his client's problem, and the appropriate resolution, entirely without discussion or reference to Dominic. This approach would have been suspect even if deployed in a paternalistic and benevolent manner, but in Dominic's case these more admirable motivations were clearly absent. Dominic became distressed once he appreciated the implications of his refusal following Mr Razzaq's disappearance, however he was naïve about the professional integrity of his lawyer and ironically had remained satisfied up to that point, confident that the lawyer had come well recommended. Whether Mr Razzaq's handling of other cases was as poor as in Dominic's case is unclear, although his continuing disappearance does not attest to a quality reputation and a waiting room full of satisfied clients. It is hard to speculate about what motivated him in his

approach to Dominic's case, however it seems to be an extreme example of lawyer routinisation of his workload and lack of concern for his client's participation of welfare at any level.

That Mr Razzaq did actually submit an appeal, albeit one raising 'no new evidence or argument' actually served to make things worse for Dominic, who would have been better off without such assistance as he would have been free to go elsewhere. Once he realised the problem when his benefits were withdrawn, it was then too late as the appeal deadline had passed. Mr Carrick was clearly overworked and uninterested in a failed appeal, and even once he understood the issues he was unwilling to do the work 'for nothing'[247] and was only prepared to offer questionable help, when pushed.

Compared with the other experiences that I have documented, Dominic's story is an extreme example of poor quality lawyering, highlighting the potential for the abuse and exploitation of dependent clients by unscrupulous lawyers,[248] and a lack of willingness in the profession to address injustices in difficult individual circumstances. It is ironic that though his case ended in complete failure, and that all his encounters with lawyers were at best not really-client centred, Dominic was not bitter about his experiences, and remained grateful that he had escaped deportation. Dominic's case is tragic as through his encounter with Mr Razzaq he became a victim of circumstances beyond his own control that served to deprive him of the due process

[247] It is lamentable that of all the organisations serving refugees, a charity whose object is to provide assistance to needy individuals would refuse to help a desperate refugee, with a reasonable case, who had by no real fault of his own exhausted his legitimate options.

[248] I pressed Dominic to pursue a claim against Mr Razzaq through the Law Society, but he adamantly refused to have any further contact with official institutions, convinced that this would result in his eventual apprehension and deportation.

of a genuine appeal, but is unfortunately typical of many other cases where 'dependent' clients received poor service resulting in unsuccessful outcomes.

BAAKO

Baako entered the UK illegally in August 2003, having spent several weeks attempting to do so from one of the notorious refugee centres in northern France. Originally a furniture craftsman from the Democratic Republic of Congo, he fled the bloodshed of the civil war making his way into Italy, through France to the UK. He is 30 years old, and had a wife and three children before they were killed during a massacre near his home in Ituri.

Baako was discovered by Customs officials in Dover with six other men hiding in a lorry. He claimed asylum in the UK and was processed at the Dover immigration induction centre, before being allocated temporary accommodation in the Birmingham area. Baako is very reserved, almost withdrawn, his manner alluding to the tragedy in his life. He speaks English reasonably, although he rarely speaks at all and never seems comfortable in company. Baako waited four months for his asylum decision, during which time he looked unsuccessfully for work. He had been allocated accommodation but his weekly NASS subsistence payments were stopped shortly after he was declined asylum in the UK. I first met Baako when he came to the Midland Refugee Council looking for advice for his appeal. The following accounts of that encounter, and the subsequent visit to an immigration law clinic are drawn from my contemporaneous notes.

Consultation #1

A tall, casually dressed man approaches the desk apologetically. He stoops slightly and does not make eye contact. Mr Watkins checks that he has come for legal advice, before offering him a seat and reaching for the papers the man is holding. He reads aloud the name and address details from an asylum decision letter, writing them down in his pad. He then inspects the decision letter – a refusal, waving his hand to halt the man - Baako who has started on his introduction of his problem. Baako stops speaking, waiting for Mr Watkins who finishes reading then remarks on the number of other Congolese refugees he has seen. He reassures Baako that many remain in the UK. He explains that he will have to refer Baako elsewhere as he cannot act in appeal cases, and gives him a flyer for an advice clinic run by a refugee charity called ASIRT with directions to their offices. Baako seems confused by the redirection and Mr Watkins repeats it. He reassures Baako that the lawyer will look after him, and volunteers that I will accompany him there if he wishes. Baako is non-committal but Mr Watkins presses the matter and Baako concedes.

Mr Watkins enquires if he can do anything else, and Baako explains that he is worried about his NASS accommodation now that his support payments have ceased. This problem is familiar and Mr Watkins seems pleased to be able to action something. He explains how support payments should not be stopped within the appeal deadline, but how more and more people seem to be faced with this position. Without further explanation he picks up the telephone and dials one of the numbers on the notice board by the desk. After several minutes on hold he identifies himself, and explains to the NASS caseworker that he is calling on behalf of Baako

whose NASS support payments have been stopped, giving the reference number from the refusal letter. Mr Watkins passes the phone to Baako who takes it quizzically, listening briefly before confirming his name then returning the phone to Mr Watkins. Mr Watkins explains that Baako is in the process of submitting an appeal and that his support payments should be reinstated pending the outcome. The caseworker seems to want appeal reference details, but Mr Watkins explains that the appeal has not yet been lodged, but that NASS support should not have been withdrawn at this stage. Mr Watkins is forceful and authoritative. When the caseworker apparently stands by the necessity of the appeal reference precondition, Mr Watkins becomes aggravated, explaining dramatically that Baako is destitute having received no support for 10 days, and urging the caseworker to authorise an interim payment in advance of the appeal details. The caseworker agrees, and Mr Watkins concludes the conversation. He replaces the receiver and reports his success to Baako, who is grateful. Mr Watkins directs him to return if he has further problems, and to tell the appeal lawyer to forward the necessary details to NASS. He then gathers Baako's papers, and the ASIRT flyer, and hands them to Baako, telling him that he and I should go together now to the offices. Baako thanks Mr Watkins, and me, and we both leave together.

Consultation #2

ASIRT operates from a run down office building in the Digbeth area of Birmingham, some five minutes walk from the MRC. Amongst other services, it runs a drop in law clinic for refugees and asylum seekers two afternoons each week. Appointments with the lawyer and the two advisors retained by the charity cannot be booked in advance, and the clinic works on a first

come first served basis. We arrive towards the end of the afternoon, and the waiting area is busy. We join a queue for a receptionist, who eventually ascertains that Baako needs help with an appeal and directs us to the queue for Mr Ibrahim. Almost an hour later we enter a small office cluttered with legal bundles piled high on every available surface. Mr Ibrahim is a small man in his early fifties, sat behind a large desk, who introduces himself gently. I explain who I am and my connection to Baako, but he seems unconcerned and keen to get on with the consultation. We sit down, and Baako hands over his papers. Mr Ibrahim scans the refusal letter, glancing up to regard Baako intermittently. He asks if Baako understands why he has been refused asylum. Baako answers that he does understand. The lawyer pauses, inviting a response from Baako, who remains silent, his gaze focussed on the paperwork on the desk.

Mr Ibrahim challenges Baako with the reasons cited in the refusal. The Home Office caseworker had been unconvinced by Baako's account of the threat that faced him in the Congo. He had apparently given inconsistent and contradictory answers during interviews, and had no evidence corroborating his story, not even a photograph of his murdered family. He had also admitted that he had been motivated in part by financial considerations and his perception of the likelihood of finding employment in choosing to seek asylum in the UK, reinforcing the caseworker's suspicions about the application. Baako says nothing, simply shaking his head. Mr Ibrahim is brusque and businesslike, putting the caseworker's points dispassionately and forcefully. Baako seems taken aback by the questions, unsure how to respond. Mr Ibrahim continues. Baako had apparently failed to demonstrate in his application that he himself faced danger in the Congo. The caseworker was of the opinion that even if he accepted Baako's account of the murder of his family, this did not of itself demonstrate that Baako was in danger.

Finally asylum was declined as according to the latest Foreign Office report, though Baako's home in the Ituri region was recognised to be lawless, Kinshasa and other regions of the Congo were now established to be under the control of Government forces who were able to offer sufficient protection for individuals at risk from non-state agents. Therefore regardless of Baako's assertions, parts of the country were considered to be sufficiently stable to render his application unsuccessful.

Baako becomes very distressed as the lawyer articulates these reasons. Tears escape his eyes and he wipes at them nervously with the back of his hands. He explains that he had to leave everything he owned behind because he had to leave quickly and that he had told the truth. At the mention of his family he starts to shudder and sob, hiding his face behind his hands. Mr Ibrahim seems unmoved. He probes Baako sceptically, attempting to elicit responses to the specific grounds cited in the refusal. Baako does not perform well under this scrutiny, repeating that he told the truth and that he fears for his life in the Congo. Baako cannot accept that his home in the Congo is safe, but his beliefs do not move Mr Ibrahim who changes tack, addressing the appeal. He muses that he could challenge the insinuation that Baako came to the UK as an economic migrant, as it is not unreasonable to include economic considerations in the decision about where to seek asylum, assuming that there is a genuine need to seek asylum. He makes a note of this point, before advancing another – that asylum be granted discretionarily on humanitarian or compassionate grounds in light of the murder of Baako's family. Baako does not understand and Mr Ibrahim explains in simple language that Baako can ask for asylum because a terrible thing had happened to him and he wanted a new start. But it would be better if Baako could find some evidence of his family such as a marriage record or a child's birth

certificate, because the lack of evidence had been a problem for the caseworker. Baako seems very uncomfortable with the approach. He does not have any documents, and does not know how he could get hold of them. And he says he does not like the idea of begging to remain in the UK. Mr Ibrahim seems incredulous at Baako's comment. He asks him to clarify it, and Baako explains that he believes that as he is in danger in the Congo he should be granted asylum, and he should not have to beg for it. He says he has only his dignity, and that he will keep it. The lawyer is dismissive. He tells Baako that if he really fears for his life in the Congo and wants to remain in the UK he has few options and should listen to the advice. Baako seems shaken by the lawyer's bluntness. Mr Ibrahim seals it, asking if Baako wants him to do the appeal or not. Baako quickly concedes, and Mr Ibrahim picks up Baako's papers, leaves the room then, quickly returns with photocopies. He begins filling out various forms, passing other documents cursorily before Baako for a signature. After a few minutes, he stands up, indicating that the consultation has now concluded. He instructs Baako to inform him should his address change, and assures him that he will be in touch with any developments. As we leave I explain that Baako's NASS payments have stopped, and the details of Mr Watkins's earlier involvement, and Mr Ibrahim pauses briefly to make a note of this before escorting us out of the office.

Baako is clearly dejected by the experience. I ask him how he feels it went, and shakes his head – badly. He curses the lawyer for not respecting him, and the system for refusing him asylum, and confides that he is not confident with this lawyer and may try to find another one. We exchange telephone numbers, and he agrees to let me know when receives a date for his appeal.

Outcomes

I have not seen Baako since the consultation with Mr Ibrahim. Despite his promise, he never contacted me before his hearing, and the telephone number he gave me was no longer connected when I called it some weeks later. In the months that followed, I returned to ASIRT on several occasions with other refugees. I became acquainted with the receptionist, who had seen me on a number of occasions and shown some interest in my research, and in July 2004 I told her about losing contact with Baako after his consultation and asked her about the outcome of his case. She could not access the file which was located in Mr Ibrahim's office, but she found a record on the computer system showing that Baako had lost his appeal, and that the case had been closed. His correspondence address had been deleted, which she explained meant that Baako had most probably been deported.

Comment

Baako's attitude towards his interactions with both Mr Watkins and Mr Ibrahim was for the most part deferential and subordinate, and his experience with his lawyers provides a stark contrast to Luthesi's experience with Mr Ahktar. From the outset, Baako appeared to be reticent and withdrawn, and uncomfortable in his contact with the system, and perhaps this impression of him led Mr Watkins to handle his case in such an autonomous manner. That his NASS benefits were reinstated pending his appeal, despite the initial unwillingness of the caseworker, attests to Mr Watkins's experience in such matters. Though Mr Watkins was clearly not overly

concerned with including Baako in the process or seeking his approval in advance of his action, he was willing to improvise and deploy information about Baako's financial position that helped to persuade the caseworker to approve the request. Despite this successful aspect of his encounter, the lawyer's inability to help with the appeal, and his approach to the interaction in general left Baako feeling unimpressed with the consultation.

His experience with Mr Ibrahim left an even worse impression. The lawyer was clearly very busy, and quickly adopted a challenging approach after Baako initially failed to articulate clearly the merits of his own case. The lawyer was concerned to elicit information of use to the appeal, but he assumed control of this process and structured the consultation according to his own identification of the salient issues. He was unsympathetic in his presentation of the grounds for refusal, confronting Baako in an adversarial and non-cooperative manner, and Baako's distress at this approach also failed to alter the lawyer's attitude. When Baako did protest, invoking his dignity and his unwillingness to 'beg' for discretionary leave, Mr Ibrahim reasserted himself by dismissing Baako's objection and threatening that he would not act in the appeal, and Baako quickly conceded. As a refugee in an unfamiliar environment, without the practical or emotional support of a social network behind him, Baako clearly understood his lack of options, and so was unwilling to walk away from Mr Ibrahim. Only after the consultation had concluded did he express his intention to find a different lawyer, although having formally engaged Mr Ibrahim for his appeal, Baako would not easily have found another lawyer willing to act for him.[249]

[249] Legal aid is only available once at each stage of the application process.

Baako was clearly dissatisfied following his encounter with Mr Ibrahim. He did not really approve of the grounds identified by the lawyer, and he objected to not having been respected. His remark about seeking help elsewhere demonstrates that he recognised to some extent Mr Ibrahim's contribution to his dissatisfaction, although this understanding came too late for anything to be done about it. The lawyer, though apparently unconcerned with his client's perceptions of the process, did at least seek to address the appeal. He recognised the necessity of eliciting appropriate information from Baako, and the importance of evidence in support of the application, and did interpret grounds for the appeal from Baako's responses. However his approach to this process contrasts completely with the more sensitive and participatory approach employed by Mr Ahktar in Luthesi's case, and Baako's dissatisfaction with his experience was evident well in advance of his receipt of the decision on his appeal.

That Baako eventually failed in his appeal is unsurprising given the lawyer's swift treatment of the issues. The approach identified by Mr Ibrahim sought to challenge the validity of some of the grounds on which Baako's application had been declined, but did not address the key obstacle presented by the Foreign Office assessment of the safety of certain areas of the Congo. Unlike Mr Ahktar, whose creative response to this problem in Luthesi's case allowed for a successful challenge, Mr Ibrahim never attempted to respond to the real objections to Baako's application. In this sense, the appeal was most unlikely to have succeeded.

Baako's case was regrettably representative of many of the others that I observed, and serves as an unfortunate model of the poor quality service and the resulting unsuccessful outcomes that many refugees who are unable to command any better receive. Baako's eventual dissatisfaction

with his lawyer, his consultations and his outcome were hardly surprising in light of his experiences documented here.

INTERPRETATION

All 26 of the powerless clients that I observed, and whose experiences are the subject of this chapter are detailed below in Table 2.

Table 2: Powerless Clients

Client	Interaction	Outcome	Satisfaction	Country of Origin
Luthesi*	Participatory	Success	Yes	Somalia
Wasim*	Participatory	Failure	Yes	Iraq
Middar*	Participatory	Failure	No	Algeria
Jacob*	Traditional	Success	Yes	Sudan
Nassor	Traditional	Success	Yes	DRC
Charles	Traditional	Success	Yes	Gambia
Milton*	Traditional	Success	No	Zimbabwe
Dominic*	Traditional	Failure	Yes	Algeria
Baako*	Traditional	Failure	No	DRC
Marcel	Traditional	Failure	No	Algeria
Ayaan	Traditional	Failure	No	Somalia
Rashid	Traditional	Failure	No	Afghanistan
Ajmal	Traditional	Failure	No	Sudan
Haresh	Traditional	Failure	No	Burundi
Mukul	Traditional	Failure	No	Albania
Manny	Traditional	Failure	No	Algeria
Bassam	Traditional	Failure	No	Albania
Chuma	Traditional	Failure	No	Iran
Fatmir	Traditional	Failure	No	Kosovo
Abrahem	Traditional	Failure	No	Iraq
Habimana	Traditional	Failure	No	DRC
Phillippe	Traditional	Failure	No	Ivory Coast
Daweed	Traditional	Failure	No	Zimbabwe
Shajdad	Traditional	Failure	No	Afghanistan
Desta	Traditional	Failure	No	Kosovo
Krim	Traditional	Failure	No	Algeria

* Accounts presented in this chapter.

Only 5 of these 26 individuals (19%) obtained successful outcomes in their contacts with the law, and only 6 (23%) reported that they were satisfied with their encounters with their lawyers. The outcome determined client satisfaction in 23 of the 26 cases (88%), the three exceptions – Wasim, Milton and Dominic (all described above) are discussed below.

Reliable quantitative analysis is not possible with a small and necessarily non-random sample, however it is indicative that clients were satisfied with the service they received in 2 of the 3 cases where they were encouraged to participate, and in only 4 of the 23 cases where the lawyer did not invite or accept participation

In absolute terms, those who enjoyed the benefits of a participatory relationship with their lawyers (3 of 26) faired better in terms of both satisfaction (2 of 3) and outcome (1 of 3) than their counterparts with traditional interactions (23 of 26), whose reported satisfaction (4 of 23) and successful outcomes (4 of 23) were the lowest of all the individuals I observed. Although this analysis supports the contention that the model of interaction influences the outcome and even more strongly, the extent of client satisfaction in each case, the small number of cases precludes testing for the statistical significance of the results. This work is designed as a qualitative study, however, with hypotheses serving the primary purpose of guiding and making public my interpretation of the data. The analysis indicates that the participation hypotheses at the least merit a more rigorous test.

It is important to note that the choice of the approach to the interaction for these clients was always a choice of the lawyer, and none of these individuals was able to meaningfully affect the choices of their lawyers about the model of interaction. It is in this sense that these clients were 'powerless' as they were ultimately subject to the predilections of the lawyers that they had approached, and were unable to command a level of service greater than their lawyers were willing to provide.

Normal Cases

In only 1 of the 3 participatory model cases did the client (Luthesi) both obtain a successful outcome and report his satisfaction with his lawyer. Luthesi's case stands out even amongst the other successful cases as an example of a client experience that was wholly positive and is notable for his satisfaction with his lawyer, the consultations, and the final outcome, and in this sense serves as a model of a quality client experience with the law. Luthesi's case is 'normal' insofar as the hypotheses about the impact of participation on outcomes and client satisfaction anticipate that such outcomes will occur more frequently from participatory interactions. Comparing the 1 of 3 successful and satisfied clients who experienced participatory interactions with the 3 of 23[250] successful and satisfied clients who experienced traditional interactions supports this contention.

The hypothesis also anticipates that traditional model interactions will result in fewer successful outcomes and lower client satisfaction. Indeed, 20 of the 23 traditional model interactions I

[250] Not including either Milton or Dominic who did not obtain both successful outcomes and report satisfaction.

observed resulted in neither a successful outcome nor client satisfaction. Baako's case is remarkably representative of the experiences of 18 of these 20 individuals, whose interactions were characterised for the most part by disinterested, routinised and sometimes incompetent legal service.[251] His case is 'normal' in respect of the hypothesis about the impact of client participation in that his lack of success and subsequent dissatisfaction are anticipated by the theoretical preference for the participatory model. The number of other cases that Baako's represents, (18 of 26 powerless clients) provides further support for the contention that traditional model interactions do not facilitate successful outcomes or client satisfaction.

Intermediate Cases

2 of the 3 cases in which outcomes did not determine client satisfaction support the participation hypotheses to some extent, but also challenge aspects of them. In this sense these cases are 'intermediate' in that they 'fit' to a degree, but not perfectly. Interestingly, in both Milton and Wasim's cases, the outcome did not determine satisfaction, but unlike Dominic's case, for Milton and Wasim the variation is easily reconciled with the participation hypotheses. Wasim experienced a participatory interaction with his lawyer, and reported his satisfaction despite his failure to obtain a successful outcome. In one respect, this case is intermediate because despite the opportunities offered by the participatory model interaction, the lawyer ultimately failed to address Wasim's legal issues, or to adopt his chosen outcome. In this sense,

[251] That clients who received such service, and were eventually unsuccessful in their cases professed dissatisfaction with their encounters with their lawyers is hardly surprising.

Wasim's case does not support the hypothesis that participatory interactions promote successful outcomes. However, Wasim's satisfaction with his lawyer and the interaction, notwithstanding his unsuccessful outcome, arose specifically on the basis of the model of the interaction itself. His feelings of 'having been listened to' and 'taken seriously' provided the necessary closure to allow him to move on from his experience with the police. In this regard, Wasim's case explicitly confirms the hypothesis that participatory interactions promote client satisfaction. Indeed on the basis of Wasim's case one can argue that satisfaction is the more important variable, in that it represents the client's final judgment on their encounter with their lawyer. As with Wasim, it may be psychologically preferable to leave the relationship unsuccessful but satisfied, than successful but unsatisfied.

On this theme, the other intermediate case did indeed achieve a successful outcome, but reported his dissatisfaction with his encounter(s) with his lawyers. Milton experienced a range of traditional model interactions, and in one respect his case challenges the participatory hypothesis that traditional interactions are less likely to facilitate successful outcomes. Milton's encounters with his lawyers were all traditional, and yet his case was resolved successfully. However, despite his successful outcome, Milton remained adamantly dissatisfied with his lawyers and his experiences of interactions. In particular, he objected explicitly to the hallmarks of the traditional model which he understood to characterise routinised immigration practice. In this respect, Milton's case clearly offers support to the hypothesis that participatory interactions promote client satisfaction.

Deviant Cases

In the sense that the outcomes of both Milton and Wasim's cases were not anticipated by the participation hypotheses, they might both be regarded as deviant cases. I chose to classify them as intermediate cases however, on the basis that their own lasting impressions of their experiences were readily reconcilable with the theory of participation. Dominic's case is different in that his unsuccessful outcome arising from a traditional interaction is anticipated theoretically, but his subsequent satisfaction could not have been predicted under either hypothesis. In the context of Dominic's experience with his lawyer, which was among the most unhelpful and disturbing of all that I observed, his reported satisfaction is remarkable. He remained content and good-natured about his experiences, notwithstanding the appalling treatment he received and the failure of his application to remain (legally) in the UK. I have searched for some explanation of his satisfaction, and the best that I can offer is that his expectations were low from the outset, and that his personal characteristics were such that he refused to be unhappy with his lot. Dominic's case clearly supports the hypothesis that participation in the relationship promotes successful outcomes, but challenges the hypothesis that (only) participation facilitates client satisfaction.

Limiting Cases

4 of the 26 cases cannot be reconciled with either of the participation hypotheses, and illuminate the limitations of the theory. Middar experienced a participatory interaction but was

unsuccessful in his case and reported dissatisfaction with his lawyer. Jacob, Nassor and Charles each experienced traditional model interactions but were successful in their cases and reported satisfaction with their lawyers. These cases, although only representing a small percentage of the total powerless client cases, are nonetheless difficult to reconcile with the theory.

Middar experienced an extremely positive interaction with his lawyer which bore all the hallmarks of the participatory model. Yet even this interaction was unable to transcend the legal limitations of his case. As 1 of the 3 powerless clients who experienced participatory interactions, Middar's case is as indicative as Luthesi's, and clearly reveals the limitations of the participation hypotheses. One might have anticipated that, like Wasim, Middar's participatory experience itself would have been sufficient to secure his satisfaction with his lawyer, notwithstanding his dissatisfaction with his outcome. However in the final analysis this was not the case, and Middar remained dissatisfied in the face of his lawyer's considerable efforts. I have speculated that perhaps Middar's previous (traditional) experience with his original lawyer altered his perceptions of his experiences with the second, so that his overall assessment of the positive interactions that I observed was coloured by the interactions that preceded them. Or perhaps he was unable to distinguish his dissatisfaction with the outcome of his case from his feelings about his interaction with his lawyer. Either way, his case reveals the limitations of the hypothesis that participation promotes positive case outcomes in that even an extremely participatory interaction cannot transcend the legal weakness of a case. Furthermore, Middar's case challenges the hypothesis that participation promotes client satisfaction, in that it demonstrates how satisfaction is often not an independent variable, but may be contingent on case outcomes.

Jacob, Nassor and Charles all experienced traditional interactions but were successful in their cases and reported satisfaction with their lawyers. As 3 of the 23 powerless clients who experienced traditional interactions, their successes and satisfactions are less indicative than Middar's failure, but still reveal the limitations of the participatory hypotheses, under which they would have been expected to be unsuccessful and dissatisfied. In defence of the theory, the participation hypotheses do not predict 100% compliance, but rather a greater likelihood of successful outcomes and client satisfaction where participatory interactions are utilised. However, notwithstanding this caveat, these cases are still difficult to reconcile theoretically. They demonstrate that some clients are not dissatisfied when their lawyers assume control of their problems and act independently in addressing them. Indeed, that some individuals were unconcerned with the mechanics of their relationships with their lawyers, and only with the outcomes of their cases is not surprising given the fact that many powerless refugees had little or no understanding of the tasks undertaken by their lawyers, or of any criteria by which to judge them aside from the eventual outcomes of their cases. Depending upon the strengths of their cases, such clients may not desire particularly participatory relationships with their lawyers, and for some the opportunity to hand over their problems to a lawyer is attractive.[252] In this sense either a successful outcome alone is enough to ensure client satisfaction (regardless of the means of achieving it), or these clients may be unaware of the existence of a better model of service. Indeed, clients who recognised their own lack of power in the relationship tended to have very low expectations of the approach taken by their lawyers to their cases. In the final

[252] A number of the individuals I observed were either unable or unwilling to offer any really useful input into their cases.

analysis, Jacob, Nassor and Charles' cases are limiting in that they assert the possible value inherent in the traditional model, and demonstrate how client satisfaction is not always contingent on participation.

Case Strength

It is important to explain that 17 of the 25[253] immigration cases that I report in this chapter were inherently 'weak' as they had been declined at first instance. An analysis of the relative strength of these cases cannot transcend the limitations of the data. Notwithstanding this caveat, Luthesi's case is more remarkable because my own assessment of the merits of each of the successful cases suggests that his case was perhaps the weakest of the five which were eventually successful.[254] Each of the other 4 successful applicants experienced traditional interactions, presented stronger cases on the facts, and their eventual successes were more readily anticipated. Luthesi's experience is usefully analysed in this context. Strong cases present more straightforward solutions than their weaker counterparts, and are more suited to a method of resolution whereby the lawyer invokes established legal principles. If the identification of the issues that are implicated and actionable in client narratives can be made without difficulty by the lawyer, and the client expects or anticipates that the lawyer will make such an identification, we may expect that some lawyers will identify the issues and appropriate

[253] Wasim's case was a civil action against the police and not an immigration case.
[254] Various immigration practitioners with whom I have subsequently discussed the circumstances have all agreed that on the facts as I have outlined them, Luthesi would not ordinarily have been granted asylum, and certainly not an indefinite leave to remain in the UK, as his account did not really demonstrate a continuing threat to his safety in Somalia. Furthermore, challenging Foreign Office guidance reports is notoriously difficult, and rarely if ever successful given the potential ramifications regarding precedent.

responses unaided explicitly by their clients. However, more 'challenging'[255] cases, on the facts or the evidence, are less readily dealt with by the lawyer who seeks a positive outcome,[256] and notwithstanding the expectations of the client, such cases inevitably require a closer cooperation in the relationship if the lawyer is to elicit useful information and respond to existing findings. As Luthesi's appeal was the least assured of the five that eventually succeeded, the success of his case more than the others would have depended upon his involvement and inclusion in his lawyer's preparation of the appeal. Under this analysis, Luthesi's positive interaction with his lawyer was a consequence of the weaknesses of his case, and the diligence of the lawyer in seeking to address them. The unexpected success was then facilitated by the fruits of their exchange. This line of reasoning supports the theoretical preference for the participatory model as the means of achieving successful outcomes in difficult cases, but also recognises the limitations of the theory where cases are easily routinised and successful outcomes can be readily achieved (almost) independently by the lawyer. However this limitation only extends to the outcome hypothesis, and the experiences of both Milton and Wasim with respect to satisfaction serve to illustrate the impact of participation on satisfaction regardless of case outcomes.

