An Analysis of the Perceptions of the Legal Profession through the Eyes of Dissatisfied Consumers of Legal Services in Manhattan, NY: An Interpretative Phenomenological Analysis

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An Analysis of the Perceptions of the Legal Profession through the Eyes of Dissatisfied Consumers of Legal Services in Manhattan, NY: An Interpretative Phenomenological Analysis

Abstract
In the past, research on consumer dissatisfaction with legal services tended to be quantitative in nature, and focused primarily on consumer opinion of the legal profession. These quantitative studies have been valuable in gaining a basic understanding of consumer consensus of legal services and the legal profession. However, a qualitative understanding of the complexity of the personal dissatisfaction experience with legal services, as well as the psychological and social meanings and consequences of these experiences, is an important contribution to the literature. This dissertation provides a qualitative view of the experience of consumer dissatisfaction with legal services in Manhattan, NY. An interpretative phenomenological analysis using semi-structured interviews was used to examine the dissatisfaction experiences of four participants. The analysis resulted in five super-ordinate themes and their accompanying sub-themes. The super-ordinate themes are: (a) disconfirmation of expectations leads to alienation, (b) rationalizing disconfirmation experience, (c) resisting alienation by developing coping mechanisms, (d) psychological reactions, and (e) desire for measures that would confirm expectations. The study used existing literature to clarify the results, and make recommendations. Information from this study could provide direction to the New York State legislature and to the legal profession as a whole, as to how to respond to the complex phenomenon of consumer dissatisfaction with legal services.

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An Analysis of the Perceptions of the Legal Profession through the Eyes of Dissatisfied Consumers of Legal Services in Manhattan, NY:

An Interpretative Phenomenological Analysis

by

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Supervised by

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Ed.D. Program in Executive Leadership

Ralph C. Wilson, Jr. School of Education

St. John Fisher College

December, 2013
Dedication

I dedicate this journey to my parents Isabelle (Mommy) and Wallace (Daddy) Alves. Thank you for your undying love and sacrifices. I love you more than words.

I extend immense gratitude to my dissertation committee Dr. Ronald Valenti, Dr. Mark Villanti, and Dr. Jerry Willis.

Thank you Dr. Valenti for being my advisor and supporter throughout this process. I wholeheartedly appreciate all of your efforts.

Dr. Villanti, your kind words and undying encouragement throughout this journey kept me motivated and encouraged. I thank you for your kindness and I’m eternally grateful. Thank you for the Good to Great book too!

To Dr. Willis, thank you for being my chair and for your support of my research endeavor. I’m extremely honored to have you as a mentor.

Thank you so much Dr. Kathy Abbott for all of your help and encouragement. You are a true blessing in my life.

To my mentor Shivaun Gaines, your sisterly love and endless support throughout this process is heartfelt and unforgettable. Your sophistication and brilliance is completely inspiring and I’m extremely honored to have had you along on my doctoral journey. I’ll always love you and be eternally grateful.

I express gratitude to Senator John Sampson, for your support throughout my doctoral process, and extend further appreciation for the efforts and kindness of Maurice Phillips and Tonya Cantlo-Cockfield. I am truly thankful.
I give acknowledgement and appreciation to Senator Kevin Parker, Assembly member Keith Wright, Dr. Isaac Elegbe, and Dr. Jeff Wallis for their kind words and encouragement in their referrals of me to the St. John Fisher Ed.D program.

I express gratitude to all of the members of Cohort 3, and especially the members of “Eyes on The Prize” Charles, Joyce, Matthew, Elizabeth, and Darren. Thank you for being a support system and family. I love you all.

I extend special appreciation to Charles Richburg and Greta Strong for their friendship, support with my dissertation, and for their love. I love you both very much.

Lastly, thank you to my friends and family members who are always in my corner. This achievement is for all of you.

This doctoral process has been an extraordinary journey that has changed me forever. It provided me with the opportunity to grow professionally as well as personally, and has exposed me, not only to the work of so many prestigious professionals and scholars in varied fields, but to the difficulties of everyday people. I wish to thank each and every person who has taught me and inspired me throughout this journey. My work begins here.
Biographical Sketch

Caprice A. Alves is an adjunct professor of Social Science at several colleges throughout New York and New Jersey. She attended the College of New Rochelle from 1994 to 1999 and graduated with a Bachelor of Arts degree in 1999. She then attended the Queens College City University of New York from 2001 to 2003, where she received a Masters of Arts degree in 2003. In the summer of 2011, Caprice entered the St. John Fisher College Ed. D program in Executive Leadership to begin her doctoral studies in Executive Leadership, and completed her degree in December 2013. Caprice pursued her doctoral research using an Interpretative Phenomenological Analysis, by conducting an Analysis of the Perceptions of the Legal Profession through the Eyes of Dissatisfied Consumers of Legal Services in Manhattan NY. She worked under the scholarly leadership and direction of Dr. Jerry Willis and Dr. Mark Villanti.
Abstract

In the past, research on consumer dissatisfaction with legal services tended to be quantitative in nature, and focused primarily on consumer opinion of the legal profession. These quantitative studies have been valuable in gaining a basic understanding of consumer consensus of legal services and the legal profession. However, a qualitative understanding of the complexity of the personal dissatisfaction experience with legal services, as well as the psychological and social meanings and consequences of these experiences, is an important contribution to the literature. This dissertation provides a qualitative view of the experience of consumer dissatisfaction with legal services in Manhattan, NY. An interpretative phenomenological analysis using semi-structured interviews was used to examine the dissatisfaction experiences of four participants. The analysis resulted in five super-ordinate themes and their accompanying sub-themes. The super-ordinate themes are: (a) disconfirmation of expectations leads to alienation, (b) rationalizing disconfirmation experience, (c) resisting alienation by developing coping mechanisms, (d) psychological reactions, and (e) desire for measures that would confirm expectations. The study used existing literature to clarify the results, and make recommendations. Information from this study could provide direction to the New York State legislature and to the legal profession as a whole, as to how to respond to the complex phenomenon of consumer dissatisfaction with legal services.
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Chapter 1: Introduction

Prelude: 2009-A Case Study

Preet Bharara, the United States Attorney for the Southern District of New York, announced:

The unsealing of charges against 41 defendants, in eight separate cases, for allegedly engaging in various mortgage fraud scams that collectively defrauded lenders out of more than $64 million in home mortgage loans on more than 100 properties across New York State. Among those charged are six lawyers, seven loan officers, three mortgage brokers, an accountant, and a residential property appraiser (U.S. Attorney’s Office, 2012 para. 1). …As the U.S. economy struggles, we will continue to have a zero tolerance policy for those who defraud financial institutions and prey on homeowners on the brink of foreclosure (U.S. Attorney’s Office, 2012, para. 5).

Joseph M. Demarest, Jr., the Assistant Director-in-Charge of the New York Field Division of the FBI, stated, “Combating mortgage fraud is a priority because mortgage lending and the housing market have such an impact on the nation's economy. The defendants charged today include mortgage brokers, lenders, lawyers and buyers” (U.S. Attorney’s Office, 2012, para. 6).

Richard H. Neiman, Superintendent of Banks for New York State, noted:

A key factor leading to the mortgage crisis was the failure of the gatekeepers—including mortgage brokers and attorneys. Unfortunately,
instead of protecting our financial system, in some cases they abused their positions and joined criminal schemes to steal millions of dollars (U.S. Attorney’s Office, 2012 para. 7).

On October 15, 2009, attorney Emmanuel Roy was one of the lawyers arrested by the Federal Bureau of Investigation for engaging in a $64 million mortgage fraud scheme (U.S. Attorney’s Office, 2012, para. 24). In January 2006, three years prior to Roy’s arrest, several complaints had been submitted against him to the Departmental Disciplinary Committee First Department (DDC), which is the New York State Court agency charged with the day-to-day administration of the attorney disciplinary system for the more than 55,000 lawyers who work in Manhattan and Bronx, NY. The complaints submitted against Roy were from Roy’s former client, with whom he had a relationship/ Daisy Lew, his law partner, Paul Greengrass, who had dissolved their law firm under urgent conditions, and his landlord, Fred Jimby. All of the complainants specifically highlighted and documented the egregious ethical abuses and criminal behaviors of Roy against his clients and the public, but no immediate action was taken against Roy. In fact, in September 2009, one month prior to Roy’s federal arrest, a letter was sent to Lew to inform her that the DDC had dismissed her complaint against Roy.