[255] Mr Ahktar, Luthesi's lawyer, explained to me on a different occasion that the identification of cases as 'bad' is failure of either the lawyer or immigration rules. Weak cases are better seen as 'challenging' cases for the lawyer, or cases that demonstrate the inadequacy of the existing immigration rules.

[256] Although where the lawyer is unconcerned with the final outcome, such as appeared to be the case with Dominic, challenging cases are no more difficult than straightforward cases.

Lawyer Attitudes

The attitude of the lawyer is important in this analysis. Immigration lawyers in Birmingham are located in a range of practice settings, and the contexts in which many operated did not encourage the building of close and meaningful relationships with refugee clients. The sheer number of refugees in Birmingham embroiled with the system at different stages in their cases, and the lack of resources applied to their support[257] mean that many lawyers working with refugee clients are not keen to devote unnecessary attention to any individual. Dominic and Baako clearly experienced this with their lawyers and Milton expressly identified and protested it with his lawyer. Wasim's experience, though outside of an immigration context, also reveals the relevance of financial considerations to the lawyer who deals with dependent and often indigent clients. Luthesi's experience was very different, but would have been unlikely to have been so if he had approached many of the other lawyers encountered in this research. In this way his satisfaction and success were a product of his lawyer's attitude towards his clients and his job. Luthesi's case may have been weak, but his lawyer was not the type to process him as swiftly as possible and collect the fee. The difficulties in Luthesi's case thus served to illustrate both the lawyer's skill and his commitment to his client, and the quality of the relationship enabled his eventual success.

Though quite different in their own attitudes towards their lawyers, many of the powerless clients' cases are comparable in the sense that they had been declined asylum on the grounds

[257] Through the legal aid scheme's remuneration levels, which discourage all but a very routinised treatment of large numbers of refugee clients and through general under resourcing in the charitable sector serving refugees, which is characterised by triage, quotas, and long queues.

that parts of their own countries were sufficiently 'safe' for their return.[258] The different attitudes of the lawyers towards their clients, and their respective professional skills in addressing the appeals clearly affected the overall quality of the client experience and the eventual outcomes of the cases. That Luthesi's success was a function of his lawyer's approach to his work, and his professional competence seems clear, and equally, Baako's dissatisfaction with his experience and his eventual failure seem to be closely related to his lawyer's approach to the consultation. The impact of the lawyers in each case on the eventual client success and satisfaction is apparent. This explains why the social capital of the refugees I observed was so important: their futures depended on finding 'the right' lawyer, and only those with experience as clients or users of the service were in a position to give others the guidance they needed.

Client Empowerment

None of the individuals whose experiences I describe in this chapter had any real network of friends or access to the benefits of the type of 'inside' knowledge and support that might have seriously enhanced their prospects of contact with the system.[259] The problem for these 'unconnected' clients who did not approach their lawyers from positions of knowledge or strength was that in the main such clients possessed no information about the lawyer they engaged, or his manner of treating clients. Some refugees received NASS approved lists of local practitioners with their refusal letters, but others did not. Regardless, inclusion on the list

[258] The real impact of this policy on those returned to such places of 'safety' is hard to imagine.
[259] Wasim was able to access immigration knowledge through his contacts with other Kurdish refugees, but not information relevant to his civil complaint against the police.

does not guarantee that a lawyer will provide a quality service or deploy a client-centred approach to practice. Similarly, many refugees received referrals to their lawyers, either from friends or from charitable support organisations, and again such referrals were often not made on the basis of the quality of the service being recommended.[260] Though most clients were able to identify poor service when they received it, none of the unconnected clients that I observed was aware of the implications of their choice about whom to approach in advance of their consultations.[261] In this sense both Luthesi, Jacob, Nassor, and Charles were extremely fortunate, having selected lawyers who facilitated their successes. Wasim's satisfaction in the face of his failure may also have been a consequence of his fortunate selection of his lawyer, whereas all the others including Milton and Dominic were correspondingly unfortunate, in that they either failed to obtain successful outcomes, failed to gain satisfaction from their encounters, or both.

Other individuals were more aware of the impact of the lawyer on their success, and were more proactive in their contacts with the system. In the following chapter I present accounts of the experiences of such clients, and I argue that their prior expectations of the system, usually shaped by their access to insightful and informed knowledge about the identity and attitudes of

[260] Mr Watkins, the legal advisor at the MRC whom I shadowed for some months habitually referred appeal cases to one of a number of lawyers working throughout the city. I once asked him what he knew about the lawyers to whom he made referrals, and he explained that he knew nothing of most of them, but had to refer appeal cases somewhere. Some days after this exchange Mr Watkins volunteered me to accompany one client to one of the lawyers he habitually made referrals to, explaining that he was interested in hearing about how well the lawyer handled the referral. As it happened, the case was not dealt with well, and on hearing this Mr Watkins decided that he would no longer refer individuals to that lawyer in the future.

[261] In Middar's case where I recommended that he approach Mrs Stollar, my choice of lawyer was based both on his requirement that the lawyer be 'white' and also on the basis that I had previously observed Mrs Stollar employing a client-centred and participatory approach to interactions. The model of Middar's interactions did indeed prove to be participatory, however the failure of his case served to undermine any benefit that he perceived in the reciprocal nature of the relationship.

individual lawyers, and the immigration process itself, allowed these individuals to approach their lawyers from shrewd and non-dependent positions, which resulted in far better outcomes than their less well-informed counterparts.

CHAPTER 6 – EMPOWERED CLIENTS

The previous chapter focused on clients I classified as powerless or dependent in their interactions with their lawyers – a classification resulting from a hypothesis that I formulated while undertaking my fieldwork. Under this hypothesis, clients who approached their lawyers from socially empowered positions, (arising in the main from their contacts with knowledge-networks of other individuals) would be more likely to receive a participatory service from their lawyers, satisfaction from the relationship, and a positive outcome. Of the 44 refugees whose experiences are included in this research, I classified 18 as being empowered in one way or another, and their stories are addressed in this chapter.

In this chapter I present seven accounts of these clients who approached their lawyers from empowered positions. These clients either selected their lawyers based on prior network-derived knowledge of the lawyers in question, or presented their stories and their cases strategically on the basis of astute assessments of potentially successful case facts. As in the previous chapter, the accounts that I present have been purposively selected to express the range of different client experiences in respect of the model of interaction, client satisfaction and the outcomes of the cases in question, and to represent the similar experiences of other refugees I observed. The details and contexts of the client experiences described below are presented in Table 3.

Table 3: Accounts Presented in Chapter 6

Client	Interaction	Outcome	Satisfaction	Country of Origin	Total Cases*
Farouk	Participatory	Success	Yes	Iran	7
Lucas	Participatory	Success	Yes	Uganda	1
Salman	Participatory	Success	Yes	Iraq	1
Ali	Participatory	Failure	Yes	Iran	1
Hamed	Traditional	Success	Yes	Iran	5
Mansoor	Traditional	Failure	No	Iran	2
Tanya	Traditional	Failure	No	Kazakhstan	1

Two of these clients, Farouk and Hamed, utilised the knowledge they were able to obtain through their connections with a network of other Iranians to select lawyers appropriate for their cases, and to present their stories in a way that most enhanced their legal positions. In this sense, these individuals' cases and the cases of those they represent can be seen as the 'normal' cases in terms of the theory of client empowerment.

One of these clients, Lucas, also approached his lawyer from an empowered position, although in his case, his empowerment was derived solely from his own legal expertise and intellect. Another client, Salman, approached his lawyer from a position empowered by his own economic resources. I have included these individuals in this chapter as examples of different bases of empowerment 'capital' – knowledge, and economic – which can also serve to radically alter the prospects of individuals in their encounters with their lawyers.

One of these clients, Ali, approached his lawyer from a position empowered by his connections with the Iranian network, but was ultimately unsuccessful in his asylum application. To some

* Including those 'empowered clients' included in the sample whose accounts are not presented in the chapter, with the same characteristics across all variables bar country of origin.

extent his case is a deviant case in respect of the theory of client empowerment, and is included in this chapter as the only example of an empowered client whose outcome did not determine his satisfaction arising from the relationship with his lawyer.

The final two clients, Mansoor and Tanya, both enjoyed a degree of empowerment arising from their social connections, but in both cases their empowerment was incomplete. Mansoor, like one other empowered client I observed, was unsuccessful in his asylum application, and dissatisfied with his relationship with his lawyer. These cases are both deviant cases and limiting cases for the theory of client empowerment. Tanya was also unsuccessful in her asylum application, and dissatisfied with her experiences with her lawyers, despite having benefited from the most influential and far-reaching support network of any of the empowered clients in this chapter. Her case is presented here as a genuinely limiting case that demonstrates the boundaries of the theory of client empowerment in the face of insurmountable legal hurdles.

FAROUK

Farouk was 59 years old when he left his wife and daughter in Iran and fled to the UK. He is tall and dark skinned with a kind face and a thick greying moustache. He studied civil engineering in America in the 1970s and worked for a city construction authority in Tehran for more than 20 years. He is intelligent and refined. He owns property in Iran, has travelled to Europe and the USA and had enjoyed a good standard of living before he came to live in the UK.

In January 2004, government officials came to Farouk's home and informed his wife that he was wanted for questioning. Farouk is Jewish. He had instructed men under his authority to repair the roof of a synagogue in Tehran, and reprimanded a man who had objected to the assignment. He believes that following this incident the man informed the authorities about this affair and made other allegations about Farouk's activities. He had previously come to the attention of the Iranian police on suspicion of assisting fugitives to leave the country, and he was familiar with the official 'questioning' processes. He made arrangements to leave Tehran that night, taking with him as much money as he could raise.

Farouk arrived in Dover almost three weeks later in early February 2004, having been concealed in the back of a lorry with six other people for several days without food or water. The lorry was searched by immigration officials and Farouk and the others were taken to the immigration induction centre in Dover. He was interviewed the following day by a Home

Office caseworker who recorded the details of Farouk's journey to the UK and his reasons for seeking asylum. He remained in the induction centre hostel, known to many refugees as 'the hotel' for ten more days before he was placed on a coach and despatched to allocated accommodation in Birmingham.

Many asylum seekers are offered introductions to support groups or contacts in the area in which they are to be located. Farouk accepted such an offer, and a NASS caseworker informed a representative of the Jewish community in Birmingham of Farouk's position. As a member of the small Jewish community in Birmingham, I quickly heard of Farouk's arrival, and I approached him several days after his arrival in the city. From the outset he was warm and grateful for any assistance in a strange country, and we spent a great deal of time together in the weeks following our first meeting.

Farouk also knew various other people living in the city. Aziz, a dentist whom Farouk had assisted to leave Iran many years before was now living and working in Birmingham. Qumas, a cousin of Farouk's wife owned a small Iranian restaurant in a suburb close to the city centre. These contacts, coupled with the assistance that he was able to access through the Jewish community allowed Farouk to benefit from the support and experience of people who were well acquainted with the city, the system and the law. His relationship with Aziz in particular also enabled Farouk to become closely associated with a fairly large group of other Iranians in the city, many of whom were either refugees currently awaiting decisions, or those now granted asylum in the UK.

Farouk's application for asylum was fairly straightforward. He had fled from Iran because he knew what a knock at the door from the secret police portended. As a Jew in Iran, his life and community had already changed beyond recognition since the fall of the Shah in1979, and although he did not actively practice his religion, he identified himself as a Jew. The assistance that he provided to the house being used as a synagogue was outside of his authority and a contravention of the law – repair of any non-Muslim places of worship required permission from the authorities. Farouk was certain that his life was endangered by his actions, and that he was too old to withstand the trials of questioning and detention in an Iranian prison.

Over a period of several weeks I observed numerous encounters between Farouk and other Iranians at which the cases of each were discussed. Farouk was at that time awaiting a date for a formal Home Office interview, and like many other refugees, he had been provided with a NASS list of local immigration practitioners. Unlike many other refugees however, his contacts in Birmingham helped him to make a choice about the lawyer that he approached based on more than a random selection from the NASS list. I spent many hours sitting with Farouk and other Iranians, sometimes in cafés in the city centre, sometimes in one of their homes, and occasionally in Qumas' restaurant,[262] during which those at early stages of their cases were regaled by those who had already experienced the various stages of the asylum process. Farouk's primary benefit from these exchanges was the selection of Mr Peernazar as his lawyer.

[262] Qumas discouraged all but small gatherings in his restaurant. Refugees are not particularly good purchasers, and Qumas was of the opinion that large groups of Iranian men put off other local customers.

Farouk received notice of the date of his Home Office interview just over three weeks after his arrival in Birmingham. The interview was scheduled for the end of March 2004 in Liverpool. Up to that point Farouk had not approached a lawyer, although he had benefited from much advice about which lawyers he should or should not approach. On the day that he received the notification, we went together to Aziz's home to make a final decision about a lawyer. Aziz was certain that Farouk should approach Mr Peernazar, a lawyer born in the UK whose parents emigrated from Iran in the 1950s. Mr Peernazar ran a small practice with two other lawyers located in a dingy suite in the legal district in the city centre dealing primarily with immigration, and did not feature on the NASS list. Aziz had known Mr Peernazar for many years and was confident both in his abilities as a lawyer, and also that he would be sympathetic to Farouk's case. Aziz reassured Farouk that he and Mr Peernazar had much in common – and that they would be able to relate well to each other. He also cited a number of Mr Peernazar's successes, and once Farouk had agreed, Aziz telephoned the lawyer and made an appointment for Farouk for the following day.

Aziz's assistance was not limited to selecting the lawyer. He was one of very few Iranians who knew of Farouk's religion, and so one of few with whom Farouk had discussed his case candidly. Aziz was confident that Farouk would be successful in his application, and he elicited in as much detail as Farouk could remember the precise facts that Farouk had revealed during his interview in Dover. He explained at length how Farouk's biggest risk would be to contradict his earlier story, but on hearing Farouk's account of his Dover interview Aziz advised that Farouk not emphasise the importance of the synagogue renovation in his account of what had attracted the attention of the authorities. As Farouk had apparently not covered this point in any

detail in Dover, Aziz was certain that to do so now would only invite a challenge that he had been forced to leave Iran because he had broken the law and did not wish to face the consequences. Aziz advised that instead Farouk should concentrate on his activities in assisting others to leave Iran, and his precariousness as a Jew in a hostile country. He agreed to swear a statement confirming that Farouk had assisted him to leave Iran many years previously.

Farouk understood and accepted Aziz's advice, and we went together to Mr Peernazar's offices the following morning. The account below is drawn from my contemporaneous notes.

Consultation

We arrive slightly late for the appointment because of difficulty in finding Mr Peernazar's office. A receptionist takes Farouk's details and asks us to wait in the small waiting area. After several minutes Mr Peernazar enters the room and introduces himself. He is short and plump with receding grey hair and a thick Birmingham accent. He greets Farouk warmly, shaking his hand and kissing him on each cheek – an Iranian greeting, before shaking my hand. Farouk introduces me, and Mr Peernazar leads us into his office.

Mr Peernazar seats us on small armchairs away from his desk, and brings a third chair and joins us. He explains that any friend of Aziz is welcome, and that he has already been appraised of Farouk's circumstances. He suggests that Farouk explain his story in his own words, and that he will then ask questions. He reassures Farouk that he will do everything in his power to assist

Farouk in his application, and that he will certainly accompany him to the interview in Liverpool. Farouk is clearly put at ease by this introduction, and begins his account of the events leading up to his departure from Iran and arrival in the UK. Mr Peernazar does not interrupt, or take notes, but listens intently as Farouk tells his story.

As discussed with Aziz, Farouk does not emphasise the repair to the synagogue roof, dwelling instead on his links with the Jewish community in Iran and his involvement in the escape of other persecuted Iranians. He informs Mr Peernazar of Aziz's offer to give evidence that Farouk had assisted him to leave Iran many years previously. He does not mention the incident with his subordinate worker and the synagogue, but he does explain how he was informed upon by a junior employee who held a grudge after he was overlooked for promotion. Farouk concludes his narrative by explaining that he is no longer safe in Iran, and that his priority now is to make a new life in the UK, and to bring his family here also.

Once Farouk has finished, Mr Peernazar summarises his story to ensure that he has understood it. Farouk confirms Mr Peernazar's understanding, and then the lawyer quickly delivers his verdict, informing Farouk that he has a very strong case. He explains that Jews are recognised by the Home Office as being likely to suffer persecution in Iran, and there is accordingly a presumption that asylum should be awarded. Farouk's case is stronger still because of his role in supporting others to escape the country. Furthermore, as an educated man with property and a good income in Iran, it is most unlikely that Farouk's application would be seen as being economically motivated. Farouk's relief and gratitude are clearly visible, and Mr Peernazar goes further, promising Farouk that he will succeed in his application for asylum.

Farouk asks about what he should expect at the interview. Mr Peernazar gives an account of one that he has recently attended, explaining how Farouk will be asked to explain his application in his own words, and then how he will be questioned by the caseworker. Mr Peernazar explains that Farouk's answers will be checked against the statement that he gave to the caseworker in Dover, and that he will be questioned further about any inconsistencies. The lawyer confirms with Farouk that his account of his experiences today accords with the account he gave in Dover, and Farouk confirms that it does, but that he did not go into the same amount of detail in Dover. Mr Peernazar accepts this, agreeing that initial 'processing' interviews are rarely very long and seem to be designed just to elicit the bare outline of refugee asylum applications.

Farouk asks Mr Peernazar about what else he should do before the interview. Mr Peernazar explains that evidence supporting Farouk's account will make his success even more certain. He explains methodically to Farouk what will be needed: First, some proof of his religion – preferably from the Jewish community in Iran, and also perhaps from the community in Birmingham. Second, anything that supports his claim that he has assisted others to escape – a statement from Aziz will be useful, but other more recent evidence will be better. Third, any proof of his qualifications and employment in Iran, or of his assets there. They discuss each of these in turn. Farouk has already become acquainted with the Jewish community in Birmingham, and has attended synagogue services on Friday evenings since his first week in the city. I agree to raise the matter of a letter supporting Farouk's application with the President of the synagogue. Farouk is also sure that he can obtain a letter from his synagogue in Iran, and agrees to forward both of these to Mr Peernazar as soon as he has obtained them. Mr Peernazar

urges Farouk to move quickly on the Iranian letter, as it will need to be officially translated before the interview.

Farouk is less clear about evidence of his assistance to others leaving Iran. Mr Peernazar asks him about the details of the assistance that he has provided. Farouk explains that in the past he has given money, and helped to arrange journeys through Turkey into Europe both for other Jews and for friends who had needed to escape the country. Mr Peernazar asks if Farouk can obtain statements from any of the people that he has helped more recently than Aziz. Farouk is unsure, but agrees to try. Mr Peernazar explains that it will be preferable for Aziz and any others to come to him and sign statements in his office, and he agrees to contact Aziz to arrange this. He adds that aside from these statements, Farouk should try to be clear in his mind about the dates that he helped people, and the precise steps that he took, so that he is able to answer questions in the interview.

Farouk explains that he has not brought any of his personal documents with him from Iran aside from his passport, which was taken by immigration officials in Dover. Mr Peernazar suggests that Farouk's wife should arrange to have as much as possible copied and sent to Farouk here in the UK as quickly as possible. Farouk agrees to arrange this.

Mr Peernazar asks Farouk if there is anything else that he can assist him with. He checks that Farouk's accommodation is satisfactory, and that he is receiving proper NASS support payments. Farouk confirms that he is – we have been together to the Midlands Refugee Council for assistance in relocating closer to the city centre, as Farouk is currently living in a suburb

almost 10 miles away, and Farouk is awaiting a response from NASS. They agree to speak again once Farouk's has obtained his documents, and Mr Peernazar offers to speak to the President of the synagogue if this is necessary. He offers Farouk further assurances that his application will be successful, before escorting us out of his office.

Outcomes

Farouk did obtain letters from the synagogues in Birmingham and Iran, Aziz swore an affidavit, and Farouk's wife posted copies of his American degree certificate and confirmation of his employment from Iran. Just twelve days after attending the interview, Farouk was notified that he had been granted Indefinite Leave to Remain in the UK. Almost one year later, Farouk's wife also joined him here, and several months after that his daughter gained entry on a student visa.

They all live today in a small apartment close to the university. Farouk has found work as a Farsi interpreter, and he has also assisted in the repair of various communal buildings for the Jewish community. He recently applied for British citizenship, and intends to remain in the UK for the rest of his life.

Comment

Of all the refugees I met during the course of my research, my friendship with Farouk remains the closest. There is rarely a day that goes by without us speaking, and I consider him as if he is

a member of my family. My close involvement in his life has allowed me the type of access to his experiences of every aspect of being a refugee in the UK that surpasses my connections with each of the other refugees I encountered or befriended. In this sense, my understanding of Farouk's story is extremely detailed, however for the purposes of this account I have addressed only his initial contact with the law in respect of his own application for asylum.

Farouk's application was resolved more quickly than any other that I encountered. A turn-around time of just twelve days from interview to outcome is almost unprecedented, and indicates the strength of his case. The interaction with Mr Peernazar left Farouk feeling satisfied, and was clearly in accord with the hallmarks of the participatory model. As an articulate and intelligent man, Farouk told his own story in his own words, and Mr Peernazar allowed him to both structure and engage in the consultation. The product of the lawyer's willingness to listen to his client's story was Mr Peernazar's clear understanding of Farouk's case, which enabled him to offer advice that was both helpful and relevant to his client's case. Mr Peernazar's experience of the immigration process allowed him to determine quickly both the initial strength of the case, and the type of evidence needed to cement it. Farouk's resulting satisfaction with his lawyer was a consequence both of the outcome of his case, but also of his positive, reciprocal and respectful experience with Mr Peernazar.

Farouk's choices about which lawyer to approach, and what parts of his story to emphasise were informed generally by his contact with other refugees and particularly by his relationship with Aziz. In this sense, Farouk's selection of Mr Peernazar as his lawyer was not accidental – he chose him specifically on the basis of the lawyer's likelihood to be sympathetic to his circumstances, and for his reputation for dealing with clients in a positive and constructive way.

Similarly the account of his story that he told Mr Peernazar was also shaped by the (astute) advice that he had received from Aziz, and was engineered to present from the outset the most (legally) advantageous case. Farouk's choices about which lawyer to approach and what parts of his story to emphasise were thus choices that were empowered by the knowledge of his network.

The strength of Farouk's case as a Jew from Iran alone might have served to make a successful outcome to his application very likely, regardless of his interaction with a lawyer. I suspect that Farouk's contact with Mr Peernazar was responsible for the speed with which the Home Office reached a decision, in that the compelling evidence which Farouk actually presented at his interview was a product of Mr Peernazar's advice. Although a source of pride and comfort to Farouk, the speed with which he received notice of the Home Office decision was not important in the context of the decision itself. Even Aziz's advice, aimed at pre-empting a Home Office objection to Farouk's application on the basis that there is no asylum protection for those escaping legitimate criminal charges (unauthorised repair of a building used for religious purposes; misuse of state resources,) is unlikely to have been decisive in Farouk's eventual success. In this sense the legal benefit that Farouk actually obtained from his access to the 'network' may have been slight, however his case clearly illustrates the possible implications of knowing which lawyer to go to, and what story to tell.

LUCAS

Lucas is 35 years old and had worked as a lawyer in Kampala, Uganda before seeking asylum in the UK in early 2004. He has a deep voice and he is tall and muscular. He speaks English well, and is intelligent. He worked for 10 years as a state supplied lawyer for indigent defendants charged with capital crimes, and was active in the political opposition Reform Agenda coalition, formed following the defeat of Dr Kizza Besigye in the 2001 Presidential Elections in Uganda.

I first met Lucas in the Midland Refugee Council in February 2004. I had been working as a volunteer, assisting Mr Watkins, one of the legal advisers, and seeking preliminary contacts with refugees for my research. Many of the other people working at the MRC were aware of my research interests, and one afternoon, Miss Boydon – who offered welfare advice – called me to her desk and introduced me to Lucas who had come to see her seeking to relocate from his existing NASS accommodation. At that time Lucas had been living in Birmingham for less than two weeks, having been relocated from Liverpool where he entered the country by boat. He had presented himself to the port authorities and claimed asylum, but had been referred to the local police station. Once he was registered by NASS, he had been allocated accommodation in Birmingham. He had yet to make any formal statement to the Home Office about his asylum claim, although he had been briefly questioned by the police in Liverpool, and he was awaiting directions from NASS as to the process for his application. He had made an appointment for the following week with a lawyer in the city, but had had no formal contacts

with the system at the time of our first meeting. His NASS accommodation was dilapidated – the heating and hot water were unreliable, and the other occupants of the shared house were persistently noisy. He had come to the MRC because despite several of his own attempts to request a transfer from NASS, he had as yet been unable to speak to anyone who would even give him a timescale for a response to his query.

Lucas had been a vocal opponent of President Yoweri Museveni and the political climate of Uganda. He believes that the promises of democracy since Museveni came to power in 1993 have been largely unfulfilled, and that corruption in government is depriving the country of the chance of meaningful progress. As a lawyer he has seen the harsh realities of the subversion of the rule of law, and of the impact of mismanagement and inadequate funding on the people of Uganda. Following the emergence of the Reform Agenda as a major force in Ugandan politics, government forces began a systematic campaign of arresting and detaining many of the RA's most vocal supporters. President Musevenio eventually caved in to international pressure and agreed to hold talks with the exiled RA leader Dr Kizza Besigye in early 2003, however RA preconditions to the talks, including the release of political prisoners, were not met. The government denied that arrests had been made on the basis of political beliefs, claiming that many of those detained would be facing criminal charges of treason.

In mid 2003, Lucas was appointed as a defence representative for one of these political prisoners, who had indeed been charged with plotting assassinations and treason. RA supporters raised considerable sums with which to conduct a robust defence, and Lucas began the process of constructing a detailed dossier of the government sponsored arrests of key opposition

figures. His work became increasingly important to his own client, and to many of the others also facing trumped-up charges, and in September 2003 he was visited at his home by a group of armed men who advised him to cease his activities or face the consequences. Lucas did not heed this warning, taking it only as a confirmation that he was working along the right lines, and several weeks later a different group visited him at his home, this time vandalising it and beating him very badly. While in hospital in Kampala, he was informed by fellow RA activists that he himself was now likely to be arrested on charges of treason, and that he should escape the country as soon as possible. Lucas was initially unwilling to flee Uganda, but he was shaken by the violence he had experienced, and was persuaded by fellow RA activists that there was little to be achieved by his imprisonment.

As an intelligent and articulate man, Lucas told his story coherently and in great detail. He had brought with him a wealth of evidence supporting his account including photographs of his injuries and his vandalised home, and case papers relating to the treason charge he had been defending. He had also written a concise chronology of the events leading up to his escape. He seemed grateful for my interest in his case, and readily agreed that I could accompany him to the appointment with his lawyer the following week. We exchanged contact details, and met again on the morning of the appointment. The following accounts of consultations are drawn from my contemporaneous notes.

Consultation #1

Lucas selected Refugee Legal Services, a legal aid practice with branches in several UK cities, from the NASS list because it was situated a short distance from his NASS accommodation. The Birmingham office is located in a suburb close to the city centre, and I met Lucas outside the building a few minutes before his appointment.

We enter a busy waiting room just before 11.00am, and a receptionist greets us, takes Lucas's details, and asks us to take a seat. Just before 11.30am a smartly dressed young lady enters the waiting room and calls Lucas' name. We follow her into a small consultation room, and she introduces herself as Miss Greenhill. Lucas thanks her for his appointment, and I introduce myself. She is happy for me to remain, and we sit down around a small table. Miss Greenhill confirms Lucas's details, and explains that she understands that Lucas is seeking help with his asylum claim that has yet to be decided. Lucas confirms this, and informs her that he has not received an interview date, but that he did give a brief statement to the police in Liverpool, although he does not have a copy of this. Miss Greenhill suggests that there is little point in doing anything until an interview date is allocated, and advises Lucas to return once he has received notification from the Home Office. Lucas asks her to look at the paperwork that he has brought with him, including his supporting evidence and his own written account of his experiences. She agrees, and scans the documents quickly at first, but then with more attention. She asks him a number of questions about the dates on his chronology, and about the case that he had been working on, and takes a few notes as he answers. Lucas explains that he would like to obtain a copy of the statement that he made to the police in Liverpool, but that they told him

at the time that they would not release it except to his lawyer. Miss Greenhill agrees to request the statement, and she produces various forms from a folder on the desk for Lucas to sign. She again suggests that Lucas should wait until he has received notice of the appointment, and that someone from RLS will accompany him to his interview. Lucas replies that he wishes to submit a further statement in advance of the interview, because he was not given an opportunity to address all of the points that he would have wished at his interview in the police station. Miss Greenhill is unsure about the wisdom of this approach. She advises Lucas that he will have ample opportunity to present his case at the interview, and that he may disadvantage himself if he submits information that he later contradicts, or that contradicts his police statement account. He is adamant that he will neither contradict his former or future statements, and that he wants to present as much information as possible in advance of the Home Office interview. He has already written a statement, and suggests that this should now be forwarded to the Home Office caseworker. Miss Greenhill looks through the statement again. She notices a discrepancy between the statement and the chronology, but Lucas demonstrates her error. She again advises him to wait until he has seen the statement from the police station, but he again asserts that he is confident that there will be no contradictions. She seems unsure, and leaves the consultation room to confer with a colleague. On her return a few minutes later, she explains that she is advising Lucas against submitting the statement at this stage, but that she is willing to submit it for him if he insists that she do so. Lucas is confident that the statement should be submitted, and Miss Greenhill copies the documents, and asks Lucas to sign a declaration to be included with the statement. With this agreed, she advises that he return once his interview date is allocated.

Consultation #2

Lucas received notice of his interview date several weeks after the first consultation with Miss Greenhill. We had met again on a number of occasions and I had helped Lucas to move his things once NASS had agreed to provide him with alternative accommodation. He telephoned me after he had made a further appointment with Miss Greenhill, and I again accompanied him to the RLS offices.

We are seated again in the busy reception area in good time for a 3.30pm appointment, and this time we wait almost one hour before Miss Greenhill leads us to a consultation room. She apologises for the delay, explaining that an emergency earlier in the day had left her running behind on all her appointments. She confirms that Lucas has now received notification of his interview date, and that his statement had been submitted following the previous consultation. Lucas asks her if she has made progress obtaining his statement from the police in Liverpool, and she flicks through his file before explaining that a request has been made, but nothing has yet been received. Lucas is disappointed, and explains how he feels it is important for him to have the Liverpool statement in advance of the Home Office interview. He asks if Miss Greenhill can submit another urgent request to the police. She responds that there is often a delay, and that making further requests will be unlikely to expedite the process, but she agrees to chase up the matter by telephone.

Miss Greenhill begins to explain to Lucas about the interview process, and about the preparations that are necessary in advance of the interview. She describes the usual routine on

the day, and confirms that someone from RLS will attend with Lucas. He is less interested in the mechanics of the interview than in her opinion of the value of his supporting evidence and the prospects of his application. She suggests that it is always hard to make judgments in anticipation of initial Home Office decisions, because case outcomes are often surprising, and she advises him not to worry unduly about the outcome at first instance. He is unhappy with this response. He asks her to read his statement, and to critically assess his version of events. He wants to know how similar cases have been resolved, and how his own story is likely to be received. She is slightly flustered by his questions. She explains that individual cases are not decided on the basis of precedents, and that she cannot give any guarantees about the outcome in any case. She does agree to read through Lucas's statement again however, and scans the large number of pages that make up his supporting evidence.

After several minutes, she comments that his case does appear to be strong, and that as long as he is clear in his account at the interview, and is careful to present all of the material that he has collected, then he has a reasonable chance of impressing the caseworker. Lucas is still unsatisfied. He asks the lawyer about the factors to which the caseworker will have regard in making a decision, and about the criteria for awarding asylum. She briefly explains the requirements that Lucas would need to demonstrate to be successful in his application: that he has a well-founded fear of death, torture, persecution or inhumane or degrading treatment arising from his political activities or affiliations in Uganda. He then asks her how better he can establish a well founded fear of death or inhumane treatment than by the facts of his own case, and his evidence of his injuries and the destruction of his home. She concedes that he is correct. He also asks her how more clearly he can demonstrate that his political position in respect of

the Ugandan government is the basis for his fear of death or inhumane treatment, and she again concedes that if his account of the circumstances surrounding his departure from Uganda is accepted, then he will have demonstrated that his persecution is related to his political activities.

He asks her again, on the basis of his case, why she is not more confident in his outcome. She considers this for a while, before explaining that his greatest obstacle will be satisfying the caseworker that he acted reasonably in fleeing the country when he was informed that he faced arrest. She explains that he may find it difficult to satisfy the caseworker that he did in fact face arrest, or that even if he did, this threat equated to any of the acceptable grounds for asylum. She suggests that the caseworker will ask Lucas why, if he is confident that he had not been involved in any illegal activities, he did not face any ungrounded charges instead of escaping. Lucas is quick to point the fallacy of this reasoning, explaining that his knowledge that others had been falsely charged and imprisoned for political reasons was what had prompted the violence against him in the first place. Miss Greenhill is sympathetic. She assures Lucas that she believes his account, but is just offering him her impression of an approach that the caseworker might take. He asks how he should answer such a question. She explains that there is no right answer, and that he should be truthful and trust that his own sincerity will come across.

Lucas asks Miss Greenhill if she has ever represented other refugees from Uganda, or other political refugees at all. She reveals that she has not encountered Ugandan refugees in the past, but has acted for people claiming asylum on the basis of their political activities. He asks

whether the caseworker assigned to his interview will have dealt with refugees from Uganda, and will understand the political situation in his country. He is also interested if caseworkers are assigned to types of cases, or just allotted randomly - will the caseworker be experienced in dealing with political applications? Miss Greenhill does not know about the methods of allotting caseworkers to cases, but reassures Lucas that this is unimportant. She explains how his story will be assessed against Home Office Country of Origin Reports, which will provide any caseworker with sufficient information about Uganda to competently deal with his application. Lucas is interested in these reports, they discuss how they are compiled and the sources of the information that they contain. She informs him that he can access the reports online, but declines to print a copy for him, explaining that each report runs to hundreds of pages. She advises him to go to a local library, or to ask me to print a copy for him.

Lucas is satisfied with his consultation, and as we leave the building he comments to me that he is content for Miss Greenhill to represent him. He observes that she might have been unwilling to engage with him at the outset, but that he managed to convince her that his case is good, and deserved her attention. I drive Lucas back to his new apartment, and we agree to meet again soon. I am due to be out of the country on the date of his interview, but I ask him to keep in touch with me.

Consultation #3

I saw Lucas on several occasions both before and after his interview. He told me that Miss Greenhill had accompanied him and assisted him on a number of points, and that he thought

that the interview had gone well. He was thus very distressed when he eventually received the decision letter from the Home Office in late 2004 notifying him that his application for asylum had been refused. We met the day after he received the decision, in advance of a third appointment to see Miss Greenhill at the RLS. Lucas showed me the decision letter which set out the reasons for the refusal.

The caseworker had been impressed with the credible evidence supporting Lucas's story, and had accepted his account of the events leading up to his departure from Uganda, but had been of the opinion that Lucas had not demonstrated that he would actually be placed in danger if he returned to Uganda. On the basis of Lucas's own story, the caseworker had distinguished the intimidation that Lucas had faced in respect of his refusal to cease his efforts in the defence of his RA client, from the prospect of arrest on charges of treason which had prompted his flight from Uganda. Referring to Country of Origin Report information about the efficacy of the legal safeguards against political oppression in Uganda, and the impartiality of the courts in deciding cases, the caseworker had decided that Lucas could be safely returned and could rely on the legal system to clear him of unfounded allegations. The caseworker had also considered the prospect of the mistreatment of failed asylum seekers by government forces on their return to Uganda, and based on Country of Origin Report findings that such individuals would not be troubled simply because they were failed asylum seekers, had concluded that Lucas could safely be returned to his own country.

We wait for a few minutes in the reception before Miss Greenhill emerges and escorts us to the now familiar consultation room. She has already received notification of the refusal of Lucas's

application, and begins by commiserating with him, and by assuring him that she will act for him in an appeal. Lucas has been busy in the days since receiving the decision, and has already drafted his own appeal. He presents it to the lawyer, asking her to read it, and for her opinion on the grounds upon which he can challenge the decision. Before she reads the appeal, she discusses her own opinion of the decision and the grounds that she has identified for appeal. She suggests that as the caseworker accepted Lucas's account, and the evidence supporting it, she can challenge the conclusion that facing politically motivated arrest is not an acceptable basis for the award of asylum. She explains that it is difficult to challenge the Country of Origin information that the legal system in Uganda is sufficiently robust to ensure that groundless charges do not lie, but that this does not prevent a challenge to the assumption that politically motivated arrest does not found a successful asylum application.

Lucas listens to his lawyer's proposal, before challenging it. He explains that he has spent a lot of time researching recent tribunal cases, and that he is convinced that his chance of successfully arguing that the prospect of arrest on his return to Uganda justifies asylum in the UK is slight. He refers Miss Greenhill to three cases of refugees from countries deemed to have effective legal systems where attempts to argue that the prospect of unfounded arrest has been rejected as the basis for asylum. She does not respond, and he goes on to outline his own assessment of his strongest appeal arguments. Both are based on Country of Origin Report data, and therefore avoid the pitfalls of challenging the accepted information about Uganda. The first centres around prison conditions in the country which are recognised as being inhumane, and widespread documentation of torture of inmates, particularly those suspected of political crimes. The second is based on the caseworker's assessment that failed asylum seekers are not

troubled by the authorities on their return to the Uganda. He refers to the CoO Report which quotes the Ugandan Department of Immigration confirmation that only failed asylum seekers who had previously committed a crime in Uganda, and are on their wanted list, would be arrested on arrival in Uganda. In light of the caseworker's acceptance of Lucas's account of the events leading up to his departure, Lucas is convinced that the combination of his two arguments are his best prospect for appeal. Miss Greenhill takes Lucas's appeal and begins reading it through. When she has finished, she expresses her approval, and suggests various minor amendments, which they agree together. He asks her to prepare the paperwork, and she agrees.

Outcomes

Lucas' appeal to the tribunal was successful and he was awarded Indefinite Leave to Remain in the UK in February 2005. While waiting for the decision on his appeal, he began working as a volunteer at the RLS, and after he was successful, the RLS supported his efforts to gain OISC accreditation allowing him to give legal advice to refugees.

Lucas became an active critic of the Ugandan government, and campaigner for democracy in Uganda, and established links with other exiled Ugandan pressure groups. In Early 2006 he was invited to join a European Union advisory committee on Uganda. He maintains a desire to return to his home country if political conditions improve.

Comment

Lucas originally approached the MRC because he understood that he needed assistance in relocating from his existing NASS accommodation. Although he was clearly capable of making his own representation to NASS, his own efforts had been unsuccessful because he did not know the best way to achieve his goal. Similarly, he approached a lawyer at RLS not because he was dependent upon the help that a lawyer would provide – indeed events later demonstrated that his own legal input into his case was ultimately more decisive than his lawyer's – but because he understood that he needed the backing of a lawyer in his contact with the immigration system.

Although in many respects Lucas had more in common with the refugees of the previous chapter – he had virtually no support network or backing in the UK, and was dependent upon NASS welfare support and legal aid funding – his interactions with Miss Greenhill were not typical of the interactions of dependent or powerless clients with their lawyers. Indeed I have included Lucas in this chapter because his dealings with his lawyer revealed his empowerment as a consequence of his intelligence and ability to participate in a reciprocal relationship. In his first consultation for example, he asserted his own view in submitting the statement that he had written to the Home Office, and resisted Miss Greenhill's attempt to reduce his involvement in the relationship. What began as a very traditional model interaction in which Miss Greenhill sought to routinise Lucas's case by telling him that nothing could be done until he had received notification of his interview date, and where his desire to discuss his circumstances and submit a statement in advance of the interview was not addressed, developed into a participatory

consultation in which the lawyer engaged with the client's requests, and ultimately actioned them.

The second consultation echoed the first in that Miss Greenhill initially sought to deal with Lucas in a way that suited her, taking control of the encounter and explaining the process of the interview. Lucas quickly steered the consultation towards the areas that he was primarily interested in - he did not want to be talked through the process, he wanted a critical examination of his prospects. Despite her initial rejection of his aims on the basis that there was little point in her assessing his case, he fired off a series of relevant and astute questions that forced her to engage with his objectives. She was clearly not accustomed to being challenged by a client with such a firm grasp on his case. Indeed it was only after being really pushed that Miss Greenhill was prepared to engage with Lucas on a level of reciprocity, perhaps as lawyer to lawyer – about the technical difficulties of his case. His strategy in the consultation had perhaps been developed in advance – he told me as we were leaving the second consultation that he had been aware of the legal difficulties of his case, but had needed to push Miss Griffths in order to get her to approach the case in an involved and determined manner. In this sense, Lucas' knowledge and intellect allowed him to determine the approach to the relationship by his skilful manipulation of his lawyer.

By the third consultation, Miss Greenhill had almost abandoned the traditional model entirely, and Lucas's strategic legal thinking and planning were revealed in their glory. The lawyer's approach was rejected on legal grounds, and the client's position was agreed and actioned. Lucas' research was clearly decisive in the subsequent success of his appeal. That he went on to

work at the RLS, first as a volunteer and then as a qualified advisor was testament to the impression that he must have made on Miss Greenhill.

Whether Lucas's ability to control the relationship was solely a consequence of his own legal skill, or also down to the personality of his lawyer is unclear. No other individual I observed was able to challenge their lawyer with the logic of the law. Of those that did seek to challenge their lawyer, none was as successful in achieving the cooperation of their lawyer in securing their desired outcomes as Lucas. I do not know if Miss Greenhill was easily manipulated because she was young and inexperienced. I do not know how other lawyers I observed would have dealt with Lucas, although I suspect that many would have not have been as willing to accommodate him. What is clear however is that Lucas's intelligence and legal skill served to empower him in his dealings with his lawyer.

SALMAN

I first met Salman in a Birmingham casino in late 2003. He was immaculately presented and exuded self confidence. He is tall, dark and handsome, with a neatly trimmed moustache, and nearly perfect spoken English. Many months later I discovered that he was 32 years old and had left his native Iraq some months after the fall of Saddam. At the time of our first meeting he had just secured Humanitarian Protection in the UK.

I saw Salman many times in the following months, usually in the same casino where we had first met.[263] After an initially superficial relationship in which we exchanged pleasantries and talked about matters of little consequence, Salman eventually opened up to me, telling more about himself in extremely candid terms. He first revealed that he was Iraqi after the capture of Saddam in December 2003 when we watched CNN footage in the casino bar, although at that time he was not prepared to discuss any details of his life or his case. It was only some months later, after I had compromised myself in such a way that he understood that I posed no danger

[263] I am not a gambler, and had visited the casino originally with Marko, an Albanian refugee, very late one Thursday evening in November, at his suggestion, to take advantage of the late night alcohol license. It was on this visit that I first met Salman in the bar. I was intrigued by him, appreciating that, on the basis of my first impressions, he would be a valuable addition to my sample. I saw Salman again several times in the following weeks on Thursday evenings in the same casino bar (Marko and I used to meet regularly on Thursday afternoon, but my other commitments sometimes led to postponement until Thursday evening, when Marko would almost always suggest that we go to the casino.) I eventually joined the casino with the express intention of being able to gain access to Salman on my own without Marko, and in the months following our first meeting I saw Salman sometimes three times each week in the casino. Only after some five months did he trust me sufficiently for us to meet outside of the casino environment.

to him, and that there was no realistic prospect of me exposing him, that he finally began to trust me sufficiently to talk openly about himself.[264]

Salman eventually revealed much about his business dealings in Iraq, his current wealth, and the circumstances that prompted his departure from Iraq and his journey to the UK. He confided that prior to the invasion in 2003 he had been a 'normal person' but that he became very rich in Iraq following the arrival of the Americans and the overthrow of Saddam. As an entrepreneur, he had been involved in all manner of very lucrative activities including the distribution of food, weapons and medical supplies; and the conveyancing of people and antiquities out of Iraq. He had made a vast sum of money (he claimed to now be worth many millions of dollars) very quickly following the invasion, but in so doing had brought himself to the attention of various hostile interests including rival entrepreneurs and the occupying American authorities. With his fortune safely deposited in international banks, and secured in various non-Iraqi investments, he had obtained a new identity in Iraq before departing for the UK. He had originally made for London, but a close encounter with a former Iraqi national had led him to relocate to Birmingham.

Salman came to the UK so that he could enjoy his newly made fortune in a comfortable, safe and free society. He entered the UK on a false passport that he had purchased in Germany, and retained a lawyer in London before making a claim for asylum. He explained to me that he had

[264] I am unwilling to go into details, except to say that I introduced Salman to two other refugees whose business interests were dubious and who were seeking informal investment. I understood that Salman was seeking opportunities to become involved in the areas of business in question, but did not have the connections to facilitate his entry into the market. Salman's readily available funds coupled with his interest in investing in the field, together with the existing operators' liquidity problems represented a golden opportunity for me to prove myself to Salman and to advance our relationship beyond the level of social acquaintance.

considered remaining here without any recourse to the authorities, but that as Iraqi nationals at that time were virtually guaranteed to receive temporary haven in the UK, he had decided that his long term prospects would be served by an application at a time when the odds were so heavily in his favour. He had found a firm of lawyers dealing exclusively with immigration law in Regent Street in London, and had engaged a Mr Sinnar following an initial consultation lasting approximately one hour.

Salman explained to me that in selecting a lawyer to represent him, his primary concern had been for the quality of the expertise that he would obtain. He had no intention of joining the queues at any of the lower-echelon providers, preferring an expensive private firm that would act vigorously on his behalf to secure his objective. He claimed to have spent upwards of fifteen hours in consultation with his lawyer, at a reported cost of almost £4,000. He told me that at his first meeting with his lawyer he explained that 'money was no object' and that he was prepared to pay whatever it cost to ensure that he was not returned to Iraq.

Salman had been very careful in his dealings with his lawyer. He understood that the real circumstances of his case would not be helpful in obtaining permission to remain in the UK. Instead of telling his story to Mr Sinnar, he explained to me how he spent some time questioning the lawyer as to potential circumstances that would found a successful claim for asylum. Once he was clear about a story that the law would accept, he proceeded to instruct his lawyer accordingly. He eventually claimed asylum on the basis that as a known collaborator and informer to the occupying US forces in Baghdad, his life was in danger from insurgents opposed to the foreign presence in Iraq, and that the occupying US forces were unable to

protect him from the real threat that he faced. Salman explained to me that he had spent many hours with Mr Sinnar discussing the best possible approach to his claim, the nature and extent of supporting evidence that would be required, and the range of likely outcomes. He understood that his asylum application would be likely to fail, as the government was effectively operating a wait-and-see policy for Iraqi refugees, but that he would most likely be awarded temporary residence in the UK while the situation in Iraq remained unclear. Furthermore, Mr Sinnar had explained to him that once he had been resident in the UK for three or four years, it would be relatively simple to apply to upgrade his permission to Indefinite Leave to Remain.

In November 2003 Salman's asylum application was rejected, but he was instead granted Humanitarian Protection in the UK. His Home Office decision letter explained that given the positive prognosis for post Saddam Iraq, and the increasing evidence of the success of the Interim Governing Council in bringing stability to Baghdad, Salman's application for asylum had been rejected on the grounds that his collaboration with the US administration would not be likely to endanger him beyond the period of the current instability. However considering the potential for persecution from non-state agents until such time as the rule of law had been properly implemented, and in accordance with UNHCR guidelines, it would be a breach of Salman's human rights for him to be returned to Iraq at this stage.

Comment

I never observed any of Salman's interactions with his lawyers, although he did allow me to look at the decision letter from the Home Office detailing his award of Humanitarian

Protection. Perhaps there is room to doubt the truth of Salman's story about his activities in Iraq, and indeed I have not infrequently encountered bravado and exaggeration in the narratives of refugees. However the circumstances surrounding Salman's revelations to me were not in keeping with the usual pattern of exaggeration. He clearly was a man of means: I observed him wager vast sums of money in the casino, and I accompanied him to large suites in expensive hotels in the city on several occasions. His lawyers (as detailed on his decision letter) were a London firm not registered to provide legal aid services. Equally, the manner in which he confided his story to me only after having come to know me over a period of time also does not indicate that he was seeking to make a favourable (false) first impression.

Assuming that the story Salman told me was true, his case is particularly revealing. Salman was clearly not a typical refugee dependent on the provision of the state for his access to legal representation in his claim for asylum. Rather Salman was in a position usually occupied by institutions - empowered by his own considerable financial resources to the point where he was able to command expert legal advice tailored specifically to his own individual needs.[265] His own understanding of the system prior to retaining his lawyer was such that he realised that an application would be favourably considered at a time when Saddam remained at large and Iraq was teetering on the edge of civil war. He also understood that his own story, far from finding a sympathetic reception in the UK, would most likely have seen him returned to Iraq as a criminal racketeer or worse. His motivation in securing legal advice was thus to establish what set of circumstances the authorities would be most receptive towards, and then what evidence

[265] One-off clients empowered by their own financial resources have received surprisingly little attention in the literature. D Landon, (1990) *op cit.* comments on the scope of wealthy individual clients in the context of rural law practice in America, but only in K Mann, *Defending White Collar Crime*, (1985) Yale University Press, albeit it a criminal context, are such clients given any specific attention in sociological research.

would be needed in support of such a set of circumstances. Finally the likely outcome of such an application, and his long term prospects for residence in the UK. His own intelligence, coupled with his financial resources allowed him to gain this information from his lawyer, and the lawyer's willingness to make time available to his client allowed Salman to construct an application the outcome of which was never really in doubt. Indeed Salman was convinced that the lawyer knew exactly what Salman was doing, but was willing to entertain him as long as the clock was ticking and the fees accumulating.

Salman's interactions with his lawyer clearly conform to the participatory model. Whether or not the lawyer appreciated that the story Salman told in his application was not his real story, the fact that Salman was able so clearly to achieve each of his objectives at the hands of his lawyer indicates his involvement and active participation in the decision-making of the relationship. Indeed, on Salman's own account of how he obtained the outline of a legally acceptable set of facts from Mr Sinnar, it is clear that Salman was successful in utilising his lawyer's abstract knowledge of the system and the law prior to his lawyer applying such knowledge to the individual circumstances of his client. Furthermore Salman admitted that the lawyer had been selected explicitly for this purpose on the basis of his legal expertise and knowledge. In this sense Salman can be seen to have been in control of the direction of the relationship.

Clearly the key difference between Salman's experience and that of other refugees was Salman's financial resources. None of the other refugees I observed were able to command a fraction of the time that Salman claimed to have spent with Mr Sinnar. And even those who did

benefit from participatory interactions were not able to control the thrust of the relationship in the way that Salman did. His observation that Mr Sinnar was complicit in helping Salman to develop a new story likely to succeed at law because the lawyer knew he was being paid handsomely by the hour raises serious ethical questions, although of course there is no evidence in support of Salman's allegation. However in the context of the norms of routine immigration practice it reveals the startling dichotomy in the quality of access to legal advice and representation enjoyed respectively by the rich and the poor. That this access to legal advice was clearly so decisive in Salman's case serves to highlight the impact of resources on the outcomes in immigration cases, and to explain Salman's empowerment in his dealings with his lawyer.

ALI

I first met Ali, a 20 year old from Iran, shortly after he came to the UK in September 2004. At that time I was spending a considerable amount of time with other Iranian refugees, and Ali arrived with Ahmed, a close acquaintance of mine, at an Iranian café where I had spent the afternoon with several other Iranians. Ahmed had met and befriended Ali the previous day in the NASS offices in Birmingham, and had brought him to the café – one of the regular meeting places for Ahmed and the others – to introduce Ali to the group. After initial introductions, the new arrivals sat down, and the café owner, Mr Hussain, brought fresh glasses of tea. The conversation soon turned to Ali's circumstances, and Ahmed informed the others that Ali had arrived in the UK by lorry a few weeks previously, and had just been relocated in Birmingham having spent some time in the 'hotel' in Dover. His initial statements had been taken, and he was yet to be allocated an interview date for his asylum application.

In my presence, the Iranians always made an effort to speak in English. Although over the years that I spent with them my Farsi developed to the point where I could sometimes follow the trail of a conversation, at that time in 2004 I was unable to do so. Ali was not initiated into this convention, his grasp of English when he arrived was not good, and his initial account to the others about his departure from Iran and arrival in the UK was translated later for me by Farouk. As time passed and I had become more acquainted with Ali, we discussed his case together in English. In essence, he explained to the others that afternoon that he had come to the UK because his father was unwell and because the family needed money. One of his sisters was

due to marry, but his parents were struggling with the dowry. As one of seven children, Ali had agreed to come to the UK to earn enough money to send home for the good of the family. His journey from Iran had taken several months as he had not been able to pay expensive human traffickers, and he was now very keen to find work. He had been allocated NASS accommodation in a suburb nearly 10 miles from the city centre, and had just received his first NASS weekly support payment since arriving in Birmingham.

Ali's story was not uncommon - indeed a number of the others sat with us in the café had also come to the UK primarily for economic reasons. One of these – Kareem, had been awarded ILR in March 2004, and asked Ali how much money he wanted to send home, and how long he wanted to stay in the UK. Ali was unsure. He explained that he wanted to return to Iran at some point, but that he would not do so until he had raised enough money to make a difference to his family – perhaps $10,000. Ahmed whistled, explaining to Ali that he would not be able to make that amount of money from his NASS payments alone, and would have to find work. Ali asked about the prospects of employment and the best place to find manual work. Naveed, an Iranian expatriate who had been living in the UK for almost 30 years, suggested that he would be able to introduce Ali to somebody who could give him a job if he was willing to work hard.

Ali remained in the café with the others for several hours, by the end of which he had heard the life stories of the other Iranians, and been advised about how to purchase cheap Iranian cigarettes and opium. The conversation touched upon Ali's asylum application, but he did not have a copy of the statement he had given in Dover, and had yet to contact a lawyer in Birmingham, and it was agreed that the matter would be discussed on a different occasion. Ali

was assured that he would be helped with his application, that there was plenty of time, and that he should not be concerned with it at this stage. Hamed, a young man also living in the same area as Ali suggested that they catch the bus home together, and that he show Ali the best places to buy food and other essentials. Ali did not yet have a telephone, but Ahmed, Hamed and Naveed each gave their contact details to Ali, and Naveed offered to speak to his friend and arrange a meeting with a view to Ali's employment.

Two days later I met Ali again, this time at Kareem's flat. Hamed and Ali arrived together, and we were joined later by Farouk, Tariq and Naveed. Ali explained that he had met Naveed's friend the previous day, and was due to start working on a building renovation in a few days time. Ali had brought a copy of his Dover statement with him to Kareem's flat, and Kareem looked through it. As the others arrived, they too read the statement, and Farouk showed it to me also. The statement was brief, and explained that Ali had left Iran after a policeman had threatened him with arrest and interrogation if he failed to pay a bribe. Ali claimed that the following day he had fled for his life because he could not afford to pay the sum in question, and he believed that the policeman would carry out the threat. Ali revealed to Farouk that his father had advised him that this was a good story that would be believed by the UK authorities. The others were inclined to agree. Kareem explained that it was a good start and that a lawyer would be able to work with such a story. Naveed suggested that Ali's father had been correct, and explained how many refugees made initial statements that they could never recover from, although Ali's statement had promise. Naveed asked Ali when he intended to see a lawyer, and informed him that it was important to see the right person, and not just anybody from the NASS

list. Ali explained that he had not considered seeing a lawyer yet, and Naveed advised him that he could afford to wait until he had been notified of a date to for his Home Office interview.