Immediately after Roy’s arrest in October 2009, the DDC conducted an emergency disbarment proceeding charging Roy with 38 violations of the disciplinary rules, including 16 charges of dishonesty, fraud, deceit, or misrepresentation, falsifying a contract of sale and other mortgage documents to reflect an inflated sale price, misappropriating funds he was holding in escrow for a client, making material misrepresentations to the Small Claims Court in a subsequent action that arose from his
conduct, submitting a false affidavit, stealing a client’s identity to apply for a credit card, testifying falsely in a deposition before the DDC, submitting fabricated documents to the DDC, neglecting a client's legal matter, using a false and misleading name for his law firm, and failure to maintain escrow account records (New York State Unified Court System, 2010). Many of the violations that Roy was charged with were stated in the complaints made three years earlier by Lew, Greengrass, and Jimby. In order to avoid being officially disbarred, Roy surrendered his NY state law license and resigned from the NY state legal profession. He claimed that he could not successfully defend himself against the charges (New York State Unified Court System, 2010). However, the surrender of a respondent’s law license while pending discipline in New York State is tantamount to disbarment (Supreme Court of Florida vs. Roy, 2010).

Although Roy was disbarred from legal practice in New York, he continued to practice law in the state of Florida where he held a subsequent law license. However, months later, in April 2010, disbarment proceedings were held to disbar Roy in the state of Florida as a result of the New York disbarment (Supreme Court of Florida vs. Roy, 2010). Roy did not respond to the court complaint against him nor did he attend the disbarment hearings (Supreme Court of Florida vs. Roy, 2010).

In 2008, prior to his Florida disbarment, but while complaints were pending in the DDC in New York, Roy, through the practice of law and by virtue of his law license, engaged in an another egregious act of abuse against a client in the Florida Federal Criminal Court. At Roy’s demand, the client, through his family, paid over $275,000 in the form of cash, jewelry, real estate property, and an automobile, for the payment of Roy’s legal fees for a criminal case (McMahon, August, 2012). A judge later found that
Roy flew to England and took a $23,000 wedding ring from the finger of the client’s wife at a meeting, took a Porsche, tens of thousands of dollars, and a townhouse from the family of the client (McMahon, August, 2012, para. 4-5). Roy then instructed the client to plead guilty and immediately abandoned the client and his family (McMahon, 2012). Roy’s client, who had been arrested in March 2008 after being accused of money laundering and drug possession by federal authorities, pleaded guilty in court with both Roy and his partner Mayas present (Robbins, 2012, para. 3). After the guilty plea, Roy and Mayas allegedly abandoned the client, “leaving him to fend for himself in court” (Robbins, 2012, para. 3). It was later found that Roy was not authorized to practice law in the federal court. The judge in the matter, referring to Roy and his partner Mayas, stated “their conduct was outrageous, disgusting, and abhorrent. [I] would go so far as to describe it as being the most outrageous in … 25 years on the bench” (McMahon, September, 2012, para. 7).

As a result of Roy’s continued unethical and criminal behavior, in April 2012, months prior to the upcoming trial for his 2009 arrest, and while Roy was under the supervision of Federal Pretrial Services in New York in connection with a pending criminal trial, the Florida Federal Court issued a new federal warrant for Roy’s arrest (United Stated District Court Southern District of Florida, 2013, p. 7).