I saw Ali several times in the weeks following our initial meeting, although only in the company of others, and never on his own. His English improved rapidly, and he had started his job and was working long hours doing odd jobs for Naveed's friend who had a business doing residential building work. Ali was earning up to a few hundred pounds in cash each week, which he has able to save as his NASS support payments covered his personal living costs. He received notification of a date for his Home Office interview after one month, but despite the urging of the other Iranians, he did not seek the assistance of a lawyer. He explained to Farouk and me one evening that he was too busy working to take the time to see a lawyer, and he reminded us that his original statement had been good, and that he was sure that he could handle the Home Office interview on his own. Over the weeks leading up to the interview, Ali asked many questions of the other Iranians about the interview process, and about the types of questions that he would face. By the day of the interview, Ali was well briefed about what to expect, and had rehearsed his story and the answers to the questions he anticipated. However in the face of the reservations of his friends, Ali did not seek legal advice prior to his interview, which he attended on his own. He was vague in his explanation of why he did not wish to see a lawyer, his long working hours and his unwillingness to forgo a day's pay being generally accepted as his motivation.

On returning from his interview in Croydon, Ali recounted to the others how it had gone well, and how he had told his story as he had rehearsed. He was confident of a positive decision,

buoyed by Kareem's account of his recent success in similar circumstances. When the notice of the decision arrived some weeks later, Ali was shocked that his application had been refused. Ali had apparently not been consistent in his story at the interview, and the caseworker referred to Ali's inability to reconcile the date of the incident with the policeman with the date of his departure from Iran and subsequent arrival in the UK. The caseworker had also questioned why, on the facts as Ali presented them, he had not simply exposed the policeman in question, or relocated to a different part of the country, referring to Country of Origin evidence that corruption was not widespread in the Iranian police or military, and that it was usually addressed when brought to the attention of the higher authorities. Ali's admission at interview that he had chosen to come to the UK because he believed that he would be able to earn a living here was also seized upon as evidence that his departure from Iran was motivated at least in part, by economic reasons.

Ali telephoned Farouk, Ahmed and Naveed to arrange a meeting, and brought his decision letter to the café the day after he received it. Hamed was working, but Kareem, Tariq, and Suhrab – a newly arrived Iranian refugee – all attended, as did Aziz, an Iranian expatriate who worked as a dentist in Birmingham. Ali passed his refusal letter around the table, and the others discussed his case. Naveed was critical of Ali's failure to have sought legal advice prior to the interview, and Ali accepted this rebuke. After discussion, it was agreed that Ali must now find a good lawyer for his appeal. Aziz and Naveed discussed which lawyer would be appropriate. Ali wanted an Iranian lawyer – both Farouk and Kareem had been successful with the assistance of Iranian lawyers, and Ali had heard talk of these encounters, but Naveed advised otherwise, explaining to Ali that he would do better with someone who would not be able to question him

too closely about his story. The question was debated, with Ali remaining quiet for the most part. The grounds for refusal, and the possible appeal grounds were also touched upon. Aziz was scathing about the Country of Origin information that asserted that a corrupt policeman could be dealt with by reporting the matter to a superior, but he cautioned Ali that it would be hard to challenge this in his appeal. The consensus emerged that Ali would now find it hard to win his appeal as a new story could not be substituted at this stage, and Ali had not been sufficiently careful in his account of his original story. Ali was downcast, but Farouk reminded him that there would be plenty of time before his appeal was decided, and that he would soon have earned the money that he had come for.

It was eventually decided that Ali should approach Mr Chandury – a Pakistani lawyer working for an Islamic refugee charity in the city centre. Mr Chandury was known to be sympathetic to Iranians, and also known not to overly question the accounts of his clients. He also had a good track record in asylum appeals, and was believed to be thorough enough in putting together the appeal that it would take time for the adjudicators to deal with the case. Naveed knew that Mr Chandury only accepted a certain number of appeal cases at any one time, and advised Ali to arrive at Mr Chandury's offices before they opened the following day, and to exaggerate his religiosity to attract Mr Chandury's attention. Ahmed volunteered to accompany Ali in the morning, and Ali agreed that I could come along too.

Consultation

I meet Ali outside the Islamic Aid office in the city centre at 8.30am. Ahmed's bus is late, and he has already called me to tell me that we should wait for him inside, but should not delay the consultation if he has not arrived. At 8.45 the front door is opened by an old lady, who escorts us into a tidy waiting area. There are three chairs and a small table, and we sit down. Ali informs her that he needs help with an asylum appeal and wishes to see Mr Chandury. She takes his name and a few other details, and then leaves the room, before returning and informing us that Mr Chandury will see us shortly. At 9.00am a smartly dressed little man, perhaps in his early fifties, enters and invites us to follow him. We enter a modest office in an adjoining room, and are seated behind a large desk piled high with papers. Mr Chandury introduces himself and Ali thanks him for the consultation. I introduce myself briefly as a friend of Ali's, and outline my research interest, and Mr Chandury agrees that I can remain for the consultation. He offers us a drink, and then leaves the room, returning some minutes later with three cups of coffee. He then sits down behind the desk, and asks Ali to tell him his story and to explain what help he needs from his lawyer.

Ali begins with the incident of the policeman, recounting the story in some detail. It is some time since I have last heard the account, and I notice how it has been developed and become more sophisticated. Mr Chandury is openly sympathetic, nodding his understanding and shaking his head in disapproval as he hears of the behaviour of the policeman. Ali is convincing is his account, and Mr Chandury does not interrupt him, allowing him to tell the story in his own words. Ali explains how he was unrepresented at his interview, and how he was surprised

when his application was refused. When he has finished, Mr Chandury takes a pen and paper, and writes a number of notes. He asks Ali if he fears that he will be in danger if he is returned to Iran, and if it he has family in other parts of the country that he could stay with instead of returning to his home. Ali explains that he is frightened to return, and that even though he does have relatives in various places, he needs to support his parents. Mr Chandury asks Ali if he has a job in the UK. Ali is unsure about how to answer this, and he looks to me for guidance. I nod that he should tell the lawyer, and he explains that he is working for a builder for cash so that he can send home to his family. Mr Chandury makes a further note, before asking Ali if he wants to stay in the UK in the long term, and what he hopes to achieve from an appeal. Ali explains that he wants to send money home for his family, and that he thinks that he will return home one day, but only once he no longer faces danger.

Mr Chandury asks for Ali's papers, and spends some minutes reading the statement and refusal letter. He makes several notes as he reads, and pauses to ask Ali questions as they occur to him. When he has finished reading he asks Ali if he understands the reasons that his application was refused. Ali blames himself for the refusal – he explains to Mr Chandury that he was confused in the interview and did not give the same answers each time he was asked the same question. Mr Chandury goes over the other grounds, explaining about the relevance of the Country of Origin information, the assertion that Ali would have been safe elsewhere in Iran, and about the problem of his admission that he had come to the UK in the hope that he would be able to earn a living. Ali disagrees with the suggestion that he could have reported a corrupt police officer, and Mr Chandury agrees with him, but points out the difficulties in challenging the Home Office information. He also expresses sympathy for Ali that the UK government appears to

object to legitimate asylum seekers choosing to come to the UK rather than some other country because they want to earn a living, and perceive that they might be able to do so in the this country. Mr Chandury then leans back in his chair, putting his hands behind his head as he thinks about the options open to Ali. After a while he explains that he can submit an appeal, but that he is not confident that it will succeed. He can challenge the Country of Origin information, and explain that inconsistencies in Ali's story were due to his confusion and nervousness, although his experiences with appeals of this sort is that they are rarely successful. Ali asks how long the process will take, and what will happen to him if the appeal is rejected. Mr Chandury suggests that the appeal decision would probably not be made for around four months, and could take as long as one year. After that, Ali could wait up to another year before he would be forced to return to Iran. Mr Chandury comforts Ali that by that time his encounter with the police would be long forgotten, and that he would most likely be able to return home without any complications. Ali agrees that Mr Chandury should proceed as he has suggested, and the lawyer asks him to return in 10 days time to once the appeal has been written so that Ali can sign it. He asks Ali to leave his papers in the office, and promises to return them at the next appointment. He then escorts us out of the office, and instructs the old lady to issue Ali with a new appointment.

Outcomes

Mr Chandury did act in Ali's appeal, which was rejected in March 2005. By this time Ali had been working for nearly 10 months, and had saved almost £6,000. Although settled in the UK, he had never intended to remain here, and had achieved his aim of raising enough money to

make a difference to his family. In May 2005, Ali was served with a Deportation Notice, and following discussion with his Iranian friends, he approached the Immigration and Nationality Directorate and registered his interest in Voluntary Assisted Return – a scheme providing cash payments and free travel arrangements to failed asylum seekers willing to be returned to their country of origin. In July 2005 Ali was escorted to Heathrow Airport and onto a flight to Tehran, Iran by an International Organisation of Migration caseworker, having received a payment of £2,750 for his co-operation in his removal from the UK. In addition to this sum, he had also managed to save almost £8,000 while working in the UK.

Comment

Ali enjoyed and benefited from the backing of a network of Iranian refugees and expatriates in Birmingham. Following his initial contact with Ahmed in the NASS offices, Ali was welcomed and supported, and this network had a considerable impact upon many aspects of his life in the UK. The emotional support of a group of interested friends was decisive in allowing Ali to resist the depression and despair that I observed in many other refugees not so fortunate in encountering useful social networks. For Ali, the most significant benefit that he obtained from his contact with the other Iranians was the job that Naveed brokered on his behalf.

Ali's initial contact with the legal system in the form of his statement made at the Dover immigration centre was such that he over-estimated his prospects for the success of his asylum application. Indeed, when the story that he had chosen to tell was discussed early on in his

contact with the Iranian network, he received further assurance that things would turn out for the best – a position bolstered by Kareem's recent example of success on similar facts. Perhaps this combination of Ali's self belief, the approval of the others, and Ali's concern not to lose a work day by going to see a lawyer resulted in his decision that he would manage the interview on his own. Even when reservations were expressed about the wisdom of this approach, Ali still did not listen. Farouk suspected that Ali was frightened at the prospect of engaging formally with the system by seeing a lawyer, and was simply putting off the inevitable by refusing to face up to his situation. Aziz suggested that as a young man, Ali may have thought that he was smarter than the other Iranians.

Once Ali's application was refused, he accepted that he had made an error in not following his friends' advice and not engaging a lawyer to help prepare him for interview. A lawyer may not have made much of a difference, as Ali spent many evenings with the others preparing himself for his interview. The inconsistencies identified by the caseworker would not have been prevented by a lawyer, and the substance of the story had already been recorded in Dover making any major changes difficult to explain. Indeed Ali recognised that he had only himself to blame for his carelessness in presenting his story.

When he did approach a lawyer for assistance in his appeal, he took a greater account of the communal experience of his network of friends, and allowed them to select the appropriate lawyer, even in the face of his own desire to see an Iranian. The interaction itself was respectful, inclusive and dignifying, and clearly in accord with the participatory model, and notwithstanding the eventual outcome, Ali was grateful to Mr Chandury and contented with his

relationship with his lawyer. The decision as to which lawyer to approach was clearly understood by the network to be a strategic choice. Aziz and Naveed, the two expatriates with over 50 years experience in the UK between them, steered Ali in the direction of a lawyer known to be sympathetic to Iranians, but not sufficiently knowledgeable to see through Ali's story. Farouk later informed me that a different reason for Naveed's objection to Ali approaching either Mr Peernazar or Mr Rhomani – the two known Iranian lawyers in the city, was that he did not want to 'use up' the goodwill of either of these men on a case that would fail because of Ali's own carelessness in his interview.

Ali was the only 'empowered' client I observed who was satisfied with his contact with his lawyer and the law notwithstanding the fact that he failed in his application to remain in the UK. Whether this was as a consequence of his having enjoyed a respectful participatory model relationship with Mr Chandury is unclear. Perhaps the 'failure' of Ali's application is less apparent in his circumstances: Ali came to the UK to earn, and succeeded in earning here in just over one year the amount that may have taken him 10 years to earn in Iran – almost twice the amount that he declared he was seeking at his original meeting in the café. That he failed in his application for asylum may have been of little consequence, and indeed, if he had been successful, he would not have been eligible for participation in the Voluntary Assisted Return programme. In this sense, the main benefit that Ali enjoyed from his contact with the network was not legal, but economic (the job brokered by Naveed and the advice about the VAR scheme). The legal outcome of his case may well have been unaffected by the choice of lawyer

for his appeal,[266] and as Ali explained from the outset, he was not seeking to remain in the UK indefinitely anyway.

[266] Except insofar as Naveed explained that Mr Chandury would author a sufficiently thorough appeal to ensure against a swift disposal of it by the adjudicator.

HAMED

Hamed was 26 when he sought asylum from Iran in the UK. He is gentle and quiet, short and quite stocky with dark eyes and hair and strong features. He is a Muslim, although he has little interest in religion. On his entry into the UK in February 2004 he was apprehended in Dover and housed temporarily in the immigration induction centre. I first met Hamed several days after he had been allocated NASS accommodation in Birmingham. He had entered the UK as a passenger in the same lorry as Farouk, and they had subsequently formed a close friendship. Farouk introduced us the first time that I accompanied him to his apartment. Hamed spoke very little English and was quite reserved, but he accepted Farouk's assurances that I could be trusted, and Farouk acted as translator.

Hamed left Iran in November 2003 after he was badly beaten by the police after two of his brothers were involved in a demonstration against political and religious restrictions in Drumiyeh, a city close to the Turkish border. One brother was shot dead during the demonstration and the other was arrested. Hamed, his father and a third brother were arrested at their home the following day. Hamed was released after three days of torture in the city police station, but was warned that he was under suspicion for a number of offences and may be rearrested at any time. His father was released two days later suffering broken legs and severe burns to his hands and feet. Two weeks after his release Hamed was warned by a friend with contacts in the police that he was to be arrested again after another prisoner had informed the

police during interrogation that Hamed was an active homosexual and had implicated him in involvement in subversive activities.

Hamed had recently refused a proposed marriage, and he believes that the girl's family may have been involved in denouncing him to the authorities. He had also been involved several months previously in the distribution of pamphlets printed by an ambitious local politician, and he suspected that an acquaintance arrested with his brothers may have implicated him during torture. After receiving the tip-off he crossed the Turkish border and made his way through Bulgaria and the Baltics into Italy. He met Farouk in Italy while arranging to be smuggled into the UK by lorry, and the two were subsequently housed a short distance from each other in Birmingham.

Hamed quickly benefited from Farouk's existing connections in Birmingham, and within a short time he had found work in a furniture shop owned by a prominent local Iranian businessman. I became increasingly close to Hamed in the months following his arrival, and as his English improved we were able to converse without Farouk's assistance, however he remained shy and retiring. Hamed worked long hours, and so spent less time than Farouk with the network of other Iranians, however he often accompanied Farouk and myself to gatherings in the evenings, and developed his own close relationships with many of the other Iranians. He had been reassured by his friends about the strength of his case and his prospects for asylum on numerous occasions, and he was also aware on the basis of many of his friends' experiences that there were many appellate options available after his initial contact with system. After receiving notification of the date of his Home Office interview, he sought assistance from an

immigration lawyer located very close to the furniture shop where he worked. Hamed later explained that at that time he was focused on earning money to send home to his mother, and had given little thought to his asylum application. None of the various lawyers that had been recommended by his friends were located close to Hamed's work, and he had decided that he could not justify the loss of a day's wages by travelling to the city centre, when an alternative lawyer was close by.

In May 2004, Hamed learned that his father had died while in police custody in Iran. Both of his brothers had remained in detention, and the police had returned to the family home looking for Hamed three days after his departure from the country. They had arrested his father in Hamed's absence, and had detained him for two weeks before his body had been returned to Hamed's mother for burial. Hamed was devastated by this news, and blamed himself for his family's misfortune. He was comforted by Farouk and the others, but he became very depressed and lost much of his energy and enthusiasm. He started working even longer hours, and Farouk confided to me that Hamed was sending everything that he earned to his mother in Iran.

In June 2004, eight weeks after his Home Office interview in Croydon, Hamed received notification that his application for asylum had been rejected. Despite the physical evidence of torture – his arms and legs had been badly bruised and there were burns on his feet when he had been interviewed in Dover – the caseworker had not accepted that Hamed continued to face danger in Iran, suggesting that Hamed's story, if accepted, represented a 'local' issue and that he could have safely relocated to a different area of Iran. He had also questioned the truth of Hamed's story that he had been informed of his impending arrest, basing a judgment that

Hamed had come to the UK for economic reasons on Hamed's admission that his father's injuries had left the family bereft of the major breadwinner's contribution. Hamed was dismayed by the decision, and this time was more willing to accept advice from his friends. One afternoon several days after he received notification of the decision, he went with Farouk to Aziz's home for a meeting to assess his options. Naveed, Ahmed and Kareem discussed Hamed's case, and the caseworker's assertions, and devised a suitable strategy.

Ahmed began by asking Hamed to tell his story exactly as he had done at the Home Office interview. Hamed did so, but frequently corrected himself as the others asked him for clarifications. Naveed held the decision letter, and put many of the caseworker's observations to Hamed as he told his story. Hamed was clearly nervous, and he did not handle the questioning well, breaking down at the mention his father and brothers. Aziz eventually halted the proceedings and delivered his verdict. He was convinced that the caseworker's decision was perverse and that Hamed could succeed on a number of points. Firstly, the allegation of Hamed's homosexuality had not been addressed by the caseworker, although Hamed was adamant that he had detailed it during his interview. The subject clearly made him nervous, but both Farouk and Naveed dismissed his concerns by reassuring him that none of his friends would judge him, and that in the UK nobody cared about other people's sexuality. Aziz explained that he had seen a number of other Iranians granted asylum just on the basis of the danger that they faced in Iran because of their sexuality. He was certain that this issue ought to have been addressed by the caseworker, and that it alone could form the basis of an appeal.

Aziz was also confident that the caseworker had made other serious mistakes. Interpreting Hamed's encounter with the police in Drumiyeh as a 'local' issue was ridiculous, as was the suggestion that if Hamed had come to the attention of the authorities in his home town, he could safely be relocated to a different part of Iran. Kareem asked Aziz how Hamed could prove that he could not safely relocate, and Aziz explained that he would not need to prove it – the caseworker's assertion was simply perverse and could be appealed against.

Naveed believed that the caseworker had confused economic motivations for a genuine need to escape from Iran. He reassured Hamed that he had seen many successful appeals against initial refusals on the basis of economic motivations, and explained that where the grounds for seeking asylum were strong, economic motivations in the selection of the UK as the country of refuge should not undermine the claim. Naveed considered that Hamed's strongest argument would be to demonstrate the danger that he did actually face in Iran on the basis of the murder of his father. This tragedy had not occurred prior to the Home Office interview, but would now offer a strong corroboration of Hamed's story and the danger that he faced should he be returned to Iran.

Hamed listens to the others discuss his case, nodding his understanding but remaining silent. He was visibly distressed by the mention of his family, but his friends supported him. Farouk was concerned that Hamed would not cope well with the presentation of his case to a new lawyer, and the group discussed the best strategy. Aziz agreed that Hamed needed the 'right' lawyer, and suggested that either way, one of the group would accompany him to the consultation. Kareem recommended his own lawyer who had recently successfully appealed a refusal on his

behalf. Naveed disagreed – he was convinced that Hamed needed a lawyer who would take on the problem and deal with it properly without Hamed. He was certain that if the facts were outlined properly, Hamed's case would succeed. After discussion, Aziz recommended Mr Lawton at the Immigration Advisory Service, precisely because he was known to work quickly and competently on his own once he had understood the basis of a case. Almost one week later, Hamed, Farouk and I attended an appointment in the city centre offices of the IAS. The following account is drawn from my contemporaneous notes.

Consultation

We arrive together shortly after 2.00pm for a 2.15 appointment. The reception is busy, and I wait as Farouk and Hamed report to the receptionist. Almost half an hour later, we are called by the receptionist and directed to Mr Lawton's office. Farouk knocks on the door and we enter. There are only two chairs in front of the lawyer's desk, but he leaves the room briefly and returns with a third. He introduces himself and asks which one of us is Hamed. Hamed indicates himself, and the lawyer turns his attention to Farouk and me. Farouk explains that he is a friend of Hamed's and will act as interpreter if necessary. I introduce myself and explain my interest in the case, but Mr Lawton is not keen for me to remain. I explain that I have attended the IAS with other individuals in the past, and that I have received approval from a Mr Sharetz – the director of the charity. Mr Lawton relaxes and agrees that I can remain. He quickly ascertains the current status of Hamed's case. He takes the refusal letter and reads through it, before suggesting to Farouk that he can appeal on the basis of the caseworker's

determination of Hamed's problem as a 'local' issue. Hamed understands this, but Farouk dutifully translates. Farouk suggests the other grounds previously raised by Aziz and Naveed. Mr Lawton is already filling out an appeal application, and does not pay close attention as Farouk attempts to explain Naveed's contention that economic motivations do not preclude asylum in genuine cases. Mr Lawton stops writing and looks up at Farouk. He thinks for a moment, then dismisses the proposal, explaining that strictly speaking Farouk is correct, but that in Hamed's case there are stronger grounds for the appeal. Farouk is undaunted, and has brought a list of the points he is to make on Hamed's behalf. He moves on to the question of Hamed's homosexuality. This suggestion does capture the lawyer's attention, and he again scans through the decision letter. Farouk is still explaining that Hamed would be in danger if returned to Iran when Mr Lawton stops him and comments that there is no reference to Hamed's sexuality in the decision letter. Farouk agrees and informs the lawyer that Hamed explained to the caseworker at interview that allegations about his sexuality had been made to the police, and that he had been questioned about these while under arrest. Mr Lawton asks Hamed if he is gay. Hamed looks at Farouk, and they discuss this in Farsi. Farouk then confirms that Hamed is gay. Mr Lawton asks Farouk if Hamed admitted his homosexuality to the police and if so why Hamed was released from police custody. Again Farouk and Hamed confer before Farouk explains that Hamed denied that he was homosexual while being interrogated, and that he believes that the allegations were made by the family of a woman whom Hamed had rejected for marriage. Hamed does not know why he was initially released, but he does know that since his release the police returned to his home looking for him. Farouk explains about the arrest of Hamed's father, and his subsequent death in custody.

Mr Lawton has started taking notes, and he asks if Hamed was involved in a sexual relationship in Iran. Farouk answers that Hamed was not sexually active, but that he did not want to marry a woman. The lawyer asks about the death of Hamed's father, clarifying dates. Once he has the information that he requires, he continues filling out the appeal application. After several minutes he reads through the application, and Farouk translates for Hamed. Once Hamed has understood and approved the application, Mr Lawton asks him to sign it, and provides him with a number of other forms for his signature. He then copies the appeal document for Hamed, and explains that it will be filed and considered by a Home Office adjudicator, and that Hamed will not need to attend at a hearing. The decision will be sent to both Hamed and the IAS, most probably sometime within the next 3-6 months.

Mr Lawton rises from his desk, shaking hands with each of us, and Hamed thanks him for his help. The encounter has lasted less than 20 minutes, and we leave the office and return to the reception.

Outcomes

In October 2004, Hamed received notice that his appeal had been successful and that he had been awarded Indefinite Leave to Remain in the UK. The adjudicator had found that the caseworker's assessments of the gravity and locality of the danger that Hamed faced in Iran were flawed, and had accepted that the caseworker's original decision had failed to account for the danger that Hamed faced in Iran as a consequence of his sexuality.

Shortly after receiving asylum Hamed enrolled on a part-time adult education English language course. He was re-housed by the city council, and in January 2005 he gave up his job in the furniture shop after he was offered an apprenticeship as a joiner with a local manufacturer. He has recently passed his driving test and he hopes to move out from council accommodation and to buy his own home once he has completed his training.

Comment

Hamed benefited in many different ways from his contact with the network of other Iranians in the city. Aside from emotional support, which under the circumstances was very important to Hamed, his initial job in the furniture shop and his day-to-day knowledge about life in the UK both resulted from his access to the experience of the network.

Hamed's original choice of lawyer was made on the basis of the lawyer's proximity to the furniture shop, and his failure at first instance to secure asylum in the face of a legally strong claim may have been attributable to his choice of legal representative. Once the implications of his earlier decision became evident however, Hamed cast his problem on his friends, who proved capable of its resolution. The strategy meeting at Aziz's house was in many ways more thorough and comprehensive than the subsequent appointment with Mr Lawton, and the legal issues skillfully identified by Aziz and Naveed did in fact prove to be the basis of Hamed's successful appeal.

Aside from correctly identifying the legal grounds for Hamed's appeal, the network went further and also identified a lawyer whose approach would be suitable for Hamed. The consultation with Mr Lawton clearly accorded with the traditional model – the lawyer structured the interaction from the outset, identified a suitable ground for appeal without reference to Hamed, and began authoring the application, all of his own accord. Hamed's participation in the process was minimal – he was not offered the opportunity to tell his story, or to ask questions of his lawyer, and the lawyer engaged with Hamed, via Farouk, only insofar as he sought clarification of matters of fact that he had deemed to be relevant. Farouk's initial suggestion of a legally actionable ground for appeal was dismissed as being weak, although the second detail relating to Hamed's sexuality was accepted and included. Without Farouk's input, it is unlikely that the lawyer would have uncovered this fertile ground as it was not addressed in the decision letter and as Hamed was not invited to offer his own suggestions and was too shy to have volunteered them.

Many other refugees I observed would not have been satisfied with the interaction with Mr Lawton. None of the participatory hallmarks were evident, and indeed Farouk voiced his own objections to me to the lawyer's approach to the interaction. Hamed's case was one of the few appeals to an adjudicator I encountered that was not heard orally. Again this was a choice of the lawyer, although Hamed did not object to not having his 'day in court.' For Hamed, the encounter was precisely what he had been looking for. As a shy and often withdrawn individual, he did not wish to become involved in a reciprocal relationship with a lawyer, and he was nervous and intimidated by the prospect of having to do so. Rather he sought, and obtained in Mr Lawton, a capable professional in whose hands he could put his case. In this

sense, the recommendation to engage Mr Lawton was astute, both on the basis of the lawyer's competence, and crucially, on the basis of his likely approach to the interaction. Aziz recognised the danger in this strategy, and accordingly insisted that Farouk take a list of the 'actionable' grounds for the appeal and that he undertake to put these to Mr Lawton at all costs. Perhaps Aziz realised that the lawyer would correctly identify some of the grounds, but was concerned, on the basis of his experience of such traditional interactions, that the other grounds needed to be actively brought to the lawyer's attention.

Hamed's case is interesting as an example of an encounter with a lawyer who had been specifically selected because of the expectation that he would deal with his client in a traditional manner. The impact of Hamed's connection to the network on the outcome of his case of was clearly significant. The appropriate grounds for appeal and a suitable lawyer were identified, and Farouk's attendance at the interaction ensured that the lawyer was made aware of the appropriate grounds. Neither Aziz, Naveed nor Farouk was surprised by the subsequent success of the appeal, and each had reassured Hamed for some time before he received notice of his outcome that all would be well. Hamed's connections with the network empowered him, both in his choice of a suitable lawyer, and in the identification and presentation of his case, and his successful outcome is readily attributed to his empowerment.

MANSOOR

I first met Mansoor, a 27 year old refugee from Iran, after Ahmed – a successful asylum seeker I was closely acquainted with – telephoned me in November 2004 to tell me that I should come and meet him at a café in the city centre where he was with a friend in whom I would be interested. On arrival in the café I found Ahmed with Kareem and Tariq – two other refugees I had shadowed as part of my research - and Mansoor, a dark and stocky man with a thin moustache. Tariq had met Mansoor some months previously, and their paths had crossed earlier that morning in the markets in the city centre. Mansoor had received notice that his application for asylum had been declined, and Tariq had suggested that Mansoor accompany him to the café to see if any of his friends could offer any suggestions about his case.

Ahmed gave me Mansoor's refusal letter and asked me to explain the reasons for the refusal to Mansoor. From the decision letter I gathered that Mansoor had entered the UK from France in June 2004. He had spent a few weeks in the Dover immigration induction centre before being transferred to Coventry where he was allocated accommodation. While in Dover he had been interviewed by an immigration officer about his asylum application and had explained at that time that he had come to the UK to seek work because he had been persecuted in Iran for his political beliefs and had been prevented from earning a living. He had been formally interviewed about his application for asylum in September 2004, but he had been unable to satisfy the caseworker about the extent of the persecution that he claimed to have suffered, or about the nature of his political beliefs and activities that had given rise to such persecution. In

the face of a challenging interview, Mansoor had offered an alternative basis for his application for asylum, claiming that he had become disillusioned with Islam and had publicly denounced the religion. This, he claimed, had led to his arrest and torture, and after escaping he had sought refuge in the UK.

The caseworker had questioned Mansoor about his escape from detention, and had determined that Mansoor was unable to offer any corroborating evidence of his story, and that he had frequently contradicted himself during the interview. His lack of credibility was further enhanced by his departure from the account he had given in Dover. On balance, the caseworker had been of the opinion that Mansoor's account of his departure from Iran was most probably fictitious and that there was no credible evidence that he faced any danger should he be returned to his country of origin. The caseworker was satisfied that Mansoor had come to the UK solely for economic reasons, and had accordingly refused the asylum application.

As I explained the caseworker's findings to Mansoor, he became very animated and confrontational. Ahmed reminded him on several occasions that I was simply explaining the decision and that I was not making my own judgments or siding with the caseworker. Mansoor apologised, but continued to deny each of the caseworker's observations as I explained them. Kareem calmed the situation by explaining to Mansoor that he himself had come to the UK primarily for economic reasons, and that he was not ashamed to admit this. He explained his philosophy that in a world which is so unfair, it is not wrong to go to a country that is rich to help provide for your family that is poor. Mansoor listened as Kareem described how he had successfully claimed asylum on the basis of his political beliefs and activities. Ahmed

encouraged Mansoor to tell his true story so that the others could help him. Mansoor refused to acknowledge that his accounts to the Home Office had been untrue, but he did concede that he had left Iran several years previously, and that having lived in many European countries, he had come to the UK in search of a job.

Tariq suggested that Mansoor should meet Naveed and the other Iranians who would be able to help him to find a good lawyer and to stay in the country. I pointed out that Mansoor had only two days remaining in which to lodge his appeal, and on that basis Ahmed suggested the four of us would help Mansoor with his story, and that he must attempt to find a lawyer this afternoon. Mansoor was unconcerned about the deadline for appeal, but I told him of some of my own experiences with refugees who had missed the deadline, and he quickly grasped the implications for himself. Having heard about Kareem's case, he asked Ahmed and Tariq to tell their own stories.

Ahmed explained how as a member of the Baha'i religious sect he and his family had been persecuted in Iran, and had been denied legal redress by the courts. He explained how his lawyer had assisted him in obtaining evidence in support of his claim, and how he had been awarded ILR at first instance. Mansoor knew of the situation facing the Baha'i and was interested in the nature of the evidence that Ahmed had obtained. Ahmed explained how the lawyer had contacted the Universal House of Justice in Haifa, Israel – the highest organ of administration of the Baha'i religion, and that they had made enquiries in Iran before issuing a letter of confirmation about Ahmed's religious status. Ahmed explained that the Home Office

accepted that the Baha'i suffered persecution in Iran, and that it was usual for asylum grants to made.

Tariq told his story. His father owned many businesses in his home town of Qum, and a rival had accused Tariq of adultery with the wife of a local farmer as a way of discrediting his father. The allegations were unfounded, but the instigator had persuaded three men to falsely testify that they had caught the couple in the act. Tariq had been arrested, but a fourth witness was required before charges could be brought. Tariq's father had secured his release by paying a considerable ransom, but Tariq understood that his life was in danger at the hands of the farmer, who was entitled under law to kill him. Tariq's father had secured his safe passage out of Iran, and he had been awarded Humanitarian Protection in the UK. The farmer had since killed his wife.

Mansoor listened to these stories with interest. He asked about other grounds that had successfully resulted in asylum. Ahmed told him of Hamed's claim on the basis of his sexuality, and of other cases involving blood feuds. Kareem cautioned Mansoor that whichever approach he decided on, he would need to be clear in his story and that there was always a danger in departing from the account that you had given during the interview. Mansoor dismissed these concerns, explaining that he was very skilled at telling stories.

Mansoor's confidence clearly disturbed the others, who exchanged concerned glances with each other. Ahmed tried again to explain that as Mansoor had already been refused asylum on the basis of his credibility, any attempt to offer wholly new grounds for his application would

be treated suspiciously. He explained that he and the others had not told their stories as models for Mansoor to copy – Mansoor would need a more careful strategy in approaching his appeal. He suggested again that Naveed, an Iranian with considerable experience in this area ought to be consulted. Mansoor again dismissed this suggestion, and steered the conversation instead to the lawyers that each of the three had consulted. Kareem described his consultation with an Iranian lawyer - Mr Rhomani, who had looked after him and won his case. Mansoor preferred not see an Iranian, and Ahmed described his own English lawyer – Mrs Warwick, but Mansoor preferred not to consult a woman. Tariq described his own lawyer, an English woman of Indian descent, and again Mansoor reiterated his objection. Kareem became impatient, explaining that with only days remaining to submit his appeal, Mansoor would do better being less choosy and actually finding someone who could help him. Mansoor did not take the criticism well, standing up and informing the others that he would go and find a lawyer on his own. I followed him out of the café, and he reluctantly allowed me to accompany him. He produced a copy of the NASS list of local practitioners, and asked me which was the closest to the café. I indicated the three that were all within a short walk, and we headed off together to the Birmingham Refugee Council. I had been to the BRC on several previous occasions, and I led Mansoor to the office in the city centre, and up the stairs to the reception. The following account is drawn from my contemporaneous notes.

Consultation

Mansoor explains to the receptionist that he needs to see a lawyer urgently about an appeal. She asks him if he has an appointment, and informs him that they are very busy and that she will have to ask him to make an appointment and come back on another day. On hearing this I approach the reception, and explain to Aisha, the receptionist that Mansoor only has two days remaining to submit an appeal. She scans the list in front of her, and agrees that we can wait to see Mr Vince, who has had a cancellation and may have a space at the end of the afternoon. At 4.30pm after almost one hour, Mr Vince collects us from the reception and leads us to his desk in the open plan office.

He introduces himself, informs us that he understands that Mansoor's case is urgent, and explains that he must leave by 5.15. Mansoor and I introduce ourselves, and Mr Vince asks to see Mansoor's refusal letter. He scans through it before suggesting that an appeal will be very difficult to win and asking Mansoor on what grounds he wishes to challenge the decision. Mansoor begins by disputing the caseworker's assessment of his credibility. He explains that he had told the truth at each of his interviews, and how he cannot understand how the caseworker has suggested that he did not. Mr Vince interrupts him, reading from the decision letter. He presents Mansoor with the inaccuracies and inconsistencies noted by the caseworker, and Mansoor becomes defensive, denying the caseworker's summary of his answers. Mr Vince advises Mansoor to calm down, and informs him that no good will come of his losing his temper. He repeats that on the basis of the refusal, an appeal will be difficult to win, and

suggests that Mansoor will need to advance some new information as Mr Vince cannot see any grounds upon which the original decision can be challenged.

Mansoor offers new information. He begins by explaining that he is a member of the Baha'i sect, and how he has been persecuted for his religious beliefs in Iran. The lawyer regards him frankly, before making a note on his paper. He asks Mansoor why he did not detail this at either his initial interview in Dover, or his formal interview in Croydon. Before Mansoor can answer, Mr Vince asks him if he has any proof of his religion. Mansoor suggests that Mr Vince should be able to find proof on his behalf, attempting to explain how the lawyer of a friend of his was able to obtain such proof. He continues that he did not refer to his religious status at his previous interviews, because he did not think that it would have made any difference. Mr Vince looks at me, and then back at Mansoor. The story is unconvincing, and the lawyer informs Mansoor of this. He suggests that in conjunction with the existing findings about Mansoor's credibility, such a story will be doomed to failure.

Mansoor tries again. He describes how a dispute over land with a neighbour escalated to the point where the neighbour made allegations to the authorities that Mansoor had been adulterous with a local woman. Mansoor claimed that he had been arrested, but released because there were no witnesses to testify against him. He explains how he left Iran shortly after his release out of fear that he would be arrested again or killed by the woman's husband. Mr Vince is clearly sceptical. He asks Mansoor for the date of the incident and Mansoor is unsure how to answer. He thinks for a while before answering that he was arrested in May 2002, and escaped Iran in June. Mr Vince asks him about his activities between June 2002 and his application for

asylum in the UK in June 2004. Mansoor revises the date, explaining that he was confused, and that he meant to say June 2003. The lawyer is clearly losing patience. He asks Mansoor if he has any evidence to support his story, and why he did not mention it at his interviews. Mansoor admits that he cannot prove what he has said, and explains that he did not inform the caseworker of this story because he was unaware that it would have been considered to be an acceptable ground for asylum.

Before the Mr Vince can continue, Mansoor volunteers that he is gay and that he had to flee Iran when his brother discovered him in an intimate situation with a male friend in September 2003. The lawyer is silent, and Mansoor elaborates. He explains how he and his friend fled Iran the same day, after his brother beat them and threatened to expose them to the authorities. He continues that he did not explain this to the caseworker at the time because he was ashamed of his conduct, and that he is only now revealing it because he has no other choice but to tell the truth. Mr Vince asks Mansoor how he can reconcile being homosexual with being adulterous with another man's wife. Mansoor explains that he was not adulterous, and that the allegations were concocted by his neighbour. Mr Vince stares at Mansoor, before picking up his pen and writing further notes on his pad. As he writes he asks Mansoor if he realises that any of the stories that he has told will be unlikely to succeed because the caseworker has already cast aspersions on Mansoor's credibility. Mansoor again denies that he has been untruthful and curses the caseworker. He asks the lawyer which of the three stories will have the best prospect of success.

Mr Vince becomes angry at Mansoor. He refuses to assist Mansoor in concocting a story, and again asserts that notwithstanding Mansoor's denials, he is clearly not telling the truth. He looks at his watch, before asking Mansoor again about the grounds that he wishes to appeal upon. Mansoor answers that the appeal should be made on the basis of his homosexuality. The lawyer presents him with a form for his signature, and explains that he will complete the appeal and fax it to the Home Office before the expiration of the deadline. He suggests that Mansoor return to sign the appeal tomorrow lunchtime. The lawyer escorts us back to the now empty reception and leads us down the stairs and out of the building.

Mansoor is unhappy with the consultation and curses the lawyer for his stupidity and his failure to help. He tells me that he will return tomorrow, and that he will insist on seeing a different lawyer for a second opinion.

Outcomes

I never saw Mansoor again following our first encounter, despite waiting in the reception of the BRC for some time the following day. Several months later, after I had become friendly with Mrs Stollar, a different lawyer working in the BRC, I explained my interest in Mansoor's case, and she agreed to establish how it had been resolved. On the next occasion that we met, she informed me that Mansoor had indeed returned on the day of the deadline for the submission for his appeal, and that Mr Vince had submitted an appeal on the grounds that Mansoor's sexuality placed him in danger in Iran, and that he had not previously disclosed this because he

had been ashamed to admit to it. The tribunal had subsequently refused the appeal, confirming the caseworker's findings about Mansoor's credibility and the lack of any evidence in support of his new claim. Mansoor did not return to the BRC after his appeal was refused, and I do not know what subsequently became of him.

Comment

Mansoor's case was difficult to classify in a number of different ways. His contact with the other Iranians of the network was limited to a period of less than two hours, and while he did not really benefit from this contact, his appreciation of the need to act swiftly on his appeal, and possible grounds upon which he might base an appeal, were both derived from his brief encounter in the café.

Similarly, the encounter with Mr Vince ostensibly appeared to conform to the traditional model, particularly in terms of the lawyer's structuring of the interaction, his approach to establishing the facts behind Mansoor's case, and his refusal to accept Mansoor's instructions at face value. However in other ways the interaction was more participatory in that Mansoor was an active participant, and the lawyer did afford his client the opportunity to define his own goals and grounds, albeit in a limited context.

Mansoor's case is interesting for its insight into the limitations of the value of contact with the network. Mansoor was no doubt a difficult individual, and the timeframe for his appeal

effectively precluded a more useful degree of contact with other individuals more equipped to offer him the type of advice about his case and his lawyer that might have made a difference to his outcome. However it was Mansoor himself who declined Ahmed's suggestion to involve Naveed, as it was Mansoor's decision that hearing the stories of Kareem, Ahmed and Tariq had provided him with sufficient ammunition with which to approach a lawyer. The recommendations of the others based on their own positive experiences with their lawyers were rejected by Mansoor whose own self-confidence eclipsed his understanding of the crucial role that the lawyer would play in his case.

In the consultation itself, Mansoor's attempts to offer all of the mutually exclusive stories that he had heard earlier in the café served to alienate Mr Vince, who recognised Mansoor's lack of credibility and who refused to assist him in selecting the most meritorious story. Ironically, in many of the other cases I observed, this function – the selection of the best story to tell to the lawyer – had indeed been undertaken by the network in advance of the interaction with lawyer. In this sense, Mansoor's haste to start the process once he perceived that he had sufficient information represented an incomplete preparation. Mansoor later blamed the lawyer for his lack of support, for doubting him, and for not having acted in accordance with his instructions.

Whether or not the identity of the lawyer would have made any difference to Mansoor's case is hard to assess. Certainly on the basis of the rejection letter detailing the failure of his initial application, Mansoor had a steep hill to climb. Other lawyers that I observed may well have refused to act in such an appeal from the outset on the grounds that it was most unlikely to have succeeded. Mr Vince's willingness to listen to Mansoor, and then to submit a suspect appeal

was in that sense a hallmark of a participatory relationship. However, in the final analysis, Mansoor's appeal did not fail because of the shortcomings of his lawyer or because of the approach taken to the interaction, but because he did not manage to overcome the legal weakness of his case. Perhaps a more prolonged exposure to the network may have been more successful in generating a more viable legal argument, however, even this is hard to assess.

Mansoor's brief contact with the network served to empower him to some extent in his relations with his lawyer, however this empowerment was incomplete and ultimately failed to usefully enhance his prospects in his dealings with the law.

TANYA

I first met Tanya and her two young sons in July 2004 in their NASS accommodation in Walsall. She had originally sought asylum in the UK in May 2003, having fled Kazakhstan to escape her estranged husband. Her original asylum application was refused in September 2003, as was an appeal to an adjudicator in February 2004. In June 2004, just prior to our first meeting, she received notice that her subsequent appeal to the tribunal had been rejected. Tanya had contacted the Progressive Jewish community in Birmingham after her appeal had failed, explaining that she was Jewish and needed the support of the community. Following an initial visit by a Mrs Gold, a concerned member of the community, a Jewish barrister in the community had examined her case papers but had been of the opinion that little could now be done. One evening I received a telephone call from Mrs Gold, a vague acquaintance, who had heard of my research interests, asking me if I would be willing to accompany her to Walsall to meet with Tanya and see if there was anything that I could suggest. I was keen to get involved, but careful to explain that I was not an expert in immigration practice, and that I was most unlikely to succeed where a barrister had failed. Mrs Gold was keen for me to see Tanya regardless of my disclaimer, and we travelled together to Walsall a few days later.

Tanya was 34 years old when we first met, and lived with her two sons aged 8 and 10 in a terraced house near the centre of Walsall. At our first meeting she was hysterical and incoherent, spoke little English, and seemed to think that I was a lawyer who could help her to address the failure of her appeal. She vacillated between begging me to intervene in her case,

and thanking me for doing so. Mrs Gold had warned me on the journey that Tanya was very dramatic and emotional, and that although she had explained that I was a researcher interested in immigration cases, she was not convinced that Tanya had understood.

Mrs Gold had already briefed me on the circumstances of Tanya's claim, but had herself not seen any of the paperwork relating to the case. The barrister had spent an hour with Tanya the previous week, examined the case paperwork, and had been of the opinion that the only remaining legal option was for Tanya to seek judicial review of the decisions. He had concluded that such an action would be extremely costly and was very unlikely to succeed because no new grounds for the application were apparent, and because there were no glaring procedural errors in the decision to refuse Tanya asylum, or in the rejection of her appeal.

When we arrived, Tanya quickly began urging me to help her, and spent almost half an hour emotionally explaining that she could not possibly return to Kazakhstan. During this time Mrs Gold comforted Tanya, drying her eyes and holding her, and gently urging Tanya not upset herself and to show me her case paperwork. Tanya remained incoherent for the most part, asserting again and again that she must not be returned to Kazakhstan, and pleading that I help her. Once I had managed to explain to Tanya that I was not a lawyer but a student, she seemed somewhat taken aback, and initially refused to allow me to look at any of her case papers, however Mrs Gold reassured her, and she eventually agreed some 50 minutes after our arrival.

My assessment of Tanya's statement submitted to the Home Office in advance of her interview, the decision letter setting out the grounds for the failure of her application, and the two appeal

submissions and rejections was that Tanya's legal advisers had been competent and thorough. As Tanya seemed unable to coherently tell her story, I gleaned the following details from the paperwork. Her original asylum application detailed how she had left her abusive husband and escaped with her children to a city in the north west of the country close to the Russian border. He had found her, savagely beaten and raped her, and threatened to kill her should she attempt to leave him again. She had reported the attack to the police, but no action was taken against her husband, as the police considered the complaint to be a domestic matter and that Tanya had acted provocatively by removing her children from their father. After Tanya had involved the police, her husband informed her that he now intended to take the children away from her because as a Muslim, his children were Muslim and she was not to be trusted with their care. She escaped again that evening, travelling almost 300km to a city with an airport on the Caspian Sea, where she bribed an official to allow her and the children to board a flight to the UK without the necessary visas. Tanya's application claimed that she suffered a serious risk of death, or inhumane treatment at the hands of her husband should she be returned to Kazakhstan, and that the organs of the state could not be relied upon to protect her.

Tanya was refused asylum for a number of reasons. Firstly the caseworker had doubted the veracity of her account of the violence she had suffered, as no medical evidence had been adduced in support of her claim, and no physical evidence on her person was apparent. He also cited a number of inconsistencies in her statement and her answers to questions at interview. Secondly he had challenged the need for Tanya to leave Kazakhstan as opposed to relocating to a different part of the country, and had suggested that her contention that adequate police protection was unavailable was not consistent with the Home Office Country of Origin Report

findings. In addition he had considered that on the basis of her own account of her ordeal, she would have been unlikely to suffer further harm at the hands of her husband should she have allowed him to assume responsibility for their children. Finally, she had failed to demonstrate that the risk of harm that she faced was related to any of the established Convention grounds for the granting of asylum.[267]

Tanya's appeals had both challenged the assertion that she could have relocated to a different part of Kazakhstan rather than seeking asylum in the UK, arguing that having already unsuccessfully relocated once, it was reasonable for Tanya to have decided that future efforts at relocation would have been likely to fail. They also challenged the contention that adequate police protection was available to victims of domestic violence in Kazakhstan, citing recent research evidence from a number of sources in an attempt to cast doubt on the Country of Origin Report findings. Further, the tribunal appeal argued that although Tanya might have escaped further harm should she have abdicated responsibility for her children, expecting her to have done so constituted a breach of her rights to family life. Finally the tribunal appeal also argued that her sons, now settled in the UK and attending local schools, would be unfairly prejudiced by removal from the UK.

The question of Tanya's credibility had been raised in respect of inconsistencies in her statements, and both the adjudicator and the tribunal had emphasised that notwithstanding the strength of some of the appeal grounds, Tanya's failure to have satisfactorily demonstrated any

[267] A well founded fear of persecution on the basis of race, religion, nationality, membership of a particular social group, or political opinion.

evidence in support of her story, coupled with the inconsistencies in her accounts of events, led to the presumption that her claim was unfounded.

Tanya already understood the basis of the rejection of her appeals. She remained silent while I read the paperwork, but once I had finished reading she again began to weep and wail, repeating over and over that she had not lied, and that she could not be returned to Kazakhstan. I was unsure what to say, but I asked her when she was due to see her lawyers again, and whether they had discussed the possibility of an appeal to the High Court with her. She was not sure, but was supposed to see her lawyer again the following week. I explained that if she received notice from NASS that her support payments were to be stopped, or that she would have to leave her accommodation, she should not worry because both of these outcomes could be challenged. My concern to provide some useful advice backfired and I only succeeded in alarming Tanya at these possibilities. Mrs Gold wanted some time alone with Tanya, and I withdrew to the kitchen while they talked. On my return I asked Tanya if she would be willing for me to accompany her to see her lawyer on her next appointment. She said that she would think about it, and let Mrs Gold know of her decision.

My request to accompany Tanya to her next appointment was not addressed, and some weeks later I was informed by Mrs Gold that Tanya had been declined leave to appeal from the tribunal to the High Court. A Deportation Notice had been served, and although her lawyers had successfully challenged the threatened withdrawal of NASS support payments on the grounds that Tanya's children were dependent upon them, Tanya's position looked bleak. The Progressive community had rallied to her aid however. Concerted efforts had been coordinated

to frustrate any attempt at deportation and Tanya had left her NASS accommodation and had been living with her sons in the homes of various community members. After several weeks, she returned to her NASS accommodation, but community members accompanied her to her weekly registration appointments in Solihull in an attempt to prevent her from being detained with a view to deportation. Money had been raised to support Tanya outside of the NASS framework, to publicise her case, and to seek further legal advice. A number of local newspapers carried articles detailing Tanya's plight and calling on members of the public to lobby their MPs. The MP in whose constituency the Progressive synagogue was located wrote a letter on Tanya's behalf to the Home Secretary, voicing her concerns about the case and asking that it be urgently reviewed. A national women's charity actively campaigning for enhanced asylum rights for victims of domestic violence also took up Tanya's cause, posting her details on their website and promoting national awareness of her case. A Jewish city councillor was recruited to join the campaign, and a petition calling for a grant of Discretionary Leave to Remain in the UK was delivered to the Home Secretary in October 2004 containing some 10,000 signatures. In the same month the MP who had originally written to the Home Secretary raised Tanya's case during a Commons debate on immigration. The possibility that Tanya might emigrate to Israel was being actively pursued, but the Israeli embassy had refused to grant Tanya a visa without further evidence of her Jewish status.

Outcomes

In January 2005 Tanya and her children were detained after attending a routine registration appointment. Ten days later they were forcibly removed from the UK and returned to

Kazakhstan. Despite the considerable mobilisation of support, and the efforts of the Progressive community, the newly formed Immigration and Nationality Directorate had refused to reconsider Tanya's case, or to delay her deportation.[268] Mrs Gold later told me that she had heard from Tanya since her return to Kazakhstan, and that she was living without complications with her children in the capital Astana. Her attempts to gain a visa to return to the UK legitimately had so far failed, and though a visa permitting her emigration to Israel had been approved, Tanya had decided that she did not wish to relocate there.

Comment

Tanya's case was extremely troubling, particularly for what it revealed about the status of victims of domestic violence in respect of applications for asylum in the UK. Perhaps the position taken by the Home Office is supported by the fact that on her return to Kazakhstan Tanya did not encounter danger at the hands of her husband, and apparently felt sufficiently safe there not to relocate legally to Israel. Although one might argue that her husband posed a continuing risk to Tanya, and that the lack of any incident since her return did not remove the potential danger in the future.

I did not observe any of Tanya's encounters with her lawyers, and due to her emotional state when we met, I was unable to obtain any useful information from her about the nature and

[268] The politicisation of asylum and immigration that led to the creation of the IND and to the imposition of rigorous targets for the deportation of failed asylum seekers is relevant in this context.

conduct of her interactions with her lawyers. The papers that I saw were extremely thorough – among the most lengthy and detailed of any that I encountered during my research – and it seems reasonable to attribute this thoroughness, at least in part, to the competence of Tanya's lawyers. However whether or not Tanya's story as told in advocacy was in fact the story that Tanya herself told to her lawyer is impossible to gauge,[269] and the nature and conduct of her interactions with her lawyer cannot usefully be speculated. It is clear to me that Tanya understood the principal ground for the refusal of her claim – that inconsistencies in her story led the caseworker and subsequently the appeal adjudicator to question her credibility and the veracity of her account.

Tanya's initial contact with her lawyers and the law was from a position of powerlessness more readily associated with the accounts in the previous chapter, although the thoroughness of her case paperwork leads me to suspect that the standard of service that she received was unusually high. Her story is included in this chapter because of the far reaching efforts exerted on her behalf once she had come to the attention of the Progressive Jewish Community in Birmingham. The support that was mobilised manifested in a number of extraordinary ways, culminating in a petition to the Home Secretary and the raising of her case in the House of Commons. My own contact with Tanya, particularly the way that I was invited to assist her by Mrs Gold, may indicate that much of the efforts on her behalf were procured by those acting in her best interests but without her explicit instructions or authority. Tanya may have been too overwrought emotionally to participate actively in the efforts to prevent her removal from the

[269] After her removal from the UK I contacted her lawyers in an attempt to find out more about her case. I was predictably refused an audience on the basis of enduring client confidentiality.

UK, and in this way her case, post appeal, can be understood to conform more to a traditional paternalistic model than to participatory model involvement in the strategy and decision-making of her case.[270]

Tanya's case is illuminating in the context of empowered clients only in respect of the considerable efforts on her behalf after the rejection of her appeal. No other refugee I observed benefited from such high level support and campaigning. Yet in the end all of these efforts eventually came to nothing. The facts of her case, particularly the credibility issues from her initial application, ultimately carried forward and determined her eventual failure to remain in the UK. The petition seeking an award of Discretionary Leave to Remain was perhaps also unsuccessful in light of the doubts about her story. In this sense the considerable influence of her supporters proved unable to overcome the difficulties posed by the initial findings of fact and the judgments of the Home Office caseworker that remained unchallenged in the subsequent appeal.

Tanya's case may have been determined differently if she had been able to mobilise the support that she eventually enjoyed at an earlier stage in her application process. In the final analysis however, even the powerful and influential lobbying on her behalf was unable to transcend the limits of the processes of immigration law and the impact of the previous decision-making in her case.

[270] If indeed there was any strategy or coordination of the efforts to mobilise support for Tanya in challenging the rejection of her appeal. I suspect that in reality the developments represented a series of increasingly desperate ad hoc attempts by altruistically motivated individuals to find a way to contest an outcome that offended against their innate sense of justice and fairness.

INTERPRETATION

All 18 of the empowered clients that I observed and whose experiences are the subject of this chapter are detailed below in Table 4.

Table 4: Empowered Clients

Client	Interaction	Outcome	Satisfaction	Country of Origin
Farouk*	Participatory	Success	Yes	Iran
Ahmed	Participatory	Success	Yes	Iran
Kareem	Participatory	Success	Yes	Iran
Rahim	Participatory	Success	Yes	Iran
Mohammed	Participatory	Success	Yes	Iran
Salman*	Participatory	Success	Yes	Iraq
Lucas*	Participatory	Success	Yes	Uganda
Aleksander	Participatory	Success	Yes	Albania
Visar	Participatory	Success	Yes	Albania
Ali*	Participatory	Failure	Yes	Iran
Hamed*	Traditional	Success	Yes	Iran
Tariq	Traditional	Success	Yes	Iran
Junan	Traditional	Success	Yes	Iran
Tomas	Traditional	Success	Yes	Iran
Marko	Traditional	Success	Yes	Albania
Mansoor*	Traditional	Failure	No	Iran
Suhrab	Traditional	Failure	No	Iran
Tanya*	Traditional	Failure	No	Kazakhstan

Empowered clients obtained successful outcomes in 14 of the 18 cases I observed (78%), and 15 of the 18 reported satisfaction with their encounters with their lawyers (83%). The outcome determined client satisfaction in 17 of the 18 cases (94%), the only exception, Ali (described above) eventually reporting satisfaction despite his failure to obtain asylum.

* Accounts presented in this chapter.

Again, reliable quantitative analysis is not possible with these data, however it is indicative that clients were satisfied with the service they received in all 10 cases where they were encouraged to participate (including the sole failed case), and in only 5 of the 8 cases where the lawyer did not invite or accept participation.