In August, 2012, Roy was re-arrested by the federal authorities in New York City, and brought to Florida to answer for his unauthorized practice of law in a federal court as well as the crimes that he committed against his client. The judge ruled that “what Roy and Mayas did was so outrageous and disgusting that he found them in contempt of court and ordered them to repay every cent of the $275,800” that the client and his family paid
to them (McMahon, August, 2012, para. 5). The judge also ordered Roy and Mayas to pay the costs of the client’s new lawyer (McMahon, August, 2012, para. 5). However, Roy claimed he had spent all of the money he received and was now “penniless” (McMahon, August, 2012, para. 17; Neil, 2012, para. 3).

In February 2013, Roy was found in contempt of court by a Florida federal judge for failing to repay the client via court order (McMahon, February, 2013). During the federal hearing, the client’s new lawyer claimed that Roy and Mayas were hiding their assets in order to avoid repaying the client (McMahon, September, 2012). Roy’s partner Mayas testified to the court that Roy had told him (Mayas) that he “was ‘stupid’ because he had kept his assets in his own name that were then subject to seizure by the court” (McMahon, September, 2012, para. 17). Roy’s court appointed lawyer stated, “there is no such thing anymore [sic] as ‘debtors' prison’ and if Roy can prove he has no money, he can't be locked up for failing to pay the court-ordered debt” (McMahon, September, 2012, para. 15). The client now remains unremedied and the new case against Roy is pending.

If measures had been taken in New York by the DDC to address Roy’s behavior when those behaviors were first brought to the DDC’s attention, his actions might not have had such far reaching consequences to the client, his family, and the states of New York and Florida. Instead, the DDC seemed to be proactive in protecting the image of the legal profession at the public’s expense.

When this dissertation research was completed, Roy had been found guilty of five counts of federal mortgage fraud charges in New York and was free on bond awaiting sentencing (McMahon, August, 2013).
The story of Roy is, unfortunately, not rare. Unethical and illegal behavior on the part of lawyers is, in the opinion of many, a threat to clients in need of legal services. In recognition of this, the website myvisajobs.com (2013) urges consumers to conduct a careful background check on the lawyers they choose. Avvo (2013a), an online website designed to help consumers “make smarter, more confident legal decisions” (para. 1), stated that the “right attorney makes the difference” (Avvo, 2013b, para. 1). Avvo immediately appears through a Google search of Emmanuel Roy and is the only online site that provides the current and accurate state of Roy’s disbarment in the states of New York and Florida (Avvo, 2013c).

Although Roy is no longer a licensed attorney in New York, has been disbarred in Florida, and is awaiting federal prison sentencing, Roy has continued to be depicted as a practicing attorney on the Internet including personal social media sites, where he is promoted as an “immigration attorney” (My Visa Jobs, n.d., para. 1), a “Member, Florida State Bar 2003-current” (Justia Lawyers, n.d., para. 3), an “Attorney at Roy and Associates” (LinkedIn, n.d., para. 1), and “Emmanuel Roy, Attorney at Law” (Legal Help Mate, n.d., para. 1).

**Introduction**

This study investigated the public’s perceptions of the experience of dissatisfaction as consumers of legal services in Manhattan, New York (NY). An interpretative phenomenological analysis (IPA) was used to analyze four case studies of dissatisfied consumers of legal services in Manhattan, NY. Semi-structured interviews elicited data on the expectations consumers had of legal services in Manhattan, NY and highlighted the challenges consumers faced when obtaining legal services and then
attempting to overcome the problems they encountered. Interest with the phenomenon of consumer dissatisfaction with, and distrust of, the legal profession is and has been of significant concern for some time (Able, 2008; Buchanan, 1994; Clifford, 2002; New York State Bar Association, 2013; Rhode, 2000). Many scholars and legal professionals have acknowledged that consumer dissatisfaction with legal services leads to public distrust of the legal profession and have recognized that this mistrust is a significant factor in the legal profession’s decline in the eyes of consumers of legal services (Able, 2008; Buchanan, 1994; New York State Bar Association, 2013; Rhode, 2000). As noted in Florida Bar versus Mcain (1978), “Erosion of trust and confidence in lawyers will lead to declining public acceptance of the judicial branch overall” (Buchanan, 1994, p. 361).