In absolute terms, those that enjoyed the benefits of a participatory relationship with their lawyers (10 of 18) faired better in terms of both satisfaction (10 of 10) and outcome (9 of 10) than their counterparts with traditional interactions (8 of 18), whose reported satisfaction (5 of 8) and successful outcomes (also 5 of 8) were considerably lower. Although this analysis supports the contention that the model of interaction influences case outcome, and even more strongly, the extent of client satisfaction in each case, the sample size precludes testing for the statistical significance of the results. Again the analysis indicates that the participation hypothesis merits more rigorous testing. However as will be seen in the next chapter, the new variable I discovered in the course of the fieldwork – client empowerment vis-à-vis the lawyer – made more difference to the case outcome and client satisfaction than either of the anticipated variables.

In all but one of the cases I document in this chapter, the choice of approach to the interaction was a choice of the lawyer. However unlike their powerless counterparts, the clients in this chapter were often informed sufficiently about the approaches that individual lawyers would take to interactions that they were able to select their lawyers on the basis of the nature of the interaction that they sought. In this sense, these clients were empowered by their prior knowledge about their lawyers.

Where such knowledge was derived from the communal experience of a network of previous asylum seekers (15 of the 18 cases), this empowerment extended beyond the selection of a 'good lawyer' to the presentation of a 'good case' in more than two thirds of the cases I observed (11 of 15 cases).

Normal Cases: Successful Outcomes

7 of the 18 empowered clients[271] received participatory interactions, obtained successful outcomes and reported their satisfaction with their lawyers. In each of these cases the clients' choice of lawyer was informed on the basis of the (communal) experiences of the network of the lawyer in question. In each case a recommendation was made on the basis of the reputation of the lawyer as a lawyer who would 'take you seriously' or as a lawyer who 'could be trusted' or who had 'looked after so and so.' Each of these expressions was a conception of the lawyer as a 'good' lawyer, and each was ultimately born out of a recognition based on prior experience that the lawyer in question would deploy a participatory approach to interactions with clients, and further, that such an approach would be advantageous to the client in obtaining a successful outcome. In this sense, the common knowledge of the network explicitly supports the hypothesis that participatory interactions promote positive outcomes.

[271] I do not include Lucas or Salman in this analysis as their contacts with their lawyers were not informed by a recommendation of a network.

In 6 of these 7 cases, not only did the clients' exposure to the knowledge of the network serve to direct them towards participatory lawyers, but in addition the prior advice of the network also directed these clients towards a particular (strategic) presentation of their stories. The one case where this did not occur, Mohammed's case, was an example of an appeal that was sufficiently strong on a single issue of new information not adduced at first instance, that the network considered that the lawyer in question could be relied upon to correctly identify and address the issue unaided. To the extent that client case presentations were manipulated through exposure to the knowledge of the network, it is hard to assess independently the extent to which client participation in the relationship actually affected successful outcomes. With this said however, the success of 7 of the 8 empowered individuals who chose lawyers through their networks and who benefited from participatory interactions clearly speaks for itself.

A more surprising finding relates to the 7 clients[272] who were directed by the experience of the network towards lawyers known to adopt a traditional approach to the interaction. In Hamed's case, and in 4 others, the client choice of lawyer was made specifically on the basis of the individual client's unwillingness or inability to usefully participate in the interaction. The network understood the lawyers in question to be 'good' – each had a record of success in asylum applications. However for various reasons[273] these clients specifically selected lawyers who were known to approach client interactions in a traditional way. These client choices offer a challenge to the hypothesis that participation is per se preferable and promotes positive outcomes. In fact, 5 of these 7 clients who received traditional model interactions did obtain

[272] I do not include Tanya, who I discuss below, in this analysis.
[273] Examples of client expressions included: 'let him get on with it, I'm too busy', and '[I] don't want him to ask too many questions'. Another reason was where the client in question spoke little or no English.

successful outcomes in their cases. Of the 2 who did not, Mansoor can be distinguished on the basis of his incomplete access to the network. The other individual, Suhrab is harder to dismiss and is perhaps the only real example of a genuine failure of the traditional model in an empowered context.

Again, of the 7 clients who received traditional interactions, 5 also altered the straightforward presentation of their cases on the basis of the advice and experience of the network. 3 of these, Hamed, Tariq and Junan all obtained successful outcomes, and the point made above about the difficulty of assessing the impact of the model of interaction on the case outcome in the face of client manipulations of their case presentations also obtains in these cases. The other 2 cases, those of Mansoor and Suhrab, were unsuccessful in obtaining asylum notwithstanding the manipulation of their case facts. However, again Mansoor's case is of limited value in this analysis as his exposure to the network was only partial, and the version(s) of events he subsequently described to his lawyer were tenuous at best. Suhrab is a better example in that his choice of a traditional lawyer and the facts that he presented to him were both influenced by his contact with the network, yet his case was ultimately unsuccessful. This example may support the theoretical assumptions about the limitations of the traditional model, but undermines the hypothesis of the impact of client empowerment.[274]

[274] It is difficult to identify the extent to which Suhrab's unsuccessful outcome is attributable to the traditional interaction with his lawyer, or the extent to which his empowerment 'failed' to achieve athe desired result. In this sense, I cannot rank the model of interaction or his prior empowerment in any analysis of his unsuccessful outcome and dissatisfaction. To the extent that as an empowered client Suhrab did not obtain a successful outcome, it is reasonable to assert that his case undermines the hypothesis that empowerment promotes positive case outcomes, however clearly empowered clients, like their repeat-player or corporate equivalents will never always win, and no approach can guarantee success all the time.

Both Tomas and Marko selected lawyers known to provide traditional model interactions, and did not alter their case stories as a consequence of the experiences of their networks. Tomas, like Mansoor, did not fully benefit from exposure to the network in that time limits on the submission of his appeal prevented more in depth strategic planning. Marko accessed his information about his lawyer through a network of Albanian refugees, which I never observed offering useful information about the strategy for presenting or emphasising case facts. Nevertheless, both of these individuals were successful in obtaining positive outcomes to their cases, on the basis of unaltered stories, notwithstanding the deployment by their lawyers of the traditional model in interactions. These examples clearly present a challenge to the theoretical preference for the participatory model, but support a conception of the client empowerment hypothesis that recognises the impact of prior knowledge on the prospects for success in individual cases.

Normal Cases: Satisfaction

All 10 of the empowered clients who received participatory interactions reported satisfaction with their lawyers, while 5 of the 8 individuals who received traditional interactions reported satisfaction with their lawyers. In all but 1 of these cases (Ali) it could be argued that the outcome determined client satisfaction. On the face of these findings, satisfaction was more common in participatory interactions, and Ali's case supports this contention in that despite an unsuccessful outcome, he did report satisfaction with his lawyer. It may be that the classification of Ali's case as unsuccessful is inappropriate – although he did not gain asylum in

the UK, he did succeed in raising more money than he had originally intended, and in this sense his case does not illuminate the impact of the model of interaction on client satisfaction any more so than the others. With this said, the overall reported satisfaction of participatory model clients (100%) against traditional model clients (62%) does support the contention that participation leads to increased satisfaction.

Deviant Cases

Ali, Mansoor and Suhrab were all unsuccessful in their attempts to obtain asylum in the UK. As I have suggested, the classification of Ali's case as unsuccessful may be suspect, but to the extent that it is not, his satisfaction resulting from his participatory interaction with his lawyer supportss the theoretical preference for the participatory model.

Both Mansoor and Suhrab received traditional model interactions, were unsuccessful in their cases, and reported their dissatisfaction with their lawyers. Their cases support the theoretical preference for the participatory model, however they do not sit easily with the hypothesis of the impact of client empowerment. As I have indicated above, Mansoor's 'empowerment' can be readily distinguished as incomplete on the facts of his case. Suhrab however is less easily dealt with. His decision to approach a traditional model lawyer was made purposely on the basis of 'network' concerns about his ability to usefully participate in the relationship (language barriers; lack of intellectual capacity). His presentation of his case to the lawyer was formulated

strategically following the advice of the network. Yet he still failed in his application for asylum and reported dissatisfaction with his lawyer.

Limiting Case

Tanya's case was very difficult to classify in many ways, not least because I did not observe any of her interactions with her lawyers, and also because I received very little information about her case directly from her. However I include her story in this chapter for the light that it sheds on the limitations of client empowerment on the outcomes of cases. It may also be argued of course, that extra-legal empowerment is unlikely to affect a legal decision, although it may well have an impact on a political one, as in an 'appeal' to the Home Secretary to intervene. In Tanya's case, despite the mobilisation on her behalf of powerful and influential supporters unparalleled by any other refugee I encountered, she ultimately failed in her attempt to remain in the UK.

Tanya's case illustrates both the limitations of *political* empowerment post-facto, and also the limitations of 'honest' empowerment that cannot extend beyond the boundaries of the 'rules of the game'. In Tanya's case, aside from an extraordinary political intervention in the form of an award of Discretionary Leave to Remain in the UK, which was tried for and failed, no further realistic legal avenues remained open once her appeal had been refused. Her own empowerment was fundamentally unable to transcend the obstacles of the legal process, and

accordingly predictably failed to obtain a successful outcome to her case. In this sense, the weaknesses of her case and surpassed the strength of her empowerment.

Other forms of empowerment, particularly the social empowerment of the (Iranian) network that facilitated the strategic manipulation of case facts may have been more equipped to have succeeded in Tanya's circumstances. Her own political support network, however, did not possess the type of knowledge and experience of the Iranians, who had, as a collective, tried and tested a large number of possible grounds upon which asylum could be successfully obtained. However even this contention of the effectiveness of different forms of empowerment does not address the primary weakness of Tanya's case and the limitations of empowerment it reveals – that her own empowerment arose at too late a stage in the process of her application to have any real effect.

Multiple Forms of Empowerment

The hypothesis of client empowerment was derived from my observations of the interaction of refugees (Iranian and Albanian) among networks of their peers. Once I had formulated this hypothesis however, I realised that there were other forms of client empowerment that also gave rise to participatory interactions, successful outcomes, and client satisfaction. I have already discussed Tanya's political empowerment above, but I included both Lucas and Salman in this chapter because their cases clearly reveal other forms of client empowerment in the relationship with their lawyers.

Lucas was the only client I observed during my research who controlled the interaction with his lawyer to the extent that he successfully effected a change in the lawyer's approach from traditional to participatory. His empowerment was derived from his ability to participate, second guess and to challenge his lawyer in the language of the law. His own input into his case ultimately proved more valuable than his lawyer's, and both of them knew it. To this extent his own personal characteristics served to empower him in the relationship – in the form of either a *personal* or *knowledge-based* empowerment.

My decision to include Salman in this chapter was difficult in that like Tanya, I never observed him in any interaction with his lawyer. At face value however, his case clearly demonstrates a form of *economic* empowerment that secured for him a participatory relationship with his lawyer, a successful outcome and complete satisfaction. This empowerment thus radically improved the otherwise poor prospects of his application for asylum in the UK.

This chapter has presented the experiences of empowered clients and assessed the extent to which the empowerment of these clients affected their interactions with their lawyers, their case outcomes, and their satisfaction. In the following chapter I contrast the results that I have presented for both powerless and empowered clients, and examine the experiences of these groups in the context of the theoretical assumptions about participation in the lawyer-client relationship, and hypotheses about the various impacts of client empowerment. I also present a secondary analysis of all clients who approached nonlawyers for advice.

CHAPTER 7 – IMPLICATIONS OF THE RESULTS

STARTING HYPOTHESES

In much of the literature discussed in Part 1 that identifies the 'participatory' model in one form or another, there is a general presumption that participation is per se preferable to the 'traditional' alternative. Whether participation facilitates accurate identification by the lawyer of client instructions, thus enabling the achievement of genuinely client-chosen outcomes, or promotes psychological wellbeing and client satisfaction, client participation is almost universally endorsed. I have argued however, that this endorsement in the literature is fundamentally lawyer-derived, and fails to account for genuine client experiences. Accordingly I have sought to examine these presumptions about participation through the eyes of clients, and from this perspective, in this chapter I analyse the data presented in the previous two chapters in order to explore following hypotheses:

1, that client chosen outcomes would be more readily achieved where they engaged lawyers who adopted a participatory approach to interactions;

2, that client satisfaction would be better where they engaged lawyers who adopted a participatory approach to interactions.

EMERGING HYPOTHESES: TOWARDS GROUNDED THEORY

In the course of the fieldwork I noted that some asylum seekers were benefiting from the advice of an experienced network of friends and acquaintances, many of whose cases had already been heard. This group - "empowered clients" – seemed to be able to access participatory interactions more frequently than their "powerless" counterparts, and also seemed to obtain better outcomes and greater satisfaction from their encounters with their lawyers.

Empowered clients are not a new phenomenon. The existing literature already contains numerous conceptions of clients who do well: rich clients, corporate clients, repeat-players, partner clients, white-collar clients, *cause* clients, etc. In many ways, the empowered asylum seekers that I observed were presented with the same choices in their encounters with the law as the powerful clients already described in the literature: the informed choices about which lawyer will try to achieve my goals, and how best to present my case. Clearly the asylum seekers I observed did not have all the same powers vis-à-vis their lawyers as the powerful clients in the literature: they were unable to influence law-making; they enjoyed no revolving doors to politicians or large law firms; and even as collective repeat-players they did not experience the dependence of their lawyers who were either paid by the state or had many other clients with a diversity of problems.

However some clients, whether empowered by a form of social capital (derived from their connections to a network of other clients with prior knowledge and experience of lawyers and the system), or by their individual capacities, did clearly approach their encounters with their

lawyers and the law very differently from their powerless counterparts. On the basis of my observations in the field, I hypothesised that they were more likely to:

(1) approach lawyers who adopted a participatory approach to interactions; and
(2) obtain successful outcomes in their cases; and
(3) report satisfaction with their experiences with their lawyers.

These hypotheses are inherently client-derived, in that they are a product of an ethnographic method that enabled me to make a discovery about client power that was wholly unexpected, and that could not have emerged through research primarily directed at the lawyer. I explore these hypotheses below.

ADVICE FROM NONLAWYERS: SECONDARY ANALYSIS

The most recent qualitative research on client perceptions of nonlawyer advice was conducted after the completion of my fieldwork, and the relevance of my own data to the earlier review of the quality and cost of legal aid advice in the NFP sector was not apparent to me until late into the writing up of this thesis.

As the research was not directed towards differences in lawyer/nonlawyer provision, I did not contemporaneously determine the professional status of all 41 of the lawyers/advisors I encountered. Looking back through my field diaries allowed me to classify with certainty 9 different individual advisors, who between them account for all 13 advisor-client interactions

included in my sample, and 21 different lawyers. The remaining 7 individuals cannot be classified with certainty,[275] or even by inference.[276] My inability to fully engage in this secondary analysis is clearly a limitation of my data, although again these questions were never a central concern of the research. Indeed with such a small number of observed client-advisor legal interactions, my data would be unable to offer any useful quantitative conclusions, although again the value of any amount of qualitative data in the generation or development of theory is well recognised.

The most extensive qualitative research to date interviewed 46 advisors and 58 clients[277] and found that clients predominantly perceived nonlawyer advice to be of high quality. Similarly Moorhead et al's (2001) Quality and Cost survey found that nonlawyers were able to provide advice that was at least as 'good' as their qualified counterparts. Only 3 of the 44 refugees in my sample received their only legal assistance from nonlawyers, and 1 other received legal advice from both a lawyer and a nonlawyer. 10 individuals had various other contacts with an advisor, either as a referrer to a lawyer, or for other (non-legal) advice.[278] My own ethnographic data may accordingly illuminate some of the central concerns addressed by the existing literature, namely the quality and accessibility of nonlawyer advisors,[279] although the low incidence of nonlawyer advice in my sample precludes useful quantitative comparison of the performance of the lawyers and nonlawyers I encountered.

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[275] I have tried without success to contact these individuals since completion of the fieldwork, although all have moved on.
[276] Individuals who were unable to process appeals were always advisors.
[277] J Johnstone and J Marson, *op cit.*
[278] I have only included individual refugees whose encounters with nonlawyers I observed.
[279] The relative cost of nonlawyer advice has also been a central concern of the existing research, although cost and funding questions are beyond the scope of this work.

The majority of the cases I encountered (24 of 44) involved appeals against first instance refusals of asylum. 22 of these 24 appeal cases were handled by lawyers, and only 2 were handled by qualified advisors.[280] Of the 19 *pre-clients* I observed before a first instance decision was made on their asylum application only 1 received his only (pre-application) legal advice from a nonlawyer,[281] although he subsequently consulted a lawyer for his appeal. 6 refugees seeking to appeal against unsuccessful asylum applications consulted nonlawyers who referred them to other providers. 4 others consulted nonlawyers for assistance with benefit entitlements or housing concerns. Many of these client-advisor interactions were very short, particularly where they involved appeals that advisors were unable to progress. Nevertheless I have still attempted to classify these interactions as either traditional or participatory on the basis of the usual hallmarks.[282]

The model of interaction, outcome and satisfaction data for the 4 individuals who received legal advice (application or appeal) from nonlawyers are presented below in Table 5.

Table 5: Legal Advice from Nonlawyers

Client	Interaction	Outcome	Satisfaction	Case Type
Mukul	Traditional	Failure	No	Application
Fatmir	Traditional	Failure	No	Appeal

[280] Advice on asylum appeals can only be provided by qualified lawyers or advisors with OISC level 3 qualifications. My own experience volunteering at local immigration advice charities exposed me to many more level 3 advisors than qualified lawyers, and I am clear that my sample is unrepresentative of the proportion of the immigration advice in the region provided by qualified advisors.

[281] Again this figure is hard to reconcile with the stratification of the asylum legal advice sector, although in no cases did individual refugees explain their decision to consult a lawyer rather than an advisor on the grounds of the respective qualifications or professional status of either.

[282] Interactions with advisors who were unable to assist but took the time to listen and to ensure that other suitable advice was procured have been classified participatory.

Shajdad	Traditional	Failure	No	Appeal
Milton	Traditional	Failure[283]	No	Application

These data do not paint a particularly good picture of nonlawyer legal advice, although caution should be exercised in any generalisations due to the small sample size. That 2 of the 4 cases were appeals against unsuccessful applications, and that 1 other (Mukul) was subsequently declined asylum, may indicate that the cases were 'weak' and the advisors who did dispense formal legal advice may not have been given much to work with from the outset. Nevertheless, these advisors all deployed strongly traditional approaches to the interactions, and their clients all expressed dissatisfaction following their consultations. Milton's encounter, described in chapter 5, highlights the impact on the client of poor quality routinised service.

It is noteworthy that none of the empowered clients I observed received their primary legal advice from nonlawyers. This was not because of any conscious choice to prefer lawyers *because they were lawyers*, although network-influenced decisions about where to seek advice frequently included assessment of the skill of individual providers. In this sense the fact that no empowered clients approached nonlawyers for legal advice may demonstrate a judgement about the quality of specific nonlawyers, but equally may simply be a consequence of the prevalence of lawyers among the social contacts of the Iranians.

[283] Although I designated Milton's overall outcome as a success in chapter 5, his contact with the advisor Miss Bashir cannot sensibly be seen as a contributing factor.

The model of interaction, immediate outcome, and satisfaction data for the 6 individuals who approached nonlawyers with appeal cases that were referred elsewhere are presented in Table 6 below.

Table 6: Appeal Referrals from Nonlawyers

Client	Interaction	Outcome	Satisfaction	Case Type
Rashid	Traditional	Referral	No	Appeal
Dominic	Traditional	Referral	Yes	Appeal
Ajmal	Traditional	Referral	No	Appeal
Baako	Traditional	Referral	No	Appeal
Abrahem	Traditional	NASS list	No	Appeal
Krim	Traditional	No assistance	No	Appeal

All 6 refugees who approached advisors seeking help with asylum appeals were informed that they would have to seek help elsewhere. 4 of these individuals were directed to specific individuals or specific providers. In 3 of these cases the advisor made telephone contact and/or an appointment with the referred provider, and in 1 case (Baako) the advisor sent me to accompany the client. 2 individuals were informed that they would have to seek alternative help, but were not actively assisted in so doing.[284]

The willingness and efficacy of advisor referrals to other providers has received some attention in recent research, and the difference between active 'referring' and passive 'signposting' has already been identified.[285] My data reveal the impact of different approaches to referrals on client experiences. Although only 1 of the 6 clients referred to other provides was satisfied with

[284] One was provided with the standard NASS list of local advice providers, the other was advised to "try somewhere else".
[285] H Genn, *op cit;* R Moorhead et al, *Quality and Cost, op cit;* P Pleasence, *op cit.*

the interactions with advisors that resulted in referral,[286] those who were actively referred (had appointments made etc) were all able to access appropriate advice swiftly (the shortest interval between advisor consultation and referred lawyer consultation being 2 hours; the longest interval being 10 days). The 2 clients who were 'signposted' – simply told to go elsewhere, or offered a list of other providers – waited 14 days and 23 days respectively before obtaining appointments elsewhere.

The 6 refugees who were referred to lawyers by advisors all had 'unsuccessful' outcomes in respect of their interactions, as the advisors in question were unable to assist them except for referring them elsewhere. The outcome variable is accordingly of little value in these 6 cases. Client satisfaction in these cases is also a somewhat artificial measure. This is because clients who had spent considerable time queuing for advice only to be told to go elsewhere were unlikely to be satisfied, even when treated in a helpful and respectful manner. In this sense clients did not differentiate between 'good' and 'bad' referrals – all were dissatisfied following consultations where they were informed that the advisor was unable to provide substantive advice.[287]

4 individuals received non-application/appeal advice from nonlawyers. The model of interaction, outcome and satisfaction data for these individuals are presented below in Table 7.

[286] Dominic (chapter 5), who was very easily satisfied.
[287] Dominic's isolated satisfaction can once again be distinguished – he was always happy with his lot.

Table 7: Non-Legal Advice from Nonlawyers

Client	Interaction	Outcome	Satisfaction	Case Type
Tariq	Participatory	Success	Yes	Benefits
Baako	Traditional	Success	Yes	Benefits
Farouk	Participatory	Success	Yes	Housing
Haresh	Participatory	Success	Yes	Housing

Advisors achieved better outcomes and client satisfaction when engaged for non-appeal or non-application issues. All 4 clients who sought either benefits or accommodation assistance obtained successful outcomes (interim reinstatement of NASS benefits, change of NASS accommodation) and expressed satisfaction. 3 of these 4 received participatory interactions from their advisors. The experiences of these clients are more readily reconciled with the existing research that has emphasised the quality of nonlawyer advice. The participatory nature of 3 of these consultations is unusual in the context of other powerless clients who rarely experienced participatory interactions, and supports the various conceptions of the 'paraprofessional paradigm' of the hallmarks of nonlawyer advice.

In summary, in legal advice cases, the lack of advisor legal qualifications had no measureable positive impact on either client satisfaction or successful case outcomes, and may have had a negative effect.[288] Furthermore advisors all deployed the traditional model in legal advice interactions, in contrast to the client-centered conceptions of inclusive, holistic and sympathetic service described in the literature.

[288] Quantitative analysis is not possible given the sample size.

Nonlawyers whose qualifications prevented them advising on appeal cases provided active referrals in the majority of cases (4 of 6), although none of these individuals was eventually successful in their appeals. In 3 of these cases I have no data about the advisor's perception of the referred provider, but in Baako's case the advisor ceased making referrals to the provider in question after hearing my account of the service provided. The 2 cases where active referrals were not provided demonstrate the value to the client of active assistance in respect of the length of time until the next advice appointment, however the 'quality' of the referral had no impact on client satisfaction. This is an unexpected finding that merits further discussion. It may be that better filtering of client problems by reception staff could have reduced the incidence of individual clients queuing for an advisor, perhaps for long periods, only to discover that appeal advice was unavailable. It may also be that in all of these cases the client did not fully understand the distinction between lawyer and advisor, and accordingly the rationale for the need to seek help elsewhere.

The lack of legal qualifications appeared to have a positive impact on the interaction model, client satisfaction and outcome in non-legal advice cases, as all 4 clients achieved their chosen outcomes and reported satisfaction. None of the individuals in my sample consulted a lawyer for the sole purpose of obtaining assistance with housing/benefits, although 5 individuals did receive auxiliary housing/benefits assistance from lawyers whom they had consulted for legal advice. Only 3 of these 5 were successful in respect of these housing/benefit problems, and only 2 addressed these issues with their lawyers in a participatory manner.[289] In this sense advisors

[289] I am unable to account for client satisfaction in these cases independent of their satisfaction in respect of the legal issue for which they had sought advice.

were better at dealing with non-legal matters than lawyers. This is supported by the willingness of 2 empowered clients to seek non-legal advice from nonlawyers. Empowered clients recognised that nonlawyers were a valuable resource for assistance in the resolution of non-legal matters, even if not in legal matters.

EFFECT OF CLIENT PARTICIPATION ON CASE OUTCOMES

10 of the 13 clients I observed who engaged lawyers who adopted a participatory model in interactions, and who enjoyed participatory relationships with their lawyers, were successful in their cases. Only 9 of the 31 clients who engaged lawyers who adopted a traditional model in interactions, and who experienced traditional relationships with their lawyers were successful in their cases.

These findings speak for themselves. Those clients in my sample who enjoyed participatory relationships with their lawyers were considerably more likely to obtain successful outcomes in their cases. The data presented in the previous chapters thus clearly support the contention that participatory interactions promote successful case outcomes.

EFFECT OF CLIENT PARTICIPATION ON SATISFACTION

12 of the 13 clients I observed who engaged lawyers who adopted a participatory model in interactions, and who enjoyed participatory relationships with their lawyers reported

satisfaction with the legal service they received. Only 9 of the 31 clients who engaged lawyers who adopted a traditional model in interactions, and who experienced traditional relationships with their lawyers reported satisfaction with the legal service they received.

These findings also speak for themselves. Those clients who enjoyed participatory relationships with their lawyers were more than three times more likely to report satisfaction with the legal service they received. The data presented in the previous chapters thus clearly support the contention that participatory interactions enhance client satisfaction.

INFLUENCE OF OUTCOMES ON SATISFACTION

It may be that client satisfaction is not an independent variable in that of the 44 cases I observed, outcomes determined client satisfaction in all but 4 cases (40 of 44). If client satisfaction with the legal service received is simply a consequence of the outcome of each case, then any analysis of satisfaction will fail to capture the real impact of participation, except insofar as participation promotes successful outcomes. The 4 cases where outcomes did not appear to shape satisfaction may thus present the only opportunity to assess the effect of participation on satisfaction independently of case outcomes. The combined satisfaction and outcome correlation data for all of the 44 clients I observed are presented in Table 8.

Table 8: Satisfaction and Outcome Correlation for All Clients

Model of Interaction	Successful and Satisfied	Unsuccessful and Unsatisfied	Successful and Unsatisfied	Unsuccessful and Satisfied	Total
Participatory	10 (77%)	1 (8%)	0	2 (15%)	13
Traditional	8 (26%)	21 (68%)	1 (3%)	1 (3%)	31

In participatory interactions, outcomes determined satisfaction in 11 of the 13 cases in my sample (85% - the first 2 columns). In traditional interactions, outcomes determined satisfaction in 29 of the 31 cases in my sample (94%). These results are suggestive but the differences are too small to be relied upon. Client satisfaction can only be independently examined in the 4 cases where case outcomes did not correlate with client satisfaction.

Two clients who received participatory interactions, Wasim and Ali, were unsuccessful, yet reported satisfaction with their lawyers. Correspondingly, 2 other clients, Milton and Dominic, were both clients who received traditional model interactions. One was dissatisfied in spite of winning his case, while the other, who lost his case, was nonetheless satisfied. In my sample satisfaction independent of case outcome was thus more likely in a participatory context.

Wasim and Ali's cases particularly demonstrate the advantages to the client of a respectful, reciprocal and dignifying interaction with their lawyer, and provide a strong support for the theoretical preference for the participatory model. Indeed, on the basis that their cases were unsuccessful, these cases represent genuine client judgments about satisfaction arising from the relationship independent and unclouded by client perceptions of their case outcomes. In respect of the traditional model, Milton's dissatisfaction, notwithstanding the success of his case, was

explicitly a dissatisfaction with the model of his interaction and with his lawyer. Dominic, the deviant case, can only be explained on the basis of his own personal characteristics and refusal to let his poor experience 'get him down'.