Such dissatisfaction appears to have plagued the legal profession for over 100 years (Re, 1994). In 1906, Pound, known to some as a “great legal thinker” (Re, 1994, p. 86) noted that the amount of dissatisfaction with the legal profession was abnormal, widespread, and pervasive, and that some people believed the dissatisfaction had reached “crisis” proportions (Pound, as cited in Re 1994, p. 86). Over 90 years later, Buchanan (1994) stated, “public perception problems lawyers face today are deeper and more widespread than any the profession has ever faced before. Worse yet, the problems are growing” (p. 563). In 2000, Debra Rhode, a Stanford University legal ethics expert, noted the legal profession was “lost, betrayed, and in crisis” (Rhode, 2000, p. 1). However, in 2002, Clifford (2002), president of the American Bar Association, provided a more hopeful tone as he noted that “America is ambivalent about its lawyers” (p. 4). Clifford (2002) highlighted reasons for this ambivalence and noted positive and negative aspects of the public’s views in order to provide a working foundation on which the legal
profession can build. However, in spite of Clifford’s progressive report, Moliterno (2013) claimed that “in some ways, the American legal profession is always in crisis” (p. 2) as it is a “crisis-prone profession” (p. 1).

In addition to reports that the American legal profession is in crisis, it is well noted that consumer trust and confidence of legal services and the legal system is crucial for the future of the structure of the nation. The American system of checks and balances is only sustainable if people remain assured that the system works and that unethical or illegal behavior will be checked by appropriate oversight and action (Buchanan, 1994). Buchanan (1994) further highlighted Thomas Jefferson’s notion that “government derives its powers from the consent of the governed” (p. 572). “Without that consent, no government however idealistic or sensible, can last” (Buchanan, 1994, p. 572).

In spite of the legal profession’s continued desire for public confidence, year after year the results have remained essentially the same. The public’s trust and overall perception of the legal profession is low (Gallup, 2012; Harris Interactive, 2006). A July 2006 Harris Interactive poll surveyed a sample of 1002 respondents and found that of the 22 occupations listed, lawyers ranked in the bottom five with 27% of the respondents believing that lawyers are “least trusted to be truthful” (para. 3). Additionally, a November 2012 Gallup poll showed that when asked to rate the honesty and ethical standards in different professions, only 19% of consumers rated lawyers high to very high, and 38% rated lawyers low to very low.

This negative perception is perhaps in part rooted in the legal profession’s response to consumer complaints (Help Abolish Legal Tyranny, 2012; Rhode, 2000). The 2009 federal arrest of former attorney Emmanuel Roy shed light on the number of
annual complaints to the First Department Appellate Division’s Departmental Disciplinary Committee (DDC). Each year, the DDC receives about 3,300 complaints against attorneys (New York State Unified Court System, 2002-2011). Almost all of the complaints received have been from dissatisfied consumers of legal services (New York State Unified Court System, 2002-2011). Of the average 3300 annual complaints received, the DDC reported an average of fewer than 2% resulting in attorney discipline (New York State Unified Court System, 2002-2012). This is about 66 of 3,300 complaints, and advocates for consumers argue that this number suggests many truly aggrieved consumers are left with their complaints unremedied.

According to the American Bar Association, “inappropriate sanctions can undermine the goals of lawyer discipline” (American Bar Association, 1992, para. 4). Specifically,

…sanctions that are too lenient fail to adequately deter misconduct and thus lower public confidence in the profession; sanctions that are too onerous may impair confidence in the system and deter lawyers from reporting ethical violations on the part of other lawyers. Inconsistent sanctions, either within a jurisdiction or among jurisdictions, cast doubt on the efficiency and the basic fairness of all disciplinary systems (American Bar Association, 1992, para. 4).

Table 1.1 shows the breakdown of the DDC’s annual reports from 2002 through 2011. Highlighted are the total matters that must be addressed by the DDC for the corresponding year, the number of new complaints received, number of complaints rejected for failure to state a complaint (meaning a complaint within the ethical codes), number of complaints referred to other disciplinary committees (whenever the
jurisdiction is incorrect), number of complaints referred to other agencies (regarding mediation or fee dispute arbitration), number of complaints dismissed (by the DDC) or withdrawn (by the complainant), number of complaints dismissed through mediation, letter of admonition (letter informing the lawyer that their behavior was unacceptable), reprimand (letter informing lawyer their behavior was below standard of the profession but that they will not be punished), number of complaints referred to the appellate division for discipline, and matters (complaints) outstanding at the end of the period.

Although consumers submit complaints to the DDC, this agency does not offer remedies to the claimant such as compensation for losses or fees not returned. A breakdown of what the DDC can and cannot do is provided in Chapter 2. For dissatisfied consumers of legal services, there are only two available remedies. One remedy is the The Lawyer Fund For Client Protection of the State of New York (Lawyer Fund). The Lawyer Fund provides financial remedies to consumers for up to $300,000 after a lawyer is found guilty and disciplined by either a criminal court of law or by the Appellate Court (personal communication, Lawyer Fund, 2012). The second remedy is the court system which may order a lawyer to pay the client for losses incurred and for fees inappropriately collected by the lawyer. Since consumer eligibility for financial remedy through the Lawyer Fund has been contingent on the disciplinary outcome for criminal activity of a lawyer (personal communication, Lawyer Fund, 2012) both pathways to compensation pass through the court system. Therefore, if a consumer complaint is dismissed, the consumer is not able to recover any losses through the Lawyer Fund.
Table 1.1

**DDC Annual Statistical Report 2002-2011**

<table>
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<th>2003</th>
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<td>849</td>
<td>249</td>
<td>129</td>
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| Matters Pending at The End of The Period | 1431 | 1346 | 1238 | 1230 | 1111 | 1039 | 1267 | 1189 | 1255 | 859  |

Note. Figures retrieved from the DDC’s 2002-2011 annual reports.

With regard to the court system, an aggrieved consumer may initiate litigation against the attorney in a court of law. However, the complexity and culture of the legal profession and the law may deprive consumers of a fair and level playing field due to the lay status of the consumer, lack of legal knowledge, lack of legal networks, and lack of legal skill required to avoid being “outlawyered.” In addition, a consumer who has not
been well served by a lawyer may be reluctant to spend more money to hire a different attorney to represent them.

Furthermore, despite the fact that the DDC receives an average of 3,300 complaints annually, the number of aggrieved consumers of legal services in Manhattan, NY may in fact be substantially higher. Bearden and Mason (1984) showed that “consumers complain when there is a reasonable chance of obtaining redress” (para. 17). Moreover, “if the retailer or manufacturer is perceived as being responsive to consumer efforts to seek redress, consumers are more likely to complain” (Bearden & Mason, 1984, para. 16). Bearden and Mason (1984) also asserted that consumers largely complain when they believe their efforts are likely to be successful. Since the DDC is publicly perceived to be non-responsive to consumer concerns (Help Abolish Legal Tyranny, 2012), many aggrieved consumers may not bother to submit complaints even when their complaints are just.

Furthermore, a *New York Times* article highlighted the case of former judge Robert M. Restaino of the Niagara Falls City Court, who “was removed for sending 46 defendants who sat in his courtroom into police custody after no one took responsibility for a cell phone that rang in the courtroom” (Eligon, 2008, para. 13). Tembeckjian, head of the Commission on Judicial Conduct, stated he received media inquiries from around the globe regarding that case and that it prompted an increase in judicial complaints (Eligon, 2008). Tembeckjian stated, “as people see the commission acting on judicial misconduct, they become more inclined to file complaints” (Eligon, 2008, para. 14). His sentiments support the thought that consumers have been, in fact, more likely to complain when they believe there is a reasonable chance of obtaining redress.
Additionally, the Technical Assistance Research Program Worldwide (TARP), a consulting firm, has found that “the average business never hears from 96% of its unhappy customers” (Tatikonda, 2013, para. 14) and that “for every complaint received, the average company has 26 customers with problems—six of which are ‘serious’” (Tatikonda, 2013, para. 15). TARP further noted that, “a satisfied customer tells eight people, whereas a dissatisfied customer tells 22” (Tatikonda, 2013, para. 18). Resolving complaints has been shown to benefit a company in that “customers with satisfactory resolution of complaints showed 8% or more loyalty compared to those who had no problems at all” (Tatikonda, 2013, para. 35).