EFFECT OF CLIENT PARTICIPATION ON THE INCIDENCE OF PARTICIPATORY INTERACTIONS

10 of the 18 socially empowered clients I observed experienced participatory model interactions with their lawyers, while only 3 of the 26 powerless clients experienced participatory model interactions with their lawyers. With one exception (Lucas), empowered clients did not influence their lawyer's handling of their case. Rather it was the prior knowledge about whom to approach which made the difference for empowered clients.

These findings strongly support the hypothesis that empowered clients are more likely to approach participatory model lawyers, however it is unclear whether empowered clients in my sample approached lawyers because they were known to adopt participatory approaches to interactions, or whether these clients simply approached lawyers who were known to be 'good'. Examination of the actual recommendations in the 10 cases where empowered clients were advised to approach participatory lawyers is inconclusive. In 3 of these cases, the recommendation explicitly made reference to participatory characteristics of the lawyer. In 4 of these cases the recommendation explicitly identified the quality of the lawyer's previous work, without reference to any independent participatory hallmarks. The remaining 3 cases were made on the basis of other personal recommendations unhelpful in this analysis.

INFLUENCE OF PRIOR EMPOWERMENT ON CASE OUTCOMES

The differentiated outcomes data for clients empowered by access to a 'knowledge network' and clients whose social contacts were limited or powerless are presented below in Tables 9 and 10.

Table 9: Outcome Results for Empowered Clients (N:18)

Model of Interaction	Successful Outcomes
Participatory	9 of 10 (90%)
Traditional	5 of 8 (62%)

Table 10: Outcome Results for Powerless Clients (N:26)

Model of Interaction	Successful Outcomes
Participatory	1 of 3 (33%)
Traditional	4 of 23 (17%)

14 of the 18 socially empowered clients I observed obtained successful outcomes in their cases, while only 5 of the 26 powerless clients I observed obtained successful outcomes in their cases. These findings strongly support the hypothesis that empowered clients are more likely to obtain successful case outcomes. However the logic underlying the hypothesis is that empowered clients who approached *participatory* model lawyers would be more likely to secure successful case outcomes, on the basis of the benefits and advantages theorised in respect of the participatory model itself. With this said, a more appropriate analysis focuses on the successes of participatory model clients, and not all clients in the sample.

9 of the 10 empowered clients who experienced participatory model interactions obtained successful outcomes in their cases, while only 1 of the 3 powerless clients who experienced

participatory model interactions obtained a successful outcome. Again the hypothesis is indicatively supported, but client empowerment as regards choice of lawyer makes a bigger difference than the lawyer's approach to interaction even within the group who received participatory model advice.

This influence of prior empowerment is even more marked for those who experienced traditional model interactions. 5 of the 8 empowered clients in my sample who experienced a traditional model obtained successful outcomes in their cases, while only 4 of the 23 powerless clients who experienced a traditional model obtained successful outcomes in their cases.

These data support the hypotheses that socially empowered clients who approach participatory model lawyers obtain better outcomes in their cases than those who approach traditional model lawyers. For powerless clients, the differences were more marked, and the outcomes worse, whatever the type of interaction received. Importantly the data also indicate a more general conclusion not contingent on the model of interaction analysis: *that client empowerment (social capital) increases successful case outcomes.*

INFLUENCE OF PRIOR EMPOWERMENT ON SATISFACTION

The differentiated satisfaction data for empowered and powerless clients are presented below in Tables 11 and 12.

Table 11: Satisfaction Results for Empowered Clients (N:18)

Model of Interaction	Reported Satisfaction
Participatory	10 of 10 (100%)
Traditional	5 of 8 (62%)

Table 12: Satisfaction Results for Powerless Clients (N:26)

Model of Interaction	Reported Satisfaction
Participatory	2 of 3 (67%)
Traditional	4 of 23 (17%)

15 of the 18 socially empowered clients I observed reported satisfaction with their lawyers, while only 6 of the 26 powerless clients reported satisfaction with their lawyers. Again however, the logic underlying the hypothesis is that empowered clients who approached *participatory* model lawyers would be more likely to report satisfaction. Accordingly it is illuminating to contrast client satisfaction under each of the models of interaction.

All 10 empowered clients who experienced participatory model interactions reported satisfaction with their lawyers, and 2 of the 3 powerless clients who experienced participatory model interactions reported satisfaction with their lawyers.

5 of the 8 empowered clients who experienced traditional model interactions reported satisfaction with their lawyers, while only 4 of the 23 powerless clients who experienced traditional model interactions reported satisfaction with their lawyers.

Once again, empowerment makes more difference than the hypothesised variables, although these are also supported by the data.

IMPACT OF EMPOWERED CLIENT STRATEGIC CASE PRESENTATIONS

Client empowerment is expressed in two main ways. The first directed the client towards a lawyer known to be both 'good,' and appropriate in the context of the individual client. The second directed the client to present the facts of his story in a way that was known to enhance the prospects of the case, either by emphasising important legal issues, or by downplaying unhelpful ones. To the extent that these manifestations of empowerment only occurred in empowered clients, there is a danger that the data on empowered clients are contaminated by the impact of strategic case presentations. This issue will affect both case outcomes and reported satisfaction, given the high correlation of positive outcomes to reported satisfaction.

The impact of strategic case presentations on the outcomes for the 11 empowered clients I observed who did present their cases strategically on the basis of the prior knowledge of their networks is hard to gauge. I cannot usefully speculate about the extent to which the 'enhanced' presentations of cases actually contributed to eventual successes, and a solution is to remove these 11 cases entirely from the analysis. The remaining 7 empowered clients are presented below in Table 13, and their results are analysed in Table 14.

Table 13: Adjusted Empowered Clients: Non-Strategic Case Presenters

Client	Interaction	Outcome	Satisfaction	Country of Origin
Mohammed	Participatory	Success	Yes	Iran
Lucas	Participatory	Success	Yes	Uganda
Aleksander	Participatory	Success	Yes	Albania
Visar	Participatory	Success	Yes	Albania
Tomas	Traditional	Success	Yes	Iran

Marko	Traditional	Success	Yes	Albania
Tanya	Traditional	Failure	No	Kazakhstan

Table 14: Results for Adjusted Empowered Clients

Model of Interaction	Successful Outcomes	Reported Satisfaction
Participatory	4 of 4 (100%)	4 of 4 (100%)
Traditional	2 of 3 (67%)	2 of 3 (67%)
Total	6 of 7 (86%)	6 of 7 (86%)

If by adjusting the empowered client dataset a truer picture emerges of the impact of either model of interaction or client empowerment on client outcomes and satisfaction, the adjusted data offer even stronger support for the hypotheses of greater success and satisfaction from a participatory encounter. Whereas with the inclusion of those empowered clients who presented their cases strategically, successful outcomes and reported satisfaction were **78%** (14 of 18 cases) and **83%** (15 of 18 cases) respectively, these results are slightly enhanced by the adjustment, **86%** (6 of 7 cases) in both instances.

EFFECT OF CLIENT EMPOWERMENT

A summary of the differentiated data for powerless clients and empowered clients is presented below in Tables 15 and 16.

Table 15: Results for Empowered Clients (N:18)

Model of Interaction	Successful Outcomes	Reported Satisfaction
Participatory	9 of 10 (90%)	10 of 10 (100%)
Traditional	5 of 8 (62%)	5 of 8 (62%)

Table 16: Results for Powerless Clients (N:26)

Model of Interaction	Successful Outcomes	Reported Satisfaction
Participatory	1 of 3 (33%)	2 of 3 (67%)
Traditional	4 of 23 (17%)	4 of 23 (17%)

The differences in both outcome and satisfaction between the two groups, regardless of the type of service they received are so stark as to need no further comment. This unexpected finding eclipses even the relative weight within my sample of the impact of participation. Indeed whereas participatory interactions were almost three times more likely to result in successful case outcomes than traditional interactions, and more than three times more likely to result in client satisfaction, empowered clients were four times more likely to succeed in their cases than their powerless counterparts, and almost four times more likely to report satisfaction. Accordingly, empowerment as a variable carries more weight than participation.

Hamed's case (presented in chapter 6) serves to illustrate the priority of empowerment over participation. His access to the prior experience of the network led him to engage a lawyer known to adopt a traditional approach to interactions. Hamed's empowerment thus allowed him to reject the accepted benefits of participation on the basis of an informed assessment of the best strategy in his own case. Indeed Hamed's case exemplifies how in the right circumstances, empowerment outweighs participation as a factor affecting the outcomes of the interaction.

SUMMARY

The findings reported above strongly support both of the starting hypotheses of the research – that participatory interactions promote successful outcomes and client satisfaction. The client-centred data presented above thus confirm the existing lawyer-derived understandings about the benefits of client participation in the relationship.

In addition, the hypotheses that emerged during the course of the fieldwork, that empowered clients are more likely to approach participatory model lawyers, and accordingly more likely to obtain successful outcomes, and report satisfaction, are also strongly confirmed by the data. The findings also indicate a novel and more general conclusion however, not contingent on the model of the interaction in each case - that empowered clients are more likely to obtain successful outcomes and report satisfaction than their powerless counterparts, and that client empowerment, as a variable, has a greater impact on both outcomes and satisfaction than the model of interaction employed in the relationship.

In this respect these client-centred findings also confirm the existing lawyer-derived presumptions about the impact of client empowerment on the relationship, however the existing literature does not anticipate, let alone quantify, either the type of empowerment that the asylum seekers I observed were able to achieve – derived from the prior knowledge of a loose knit network – or that such clients, ostensibly so powerless in their dealings with their lawyers and the law, would ever be able to enjoy the advantages of empowerment.

CHAPTER 8 – CONCLUSIONS

LAWYER CENTRED KNOWLEDGE

With a handful of exceptions, all the contributions discussed in the preceding chapters are primarily about lawyers: their work, their behaviour, their social organisations, their politics, their doubts, their efforts to effect change. My critique of the focus and methodologies of these studies accepts that many of the questions asked and answered in this literature can only be addressed in a lawyer centred way. It is not possible, for example, to examine the politics of the profession without research directed at lawyers.

Some of the themes developed by this literature, either as anecdotes or empirical findings, are remarkably consistent. Examples include the dichotomy in lawyer approaches to interactions with clients, and the correlation between certain client groups and particular lawyer approaches.

The hypotheses about the impact of client participation that I addressed in Part II of this thesis were accordingly grounded in understandings emerging from the lawyer centred literature. I sought to examine the extent to which client centred knowledge would coincide with lawyer centred knowledge, but also to generate client centred knowledge as an inherently useful exercise in itself, given the lack of balance in the literature.

The salient points of consensus arising from the lawyer centred literature are as follows:

1. *The existence of a dichotomy in legal service provision.* The numerous conceptions of the dichotomy presented by different contributors are broadly compatible, and predominantly lawyer centred.

2. *The preference of participatory approaches to interactions with clients.* For a variety of reasons including: better outcomes,[290] efficiency,[291] ethical compliance,[292] client autonomy and wellbeing,[293] accuracy,[294] personal morality/ideology.[295] All of these studies are lawyer centred.

3. *Lawyer choices determine the approach to any given interaction.* Ultimately lawyers choose how they operate. Like the cause lawyers, they may choose to operate outside of the norms of convention, but such choices are still lawyer choices.

4. *Lawyer choices regarding approaches to interaction tend to correlate with client status.* This understanding is almost universally endorsed. Rich clients tend get what they want

[290] D Rosenthal, *op cit.*
[291] C Seron, *op cit.*
[292] J Carlin, *Lawyers' Ethics, op cit.*
[293] M Herrman et al., *op cit.*
[294] A Sherr et al, *op cit;* C P Gilkerson, *op cit;* C Cunningham, *op cit.*
[295] A Sarat and S Scheingold (eds), *op cit;* G Lopez, *op cit.*

from rich lawyers,[296] poor clients' cases are routinised by lawyers for the poor,[297] while the cause lawyers try to even the field.

5. *Some clients are able to influence lawyer choices.* This is an extension of the previous point. Client empowerment can come from a number of sources aside from simple financial clout or economic importance to the lawyer – common source/referral,[298] collective/network organisation,[299] word of mouth,[300] personal capacity.[301] In these cases the degree of client control over their lawyers, or lawyer dependence on individual clients may radically alter the balance of power in the relationship. My own research suggests a hitherto unrecognised source of client empowerment, not facilitating client power *over* their lawyers, but client power to *choose* an effective lawyer. I deal with this below.

CLIENT CENTRED KNOWLEDGE

The foci of more recent contributions to our understanding of the mechanics of legal advice interactions have evolved significantly from the earlier works directed primarily at lawyers. A small number of client-focused studies have already revealed key insights about client advice

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[296] For example J Heinz and E Laumann, *op cit;* R Neslon, *op cit; T* Halliday, *op cit; R* Able, *American Lawyers, op cit;* K Mann, *op cit.*
[297] C P Gilkerson, *op cit.* L White, *op cit;* J Katz, *op cit;* C Cunningham, *op cit;* W H Simon, *op cit.*
[298] J Carlin, *Lawyers on Their Own, op cit.*
[299] M Cain, *op cit.*
[300] D Landon, *op cit.*
[301] J Reed, *op cit,*

seeking behaviour,[302] client perceptions of their lawyers/advisors, and the drivers of client assessments of quality[303] - insights that are contingent upon methodologies capable of capturing client experiences.

Client centred studies have supplemented the lawyer centred understandings about the relationship with clients in the following ways:

1. *Clients recognise different models of advice interactions, and different clients seek different models,* either on the basis of their own conceptions of quality,[304] or because some clients want to be involved in the resolution of their cases whereas others want someone else to take responsibility.[305]

2. *Clients choose whether or not to approach lawyers for assistance in the resolution of their problems, and if so, which lawyers to approach.*[306] Trends in client advice seeking behaviour reveal how client aspirations are related to a range of personal and social factors. Crucially many of these aspiration-forming factors are external to the advice interaction – client decision-making begins outside of the relationship.

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[302] H Genn, *op cit;* P Pleasence, *op cit.*
[303] R Moorhead et al., *op cit;* J Johnstone and J Marson, *op cit.*
[304] H Genn, *op cit;* P Pleasance, *op cit.*
[305] *Ibid.*
[306] *Ibid.*

3. *Clients may not be able to judge the technical quality of legal advice,*[307] *but they value a range of factors in their interactions with lawyers/advisors.*[308] Factors such as communication, visible effort, continuity, sympathy, willingness to listen. These factors are more than mere second bests to assessments of technical skill. They are client derived hallmarks of quality.

NEW INSIGHTS

The data presented in the preceding chapters address the understandings developed through both lawyer and client centred research, offering support for the majority of the themes identified above. I address each of these in turn below.

The existence of a dichotomy in legal service provision. Both lawyer and client centred research recognises the dichotomy in lawyer approaches to clients. My data confirm this finding. Many of the powerless clients in my sample were unaware of the dichotomy – they approached lawyers without the benefit of advance knowledge about what to expect from the individual lawyer, or about the existence of a range of possible interaction styles. However clients who were connected to a knowledge network (empowered by social capital) were more savvy – for the most part they recognised both the range of lawyer approaches to clients, and the benefits for clients in engaging lawyers known to deploy participatory approaches (or other appropriate

[307] A Sherr, *op cit;* R Moorhead et al., *op cit.*
[308] J Johnstone and J Marson, *op cit.* R Moorhead et al., *op cit.*

approaches in the circumstances) to interactions with clients.[309] The importance of client social capital as a source of empowerment, and the importance of this empowerment variable as an indicator of client ability to identify the dichotomy in lawyering, are new insights that have emerged through this client centred research.

The preference of participatory approaches to interactions with clients For the majority of empowered clients, the recognition of different lawyer approaches to clients included an explicit preference for participatory model lawyering.[310] In this sense my client centred data support the theoretical and empirical preferences for the participatory model. The role of client's social networks (empowerment) in shaping client response strategies (choose a good lawyer, tell him a good story) is a new insight that has emerged from this research.

Lawyer choices determine the approach to any given interaction. The lawyer's gift analysis advanced in chapter 1 is predominantly derived from lawyer centred research. Client studies are able only to identify the absence of client input. On this basis my data support the view that the approach to the interaction will be determined by the lawyer's choice: with just one exception, the model of all of the advice interactions in my sample was determined by the lawyer/advisor irrespective of client input.[311]

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[309] This analysis also applies to the first client centred contention: *clients recognise different models of advice interactions, and different clients seek different models,* which I do not address separately.

[310] The main exception being Hamed's case, presented in chapter 6. Hamed chose a lawyer known to approach clients in a traditional way because he did not want to engage in a participatory relationship with his lawyer. 3 other powerless clients made selections based on non-participatory factors, such as the ethnicity or immediate availability of the lawyer.

[311] The exception was Lucas (chapter 6) who succeeded in altering his lawyer's chosen approach to the interaction. Lucas' case is revealing but not altogether unanticipated. Indeed Reed (1969) suggested that lawyer choices about the approach to client interactions would account for client knowledge. And Genn's (1999) client survey also explores the relative abilities of different client groups and their corresponding expectations of their lawyers. In

Lawyer choices regarding approaches to interaction tend to correlate with client status. Client centred data are able to inform the extent to which lawyer choices about the approach to interaction with clients correlate with particular client groups, but only insofar as the sample includes different clients groups. Notwithstanding my categorisation of clients as either powerless or empowered, all the clients in my sample were refugees and my data cannot illuminate lawyer choices in respect of different client groups.[312]

Some clients are able to influence lawyer choices. This is, by and large, a lawyer centred contention, derived primarily from lawyer occupied research. My own client centred data offer few new insights. Only two of the clients in my sample were actively able to influence their lawyer's approach to the interaction. One, (Lucas) as a consequence of his personal capacity, the other, (Salman) through his wealth. Both of these locations of empowerment are already documented in the literature. None of the other clients I observed, even the socially empowered clients, was ultimately able to influence their lawyer/advisor's choices about the approach to the interaction.[313]

Clients choose whether or not to approach lawyers for assistance in the resolution of their problems, and if so, which lawyers to approach. In an immigration context the real question is not whether refugees will seek advice, but when they will seek it. Even so my data highlight a

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this sense, Lucas' case is readily recognised - he was a client empowered by his personal intellectual capacity and his prior knowledge of the law, this empowerment impacting upon his lawyer's choices about the interaction.

[312] Besides, empowered clients did not select lawyers at random. They faired better as a group than their powerless counterparts, but aside from Lucas, none wielded any control over their lawyer's choices about the interaction.

[313] That my data cannot illuminate this question is not unsurprising – to do so would require a sample populated by clients empowered in various ways. Although some of the asylum clients in my sample were empowered, this empowerment was never obvious to their lawyers, and never influenced their lawyer's choices about interactions.

range of client approaches to lawyer selection, and again client empowerment as a variable is clearly relevant to client advice seeking behaviour. Many socially empowered clients in my sample went one stage further. Their strategies involved *not only the identification of lawyers deemed to be appropriate to their cases, but also the presentation of their cases to their lawyers in the most effective way*. Their networks and contacts (social capital) improved their *prelawyer* decision-making. This finding was made possible by a client centred methodology, and is not previously accounted for in the literature.

Clients may not be able to judge the technical quality of legal advice, but they value a range of factors in their interactions with lawyers/advisors. The majority of powerless clients in my sample were unable to make judgements about the quality of the advice they received. They wanted asylum, but they most often did not get it. They were almost always dissatisfied *with their lawyers* when they were unsuccessful in their applications. They rolled the dice of advice selection and either accepted what they were offered, or sought further advice elsewhere. Most empowered clients selected lawyers with a proven track record. In this sense their communal repeat-player status did enable them to make genuine judgements about lawyer approaches to clients grounded in their own conceptions of quality.[314] Again, the role of client empowerment in shaping client assessments of quality, and the value ascribed by clients to participatory model hallmarks, are both insights obtainable only from client centred research.

[314] Johnstone and Marson's list of factors emphasised by clients in quality assessments is far broader than then concerns expressed by the majority of clients in my sample. For the most part, asylum clients were only concerned with outcomes, although empowered clients tended to recognise that outcomes could be facilitated by certain lawyers, and more often encountered in conjunction with participatory quality hallmarks.

CONFLICTS IN LAWYER AND CLIENT CENTRED KNOWLEDGE: NONLAWYERS AND PROFESSIONALISM

Where individual contributions have addressed commensurate questions, with one interesting exception, the client centred data that exist are broadly compatible with the corpus of lawyer centred data in the literature.

Only in respect of the provision of legal advice by nonlawyers have the client centred studies directly contradicted the prevailing lawyer centred understandings. In a UK context, Moorhead et al's (2001) comprehensive review of quality and cost sounded the death knell for the legal professional cartel that had enjoyed a state sponsored monopoly since time immemorial. Whether the protectionist claims of the professional paradigm were well meaning, or cynical defences of positions of privilege is a moot point. The cat is now out of the bag.

My own data do not offer much by way of clarification. The clients who sought legal advice from nonlawyers did not do well, although those seeking non legal advice faired better. Some nonlawyers provided helpful referrals, others did not. Overall, the findings of others about the quality of nonlawyer advice were not replicated in this research, although the sample size caveat is particularly apt for a small scale ethnography that did not seek to illuminate questions about nonlawyers.

TOWARDS GROUNDED THEORY: CLIENT EMPOWERMENT

My appreciation of the significance of client empowerment arose during the fieldwork – an example of grounded theory in action. That refugee clients, dependent on the state for legal assistance, would enjoy empowerment of any kind was unexpected. But looking back, the possibility that refugee clients could enjoy empowerment had already been raised in the literature. One lawyer in Cain's (1979) sample had a largely immigrant clientele who were part of loose knit but effective networks. This served to put the lawyer in the position analogous to that of a lawyer in a small town where networks are complex and gossip channels effective.[315] Similarly, Landon's (1990) analysis of the rural bar in the USA found that word of mouth among one-shot clients in a rural context served to empower each individual client.[316]

Both Cain and Landon were describing the type of empowerment that influences lawyer choices about the approach to interaction with clients – *empowerment to adversely affect the lawyer* (by word of mouth) that resulted in deployment *by the lawyer* of a more client centred (participatory) model. Such empowerment is overt and obvious, at least to the lawyer.

The empowerment experienced by clients in my sample was different, and until now unaccounted for in the literature. Empowered refugee clients did not wield influence over their lawyers, or induce them to depart from their usual standards. Indeed no lawyer of an empowered client had any knowledge or perception about the empowerment of his client – it

[315] M Cain, *op cit,* p338.
[316] D D Landon, *op cit,* p134.

did not impact on lawyer choices at all. This empowerment was *prelawyer* – it assisted in client decision-making about which lawyer to approach and what story to tell, and was effective in so doing. This new insight is contingent on methodology: only research directed at *preclient* experiences can uncover and assess *prelawyer* client strategies.

THE WAY AHEAD

This thesis offers new insights, both methodological and theoretical. By accessing client experiences prior to their encounters with their lawyers, this research has been able to advance a conception of client empowerment hereto undefined. This *preclient* methodology is a recognition of, and response to, the underrepresentation of client experiences in the literature about lawyers and clients. It is also a prerequisite to the exploration of the full range of understandings to be found in client experiences of their lawyers.

As an unresourced project with a research team of one, this research was inevitably small-scale, and my sample was not large enough to produce statistically significant results. Indeed to do so would require data of the kind that could only be collected by long term observation, precluding a large sample. This lack of quantitative rigour is the price of an ethnographic methodology that allows access to client experiences.

The new insights emerging from my data are not contingent upon quantitative analysis. My contribution to our understanding of client empowerment does not depend on the number of

empowered clients I encountered but rather on the experiences of these clients. As with any qualitative data, the value is to be found in the theoretical insights and hypotheses that emerge.

No research project can reach beyond its sample. In this sense, my own time and space restrictions prevented extension of the scope of this research beyond the experiences of the 44 clients in the reported sample. However the *preclient* methodology could be usefully deployed in other contexts, such as lawyer selection and case presentation strategies among high-net-worth or corporate clients. My analysis of nonlawyer advice could also have been more illuminative if the sample had provided more opportunities to observe nonlawyers.

In the final analysis, my methodology allowed for exploration of client experiences inaccessible to lawyer centred research, and could be replicated in wider contexts. It amplifies client voices in the context of a literature that has only recently recognised the silence of their omission. My theoretical contribution in respect of the role and importance of client's social capital based in informal and fluid networks ("client empowerment") advances our understanding of the lawyer-client relationship, and prioritises client centred data. Perhaps with further study motivated by similar concerns, existing knowledge about the lawyer-client relationship will come to recognise the intrinsic value to be found in the lives of both lawyers and *clients.*

CHAPTER 9 – REFLECTIONS ON METHODOLOGY

In chapter 4 I outlined the research aims and design, and my explanation for the reservation to this chapter of the detailed discussion of the research methodology, and my more personal reflections on my experience as researcher. I now present a full account of the development of the research design, alongside a discussion of the issues of access, ethics, and the problems I encountered during my 17 months in the field.

GETTING STARTED

I have argued that researcher commitment to give client voices equal space in the research is a prerequisite to generating data that represents more than a lawyer-structured understanding of the relationship between lawyers and clients. My aim in this study was to capture, pre-contact with lawyers, how the clients saw their problems and what they wanted from legal advice.

I prepared a list of characteristics that the subject group would need to display.

Easily found

Likely to require legal advice

Relatively organised

Likely to be accessible prior to decision to consult legal help.[317]

The most obvious difficulty was identifying 'clients' prior to their consultations with lawyers, and I discounted two possibilities. First I could have tried to locate individuals who might in the future require legal assistance, although they were unaware of any current legal need.[318] This approach would have been valuable because the realisation of the need to invoke the law is an essential part of the client's story which may well offer telling insights. The obvious drawback however, was that unlike medical problems where sporadic symptoms may develop into acute conditions, and where there may well be accurate risk indicators signifying likely future need, legal problems will rarely manifest themselves so conveniently before they become actionable.[319]

Another possibility was that of making specific attempts to locate individuals engaged in or involved in legally actionable behaviour – either actively or defensively – before they sought

[317] This requirement excluded any attempt to locate/approach people who had in the past experienced justiciable problems and sought legal assistance in the resolution of such problems.

[318] An immediate problem with this approach was that it was likely to be wasteful. If observations were distributed amongst a group of potential future clients, then only those who did proceed to legal consultations would be relevant to the endeavour. Accordingly, resources would inevitably be wasted in the gathering of data regarding those who did not end up involved in legal consultations.

[319] This may be an oversimplification. Certain types of legal problem may well arise as a result of a series of prior encounters, for example actions for nuisance would presumably only be considered where particular difficulties had been met in attempts to have the other party cease the behaviour in question. Similarly, the need for a consultation with a lawyer for the purpose of the conveyance of property will also presumably not arise 'out of the blue' but will be anticipated long before the actual consultation is arranged – searching for appropriate property, finding a buyer for existing property etc. will both precede the consultation. Both of these examples, along with numerous others, may well provide opportunities for identification of individuals who will be likely to engage legal assistance in the future. The routinisable nature of some forms of technical legal problem – property transactions and probate for example, may serve to undermine the value of client-centred research in these fields. Furthermore such individuals are most unlikely to be organised in terms of networks and support groups, reducing the likelihood that contacts will develop through 'snowball' referrals; and making internal comparison more difficult.

legal advice.[320] However, several problems were apparent in this approach: to begin, such individuals would be unlikely to be organised as a group, reducing the likelihood of the sample growing from itself by chain referrals or introductions. Following from this, again such individuals, if located, would presumably have borne little if any relation to other similarly located individuals, making any internal consistency in the sample unlikely.[321] Additionally, the location of such pre-existing complaints prior to commencement of legal action would have been almost impossible even if I advertised for people who were aware that they had grounds to invoke the law, but had not yet done so.[322] Finally, putting the possibility of a legal complaint or grounds of action into people's minds could have meant that I myself was structuring the subject's experiences.[323]

A potential solution to these problems was to locate the research amongst a group or network who seemed likely to seek legal assistance, although they may or may not have begun doing so.