Consumers learn vicariously whether or not complaining will be helpful for them, and the driving force behind the decision of whether or not to submit a complaint is based on the perception of whether or not their complaint will be addressed and resolved (Bearden & Mason, 1984). Accordingly, the fact that the DDC receives an average of 3,300 complaints annually and processes fewer than 2% for discipline, may reduce the number of legitimate complaints because the likelihood of a complaint leading to discipline for the attorney is very small.

**Problem Statement**

The status of the legal profession as a whole is not high in American society, as shown by many different polls and surveys mentioned previously in this chapter. Furthermore, when a consumer of legal services in Manhattan, NY is dissatisfied with those services, the established way of bringing a complaint is reporting it to the DDC. Unfortunately, the vast majority of complaints filed with the DDC do not lead to disciplinary action against the attorney who is the object of the complaint. This situation
calls for research related to conflicts in the attorney-client relationship. We have, however, very little research on the prospective clients who receive what they consider to be unsatisfactory services from an attorney. This dissertation addresses that problem.

**Theoretical Rationale**

The study set out to understand how dissatisfied consumers of legal services in Manhattan, NY make sense of the phenomenon of experiencing dissatisfaction with legal services. Using an IPA approach and relying on interpretation, hermeneutics was complimentary as a framework because it looks to establish symbolic and linguistic meanings of the participants (Smith et al., 2009). Furthermore, in that “hermeneutics is the theory of interpretation” (Smith et al., 2009, p. 21), the IPA method was effectively positioned to address the research questions and achieve the goals of the research.

Hermeneutics was originally designed to interpret biblical texts but has evolved into a philosophical underpinning for the interpretation of varied historical documents, literary works, and texts (Smith et al., 2009). Hermeneutic research endeavors to uncover the intentions and meanings of the individual, and seeks to understand the relationship between the whole and the parts of an individual’s perceptions (Smith et al., 2009). Smith et al. (2009) stated, “to understand any given part, you look to the whole; to understand the whole, you look to the parts” (p. 28). Essentially, Smith et al. (2009) is stating that when analyzing data to interpret the meaning that individuals assign to certain objects, concepts, or experiences, the researcher must analyze the words as individual words, but also analyze the words in the context in which they are being used. In this case the words are the parts and the context is the whole. This study was framed in
hermeneutics through the IPA method, thereby capturing the essence of the phenomenon as it appeared.

**Statement of Purpose**

The purpose of the study was to better understand the types of reported difficulties that dissatisfied consumers experienced with Manhattan, NY legal services, and the subsequent difficulties those consumers experienced when trying to overcome those difficulties. A further purpose of the study was to explore possible ways of reducing dissatisfaction.

**Research Questions**

Research questions are interrogative statements that narrow the statement of purpose to specific questions (Creswell, 2002). This study was guided by a primary research question and four supporting subquestions.

**Primary research question.** What were the participants’ perceptions of the conditions, reasons, and solutions related to consumer dissatisfaction with legal services in Manhattan, NY?

**Sub-questions.** The following four sub-questions were developed to provide additional focus. The sub-questions were ordered to build from the participants’ overall perception of the legal profession to the specifics of their experience without making assumptions about that experience.

1. What were the current perceptions of the legal profession as a whole among dissatisfied consumers?

2. How did the participants describe the conditions in which the unsatisfactory legal services were provided?
3. What did the participants perceive as central to their dissatisfaction with legal services they received?

4. What did dissatisfied consumers of legal services perceive as the best ways to improve legal services and reduce the number of dissatisfied consumers?