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[320] Clearly in a criminal context, such an approach was likely to raise ethical questions in terms of my own potential involvement, encouragement of, or even complicity in illegal behaviour.

[321] Recognising various criticisms of any attempts to make generalised claims about knowledge, and more specific criticisms of any qualitative research attempts to be representative of a wider sample than the specific subjects, this thesis rejects any attempt to claim empirical validity beyond the reach of the subject experiences that it purports to document. Accordingly, I was not concerned with engineering the sample to represent society as a whole, or even different strata of clients or different fields of law practice. (Indeed, M Denscombe, *The Good Research Guide: For Small-Scale Research Projects,* Buckingham: Open University Press, acknowledges the difficulty of applying normal principles of survey sampling to qualitative projects; at p. 25.) However the theoretical validity of the findings, it is argued, is independent of the numbers involved. Therefore this thesis seeks to present the specific experiences of individuals and their encounters with the legal profession, *as intrinsically important sources of knowledge and understanding about interactions between clients and their lawyers.* In respect of the point made above about internal consistency in the sample, it is important for operational purposes that there can be similarities in the situations of the research subjects. Similarities in ideas, concepts and themes will presumably reoccur where the subjects are involved in related legal difficulties. This was important both in terms of data analysis, and in terms of my familiarity with the fields of law that were implicated.

[322] Or who have attempted to procure legal advice but have not yet commenced their first consultation with their lawyer.

[323] I am not altogether sure of this point, however it may be that either my efforts to procure such individuals may have structured their experiences in some way, perhaps interfering with the elicitation of their stories. Or that their own involvement in their personal legal problems may have reduced their ability to usefully participate in or contribute to the research.

The group had to be organised, or at least known to each other to make chain referral sampling possible.[324] Additionally, the group members had to be likely to require legal assistance. A potential solution was to focus the study on refugees and asylum seekers. These groups of people are likely to be known to each other both because of the government's housing policy, and also because of the numerous charitable or other organisations that concern themselves with refugees and asylum seekers. As a group, it seemed to me, these people would almost always require some form of legal assistance at some point in their dealings with the state. Indeed it seemed reasonable to assume that they would require access to legal advice fairly frequently. At one stage or another in the process of making applications for asylum, legal advice will inevitably be consulted.

Furthermore, as a group, refugees and asylum seekers are amongst the most powerless and disenfranchised[325] in the country. My analysis of the literature highlights a lack of adequate provision of legal services at the margins, and especially the increased likelihood of 'traditional' approaches in interactions with clients at the extremes, such as those seeking asylum. Accordingly it seemed to me that refugees and asylum seekers ought to be a potentially fertile group in terms of illuminating some of these questions.

With the research subjects identified, I began the process of documenting the social experiences of these potential 'clients' prior to the structural influence of their consultations with their lawyers. I understood that this required my involvement with, and immersion in the lives of

[324] P Biernacki and D Waldorf, "Snowball Sampling: Problems and Techniques of Chain Referral Sampling" (1981) *Sociological Methods and Research* 10:141-163.
[325] While still entitled to the protections outlined in recent human rights legislation, asylum seekers do not enjoy other mainstream benefits of citizenship.

refugees and asylum seekers.[326] I needed to get to know them, in order to attempt to present their world as they saw it, in anticipation of future interactions between these individuals and some form of legal advice. I sought to generate data attempting to represent their knowledge and understanding, and the impact of legal interactions upon such knowledge and understandings.[327] This qualitative approach was clearly appropriate for research seeking to explore and describe areas of personal experience; represent ideas; address context and generate insight.[328]

I started the fieldwork in September 2003, and continued actively to observe legal interactions and to share the lives of my subjects for almost 17 months until February 2005. My starting point was to volunteer at the Midland Refugee Council, a charity offering welfare and legal advice to refugees, where I worked under the supervision of the legal adviser, Mr Watkins. This was primarily with a view to initiating chain contacts and meeting refugees, rather than to observe legal interactions. My time at the MRC also helped to acquaint me with the realities of immigration law. The refugees I initially encountered had approached the MRC for legal advice, often in respect of appeals against the refusal of asylum at first instance. In this sense these individuals were already embroiled in the system, making my access to their initial

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[326] This purposive location of the research is proposed on the basis that the selection of subjects is made in light of their relevance and usefulness to the topic, and the likelihood that they will be able to provide good-quality data. See M Denscombe, *op cit,* p15.

[327] This thesis seeks to apply notions of grounded theory, allowing for the generation of hypotheses, categories and theory as the research process develops. In this respect the appeal by B Glaser and A Strauss, *The Discovery of Grounded Theory,* (1967) Chicago: Aldine, towards reflexive discovery, and the avoidance of determinism in the research process is of particular interest. The authors stress the importance of allowing data that is gathered to lead the creation and formulation of theory, rather than merely using qualitative data as a series of examples and anecdotes designed to prove pre-existing hypotheses.

[328] C Marshall and G Rossman, *Designing Qualitative Research,* 2nd Edition, London: Sage. The authors offer these considerations as the fundamental advantages that can be gained by utilising a qualitative method in data collection.

choices about their lawyers and their cases impossible to obtain. After several months working at the MRC however, I did befriend three individuals whose cases, though appeals, were referred by Mr Watkins to other organisations, and who agreed to allow me to accompany them to their first consultations with their 'new' lawyers. A more fertile source of introductions to refugees, some of whom had yet to make any application for asylum, came from the welfare advisers at the MRC. After my research interests became known in the charity, advisers from different departments introduced me to refugees who had approached the MRC for welfare advice but whose legal cases had not yet been initiated. Four such individuals agreed to allow me the access to their stories, their lives, and ultimately their lawyers that I had been seeking for my research.

After I had been volunteering at the MRC for several weeks, I also approached several other charities in the city that provided legal assistance to refugees. In this way I became acquainted with a number of immigration lawyers, although ultimately these contacts did not result in useful introductions to refugees. The problems in seeking to meet refugees through immigration lawyers were manifest: such refugees had invariably already initiated their contacts with the law, and I was unable to get close to them prior to their interactions.

After almost five months at the MRC, I had met eight refugees who were eventually included in my sample, seven of whom I had encountered at the MRC itself, and one who had been introduced to me by a refugee I had met at the MRC. In February 2004, an Iranian refugee approached the Synagogue where I am a member, and we quickly developed a close relationship. In the year following our first meeting, my relationship with this individual

exposed me to eleven other Iranian refugees, and this chain was ultimately responsible for my introduction to 18 of the 44 refugees I eventually included in my sample. In the terminology of qualitative research, he became my sponsor.

Aside from the Iranians, my most fertile source of introductions came through refugee housing arrangements. Refugees whose asylum applications are yet to be determined are accommodated by the National Asylum Support Service (NASS), very often in shared houses of four or more occupants. Over the period of my research, I met 13 different refugees though introductions from their housemates in shared accommodation. Of the remaining refugees in my sample, I encountered three individuals after initiating conversations in waiting rooms, or while queuing in the NASS offices in the city centre. I met one refugee in a casino, and one after she had approached the Progressive Jewish community in the city.

STANDPOINT

This thesis seeks to present accounts of encounters with lawyers and the law from the perspective of refugee clients, premised on my commitment towards not echoing the perspectives of the lawyers. What entitles me to make this claim? Why can I presume to represent the lives and experiences of people so different from myself in terms of life experiences, culture, and often also social status and educational background?

My resolution of these questions was achieved by the presentation of the stories of the refugees I observed in full and sensitive accounts, where possible, agreed and approved by the refugees

themselves. In selecting the actual accounts that I present, the way that they are presented, and the heads of analysis, I was guided always by the need to maintain a fidelity to the original intention of the research, and to avoid any replication of the shortcomings identified in the existing literature. By avoiding the reduction of the experiences of individuals to short deconstructed summaries devoid of their qualitative value and divorced from their contexts, I was able to avoid lawyer-centred analyses that inevitably generate lawyer-centred theories.

I thus present detailed accounts of asylum applicant experiences with the legal profession in their widest contexts, drawn both from my immersion and participation in their lives, and from formal interviews and documentary analyses. These accounts seek to amplify client voices, and to document their experiences in a faithful and coherent way. I include in each account (where possible) a description of my initial contact with the individual; an outline of their history and background and the events in their life that brought them into contact with the legal profession; an account of their encounters with their lawyers, and their perceptions of these encounters; and an assessment of the impact of the interaction on their life, and their response to it. In the context of the existing literature, these accounts offer new, and methodologically sensitive insights into models of interaction, client experiences of the relationship, and client satisfaction which are not contingent upon the lawyer's structural influence or arena, and can re-examine the theoretical assumptions derived from other lawyer occupied research.

At the start of the fieldwork I sought to minimise myself and my input from the research. I considered my own involvement a contaminating factor to be controlled as much as possible - a necessary concession to the research enterprise. This perspective informed my concerns not to

allow introducing myself pre-interaction to detract from the consultation or client experience in any way. After several months in the field I realised that I could not 'write myself out' of the text or pretend that the process of befriending a refugee allowed for dispassionate or disinterested observation. For many I had become a part of their story and a part of their lives. The accounts that I subsequently generated were not about me, but I featured in them.

Looking back, my experiences in the field were genuinely life changing. The grass does not always look greener when there's a refugee on the other side, and it is good for the soul to be reminded of just how privileged an existence we live. I made friends that continue to be important to me. I observed a range of experience and emotion, misery and joy, laughter and tears, success and failure – the milestones of other people's existence that engendered in me corresponding feelings of elation and despair. I am fortunate for the opportunities I have received, and I am certain that my immersion of the lives of the refugees I encountered has had a lasting effect upon me.

REFLEXIVITY

I was constantly challenged while undertaking the research, both by situations in which I found myself, and by my desire to avoid replicating the methodological shortcomings I had identified in the existing literature. My initial aspiration to focus solely on pre-clients who were untainted by any prior contact with lawyers or the law ultimately proved to be unachievable, and although 19 of the 44 refugees whose experiences are the subject of this research were observed prior to

their first contacts with the law, the remainder had already been declined asylum before our first contact. As my search for pre-clients continued, and as the months of my fieldwork drew on, I came to recognise pragmatically that valuable meaning and insight were to be found in client-centred experiences even in the absence of complete pre-client understandings, not least because many of those whose applications had been denied were seeking new lawyers.[329]

The daily lives of some of the refugees I encountered, and the survival strategies they adopted sometimes challenged my own conceptions of morality. The standpoint of the research sought my involvement and immersion in their lives, but this was difficult in some of the situations I observed. My response to such difficulties was to recognise the difference between standpoint and sympathy, and to distinguish my observation from my condoning of certain types of behaviour.

The realities of ethnographic research among a group of often indigent individuals, and the sheer amount of time that I had to spend with certain refugees before I was able to gain their trust and accurately present their life stories, was such that I sometimes found myself in strange surroundings and experienced difficulties in organising my time. Aside from the research, teaching in the university, and various significant personal commitments, keeping a field diary of my experiences was a paramount concern. I attempted to write up the events of each day the same evening, although sometimes my entries were made days later. I was careful to record not only the experiences of the refugees, and their reactions to them, but also my own observations

[329] It has been observed that sometimes ideal approaches to the creation of a sample have to be sacrificed in favour of obtaining any sample at all, especially where lawyers are concerned: A Danet, S Hoffman & S Kermish, "Obstacles to the Study of Lawyer-Client Interaction: the Biography of a Failure," 1979 14 *Law & Society Review*, 923.

and feelings in the face of individual situations. In this sense my diary was reflexive and allowed me to revisit my own responses to the experiences I had documented.

The fieldwork for this thesis consumed my life for almost two years, and crossed a number of lines: legal, ethical, personal. I can vividly remember the faces of all of the refugees whose stories I collected, and I continue to enjoy close friendships that I made in the field. Sharing life changing triumphs and failures with other people underlined my deep conviction in the importance of treating their lives and their stories with respect and integrity, and I have strived throughout to remember that my data is more than just data.

My critique of the lawyer focus of the literature similarly demands that the narratives I present are endorsed as faithful representations by the clients themselves. For the most part this was an explicit process. I showed (read) early drafts of my narratives to almost all of individuals whose stories I had written, and ultimately secured explicit approval for 11 of the 14 of the narratives eventually included in the thesis, and general consent to 'do what I liked' with one other (Tanya). The two remaining cases, Baako and Mansoor, were eventually included despite the fact that I had lost contact with those individuals and was accordingly unable to obtain their approval for the texts of my narratives. I am not altogether comfortable with this state of affairs, but I am relying on the fact that both individuals were aware that my interest in their cases was research based, both are no longer present in the UK having been deported back to their countries of origin, and have presumably little to be lost through anonymised scrutiny. Finally their cases were lone examples that enriched the dataset and I was unwilling to deprive the research of the meaning to be found in their experiences.

My selection of the narratives to be included in the thesis was informed by this process. I made frequent revisions and alterations in compliance with requests from the individuals themselves – to emphasise a certain point or remove another. In two cases however I could not agree a final draft. Both involved requests to so distort what I had observed that I could no longer present it as a genuine narrative. In one other case involving an individual I had become close to over a period of several months, he accepted the accuracy of the narrative but refused to allow its publication in any way on the basis of his fear of identification.[330]

Before beginning the research I had been concerned about the practicalities of meeting and befriending people from different cultures with different languages. I had anticipated that the majority of the refugees I would encounter would be Muslim, and as a Jew I had worried about the difficulties that our religious differences might have promoted. As it happens, I did not experience any adversity as a consequence of religious differences and on more than one occasion, a shared belief in (a different) religion actively served to promote my closeness to individual refugees.[331]

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[330] He had been living illegally for two months following the refusal of his asylum application when I showed him my first draft of his story, and he was suspicious of my assurances about anonymity and my intention to restrict access to the finished thesis.

[331] It has often been observed that Judaism instils an understanding of persecution and exile in the psyches of its adherents. Also, as a Jew resident in England, I am familiar with the feeling of minority. Furthermore, many of the practices of Islam and Judaism are similar or share similar rationales, helping to promote a sense of shared experience between respective adherents. For examples, restricted diets – *Hallal* (Islam), *Kosher* (Judaism); daily prayer requirements, circumcision, separate gender roles, ritual washing, etc. etc.

ETHICS

There are a number of ethical questions raised in connection with this research, the resolution of which begin with the understanding that the choice of methodology that I have described itself represents an ethical decision to transcend the lawyer-structured understanding of the relationship between lawyer and client by affording the client at least an equal space in the analysis. Recognising the validity of relativist criticisms of positivist knowledge, and endemic uncertainty in the post-modern condition,[332] but also that despite imperfections, the attempt to make valid statements about (perhaps non-observable) social phenomena is valuable, this thesis seeks to ground the claims that it will make as far as possible in the genuine experiences of the subjects. It is ethical because I am seeking to make meaningful claims representing real experiences, facilitated by a fidelity towards the life experiences of others, and an overriding respect for individual experiences and understandings in an attempt to represent people in their own terms. In this respect this thesis will endeavour to produce epistemically responsible 'good' quality knowledge.[333]

Kant's categorical imperative to treat people as ends in themselves, and not as means to alternative ends[334] is specifically accepted, this thesis not being concerned with people in order to gather impersonal data divorced from the context of the individual, but rather to represent the individual as a specific location of meaning and understanding impacting directly on the lawyer-driven nature of our understanding of the relationship as a whole.

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[332] J Lyotard, *The Post-Modern Condition: A Report on Knowledge,* (1984) Manchester University Press.
[333] L Code, *Epistemic Responsibility,* (1987) Hanover, University Press of New England.
[334] I Kant, *Groundwork of the Metaphysic of Morals (1785),* Transl. H Paton, *The Moral Law,* (1948) London: Hutchinson.

Early in the fieldwork I began to have serious doubts about whether the project was viable or the data desirable on the basis that I could readily perceive the harm that might be done to the refugees I was shadowing, and to refugees in general, should my research diaries fall into the wrong hands. Immigration was a live issue in the press, and it was clear to me that some of the refugee experiences and survival strategies that I was encountering would be highly attractive to any tabloid looking to stoke the immigration fire.

It must be easier to be scandalised and outraged at the disgraceful and unlawful conduct of rogue asylum seekers if you have never slept on a couch in a NASS hostel (I have) because I have no interest in revealing the most frequently exploited 'loopholes' in the system or any other secret of refugee life to enable the powers that be to shut the stable door. Understanding the reality of living as a refugee in a strange land with little or no resource and no permission to work quickly dissolves any inclination to grandstand about the immorality of illegality. After all, people need to eat, and it is very difficult to enjoy any meaningful quality of life on £5 per day. I questioned the wisdom of the location of my research in a context that was so potentially contentious, particularly where the theoretical gains could conceivably be so easily eclipsed by incendiary details in the data. My unease remains although my solution eases my anxiety: almost 4 years have passed since I left the field, and many of the actors, even if they were identifiable, have moved on. Immigration is no longer the political hot potato it was 4 years ago. My selection of the narratives I present avoids detailing the most damaging of the situations I observed. Those individuals or organisations I feature are all anonymised. I intend to restrict access to my thesis.

Clearly these concerns raised ethical questions. To what extent can a researcher be justified in complicity in concealing illegality? My sympathies aside, I was concerned not to place my thesis outside the bounds of acceptable academia for failure to live up to fundamental ethical imperatives. I have taken the position that the public interest in revealing illegality does not supersede the public interest in client centred data about interactions with lawyers, and that neither trumps the confidence of my researcher-subject relationships.[335]

These questions are more easily dealt with now that I am no longer in the field. The first time I was shown a meth-amphetamine laboratory in a basement of a NASS house I had no idea about the extent to which refugees were being forced to turn to illegality in a bid to supplement their NASS rations. On one occasion I (my car) was unwittingly used to transport a kilo of herbal cannabis with a street value of up to £10,000. I only discovered this immediately after the termination of the journey, but I was so concerned by the possible personal ramifications should we have been stopped and searched by the police that at the time the project was thrown into doubt. This was eventually resolved by the Head of School, who provided me with a letter confirming that I was involved in a legitimate research project that could conceivably entail my unwitting exposure to behaviour that I would not willingly have engaged in. I carried this letter in my wallet for the duration of the fieldwork, believing, perhaps foolishly, that it would have protected me against the criminal process should I have fallen foul of it.

[335] I formed this view in consultation with my supervisor and the Head of School.

Deciding where to draw the line between observation and participation is not a precise science. Early in the fieldwork I was so preoccupied in gaining access that I was in no position to convey anything but total support for any activity that I observed lest I jeopardise the relationship with the individual. As the sample grew and I became more accustomed to life on the margins, I found it easier to maintain my own boundaries, sometimes justified on the basis of the limits of my remit as a researcher. Some individuals came to recognise that certain types of organised illegal activities were best not displayed in front of me. This was the case with individuals with whom I was well acquainted but whom I would not describe as friends. With friends it is more difficult because their perception of my disapproval or discomfort served as a wedge between us on more than one occasion, totally severing a friendship with one refugee who never forgave me for my refusal to help him perpetrate a benefit fraud.[336]

On other occasions I found myself actively and knowingly on the border between legality and illegality. My protracted courtship of Salman described in chapter 5 was only clinched by my facilitation of his introduction to two other refugees with whom I understood Salman wished to conduct illegal business. At the time I gave the ethical implications almost no thought, content with a self-justification that it was 'just an introduction,' the prospect of proving myself to Salman too tempting. I am less sanguine on reflection, particularly about how I was able to

[336] There are also access considerations: Refugees living in the UK illegally who own/drive a car are most unlikely to have valid insurance. Travelling as a passenger in such a vehicle may be dangerous - the possibility of an accident causing serious uninsured injury is real. There may also be legal implications. Nevertheless on more than one occasion I did travel as a passenger in such a vehicle. The first time the situation presented itself I politely declined a lift, losing the rest of the day's exposure to the refugees I was with, and kicking myself for it. It had been embarrassing and uncomfortable – I was conscious that it appeared as if I considered myself too good for their car. The next time the situation arose I swallowed my misgivings and climbed in.

abandon my own usual standards in respect of the law and also regarding my objectification of client narrative data as a prize of sufficient value to break my own rules.

In the majority of the cases in my sample I encountered some less extreme forms of illegality. For the most part this took the form of working while prohibited as a refugee pending an asylum decision. There were also a number of cases of small scale benefit fraud, use of false instruments, and vehicle related offences. One can no doubt identify at a stretch the possible 'victims' of these 'crimes' – the local indigenous unemployed; the taxpayer – but in no cases did I encounter or even hear of any incidents of violent or other interpersonal crime committed by refugees.

Aside from the greater ethical questions of the policies of provision at the margins for unmet needs, legal or otherwise, that any research with asylum seekers will inevitably generate, and the specific ethical questions about the operation of immigration law in the UK, which are both beyond the scope of this work, the research did raise other ethical questions. One particular difficulty arose on a number of occasions in respect of my ability to identify myself as a researcher to avoid covertness.

When meeting refugees this was not always straightforward. My initial contacts through local advice charities may have served to overstate my own personal status – I was seated alongside the advisor and I am certain that my own attempts to explain who I was and to obtain consent to observe the interaction were sometimes either not understood or acquiesced to in the mistaken belief that to refuse might prejudice the advice. I later took to attempting to strike up

conversations in the waiting room as opposed to the during the consultations, although again my ability to pass at will between the waiting room and the main open plan areas of the offices of the charities I was involved with may well have not gone unnoticed by those I sought to engage with in the waiting rooms. On other occasions in the company of one refugee I was explicitly forbidden to identify myself to his housemates as a condition to his agreement to show me where he lived. I am not entirely sure why this was. I have speculated that he wished to preserve some sense of mystery with his housemates with whom he was not especially close.

I met many refugees in my sample through mutual acquaintances, usually at similar stages in their respective asylum applications. If I was sitting in a cafe reading through case papers for one refugee, others would often form a queue in the mistaken view that I was offering substantive advice. One refugee allowed me to read his decision on such a misunderstanding, only to snatch it back from me minutes later as I explained to a different individual that I was a researcher and not a lawyer.

Conversely after several months in the field when referrals were snowballing among the Iranian network, my status as researcher explicitly generated access to new individuals. I gained a reputation (erroneously) among this network as an asset whose presence during advice consultations would enhance the advice or serve to encourage further effort from the lawyer. On one occasion the 'client' half-jokingly introduced me to the lawyer as "the university researcher, so you'd better look after me." This reputation was not limited to legal advice contexts. My presence was also requested for attendance at neighbourhood (benefit) offices,

again on the basis that my presence somehow lent credulity to the individual's applications. For my part I did little to dispel the myth, grateful for the enhanced access that it afforded me.

Ensuring that proper introductions were made to the lawyers I encountered was also a concern. Only one of the 41 lawyers or advisers I encountered explicitly refused me permission to observe the interaction once I had revealed my identity and purpose. Of the remainder, I was able to properly inform 33 of my identity and status prior to the commencement of the interaction, and a further three during the course of the interaction. The delay in two of these cases was due to initial refusals by the lawyers in question to accept introductions that were not elicited by their explicit questions. The other case was Dominic's interaction with Mr Carrick (chapter 5), the rapid onset of which wrong-footed me slightly.

I was unable to identify myself at all to five of the lawyers I observed, in 4 cases because the interactions were so brief, and in one because the lawyer, on establishing that I was not the client, refused to allow me to speak at all throughout the remainder of the interaction. In these cases the research was de facto covert in that the lawyers were unaware of my role. These lawyers, like all the others encountered during the fieldwork, cannot be identified in this thesis.

Before beginning the research I considered different methods of introducing myself to the lawyers I would encounter. I was concerned about the impact of my introducing myself and my research on the natural rhythm of the interaction and anxious not to overshadow the client or to distract the lawyer. I dismissed the idea of a standard letter introducing myself that I would hand to the lawyer at the outset of the interaction as being more likely, rather than less likely, to

address the concerns outlined above. Prior to entering the field I had resolved to inform receptionists of my identity and intention to accompany client x to appointment y, either at the point of booking the appointment (where possible) or on arrival at the appointments in question.[337] I abandoned this notion very early in the fieldwork after receptionists at two different providers declined to make appointments "with researchers" without prior agreement from their 'head offices.' I settled for a personal introduction, very brief outline of my interest ("I'm doing some postgrad research on the experiences of immigration clients") and an assurance about confidentiality if asked. On two occasions I was asked to provide a letter from the University confirming my details.

As the fieldwork progressed, I became familiar with some of the lawyers I encountered on more than one occasion. This familiarity obviated the need for any explicit introduction pre-interaction with new clients, as the lawyers already knew who I was.[338] Familiarity with the lawyers exacerbated my other concerns about not stealing the limelight or impeding on the interaction. On more than one occasion, several minutes of the consultation, prior to any lawyer-client interaction, were taken up with the lawyers enquiring about the progress of my research. Among the Iranians this lent credence to the myth about the impact of my presence encouraging increased lawyer effort. In other contexts it seemed to distract or wrong-foot the clients who did not always understand the nature of the discussion.

[337] Even drop-in advice providers run appointment systems for those in their waiting room.
[338] Although one Iranian refugee still insisted on introducing me.

Notwithstanding the caveats that I took to making to all new refugees about my lack of accredited legal qualifications and my inability to give legal advice, after some months in the field, and exposure to the Iranians, I did become adept at predicting the outcome of legal advice. Even so I resisted the temptation to trade on my developing skills as a legal adviser, despite the impact of my reputation on referrals discussed above. On one occasion however I did actively engage in a law job in the form of the compilation of the Judicial Review application for Dominic described in chapter 5. This was a further example of the blurring of the distinction between observation and participation, although under the circumstances it was simply the action of one human being to another in need. Dominic had no other options, and no other assistance, and if I had not tried to help him I believe that nobody else would have done so.

WRITING-UP

Protecting the refugees I observed entailed ensuring against any overt identification in this thesis. However to have disguised or concealed the details of the individual refugee stories presented in the following chapters would have been to lose the meaning inherent in many of them. I have encoded all of the names of individuals as they appear in the thesis, however the key details in refugee stories and the descriptions of refugee charity and advice organisations may ultimately facilitate their identification, and on this basis I intend that the thesis shall be 'sealed' in the library once completed (although articles based on it may be published).

I experienced little of the desire to protect manifest wrongdoing by the lawyers that I had in respect of the refugees. As I became more familiar with immigration law and procedure I became more adept at assessing the quality of the legal advice given, and accordingly more able to identify manifestly poor or incompetent service. My standpoint during the fieldwork became predictably favourable towards individual refugees and on two separate occasions I was personally so angered by unethical and unprofessional conduct by lawyers I observed that was so remiss that I seriously considered initiating some form of remedial action. After the heat of these moments I relented on both occasions – I was not the proper claimant in any case, and the clients were in both cases unwilling to engage in any public fuss-making that might serve to attract any degree of unwanted attention.

As already discussed, the aspirations of this research argued from the outset against any form of cross-sectional analysis of client experiences, in that a primary concern of the research has been to give space to client voices. Comparative analyses of different elements of the relationship and factors affecting it would hardly do justice to the theoretical and methodological aspirations of this project.[339] Even the methodological commitment to clients could have been jeopardised if, in the final presentation, the data were not treated in a client-centred way. My choice to present genuinely client-centred stories was thus a natural product of my research aims, and a choice for which I found support in the form of Stewart's beautiful ethnography,[340] which so clearly captured his subjects' experiences in the presentations of their stories in full.

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[339]To correct an imbalance in our understanding of the lawyer-client relationship which I argue has arisen as a consequence of the over prioritisation of lawyers, both methodologically and structurally in the existing research.
[340] J Stewart, *Drinkers, Drummers and Decent Folk,* (1989) Albany, Suny Press.

Looking back, my experiences in the field were genuinely life changing. The grass does not always look greener when there's a refugee on the other side, and it is good for the soul to be reminded of just how privileged an existence we live. I made friends that continue to be important to me. I observed a range of experience and emotion, misery and joy, laughter and tears, success and failure – the milestones of other people's existence that engendered in me corresponding feelings of elation and despair. I am fortunate for the opportunities I have received, and I am certain that my immersion of the lives of the refugees I encountered will have a lasting effect upon me.

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