**Possible limitations.** A possible limitation of the study was that the interpretation could be viewed as biased because of the researcher’s own personal experience with lawyers which led to the selection of this topic for her dissertation. As researchers we attempt to bracket our assumptions and beliefs so that they do not color the way we interpret new data. That, however, may not always be possible (Smith et al. 2009). Smith et al. noted that interpretative studies cannot be a pre-supposition-less capturing of data because “the reader, analyst or listener brings their fore-conception (prior experiences, assumptions, preconceptions) to the encounter, and cannot help but look at any new stimulus in the light of their own prior experience” (p. 25). However, Heidegger (as cited in Smith et al., 2009) advised bracketing experiences and presuppositions in order to secure the themes. He stated:

> Our first, last, and constant task in interpreting is never to allow our...fore-conception to be presented to us by fancies and popular conceptions, but rather to make the scientific theme secure by working out the fore structures in terms of the things themselves (p. 195).

While the fore-conceptions will always be there, according to Smith et al., priority must be given to the new objects and understandings rather than the researcher’s a priori preconceptions.
Significance of the Study

The detailed analysis provided by this dissertation may advance the understanding of attorney-client conflict on the part of the legal profession, the state and consumers. This study contributes particularly to our knowledge of these conflicts from the perspective of the dissatisfied client. Thus, the study may further illuminate the factors that foster the consumers’ negative perception of the overall legal profession, which may contribute to the search for ways of rectifying the situation, ameliorating consumer dissatisfaction with legal services, and improving the image of the legal profession.

Chapter Summary

This chapter outlined the aims of the study, the problem, the theoretical rationale, statement of purpose, research questions, and potential significance of the study. Chapter 2 contains a synthesis of the literature pertaining to the phenomenon under review. Chapter 3 sets forth the methodology used for investigating the phenomenon, Chapter 4 contains the findings from the analysis, and Chapter 5 includes a discussion of the findings and implications for research and practice.
Chapter 2: Literature Review

Introduction

This chapter reviews established literature on causes of consumer dissatisfaction with legal services. As this study looks to thoroughly understand and properly respond, to this phenomenon, it pays attention to the behaviors of consumers in the marketplace, the psychosocial needs of consumers, and how dissatisfied consumers may transition into the realm of victimization. To assist in understanding the causes of consumer dissatisfaction with legal services, this chapter reviews some of the underpinnings in the legal profession that may be affecting this phenomenon. It further provides examples that support the need to address this phenomenon.

Further, this chapter reviews the stated policies of the DDC, which is the third party complaint agency for dissatisfied consumers of legal services in Manhattan, NY. It highlights the stated rights and responsibilities of consumers by the legal profession regarding legal services. As this study aims to propose feasible remedies to respond to the area of consumer dissatisfaction with legal services, it reviews major national and international measures that have been suggested and/or implemented to respond to consumer protection and improving trust of the legal profession.

The topics covered in this chapter are:

1. consumer mistrust and dissatisfaction;
2. consumer dissatisfaction behavior;
3. internal crisis as reasons for consumer dissatisfaction;
4. ‘bad apples’;
5. concessions and mitigating factors in lawyer discipline;
6. consumers to victims;
7. consumer needs;
8. illocutionary and perlocutionary actions by the legal profession regarding consumer dissatisfaction: Stated Policies and Promoted Practices;
9. the DDC;
10. legal service consumers’ rights and responsibilities;
11. public protection measures,
12. suggested best practices;
13. importance of reform,
14. improving oversight accountability in major areas;
15. methods that work.

Chapter 3 will present an overview of the method used for this study.

**Review of the Literature**  **Consumer mistrust and dissatisfaction.** The legal profession is one in which compliance with the rules and laws are the foundation of its practice (Able, 2008). However, at times, the practice of lawyers exceeds the boundaries of these rules into unethical and/or illegal territory (Able, 2008). The state of New York receives thousands of complaints related to legal services rendered each year, yet it is able to address just over 1% of them (New York State Unified Court System, 2002-2011). There is a consequent lack of trust between customers and legal professionals.

Able (2008) notes that the legal system is built on the trustworthiness of lawyers. “Clients must trust the fidelity of their lawyers” (Able, 2008, p. vii). Adversaries and
courts must “trust the lawyers to submit truthful evidence, correctly cite the law, and make legitimate arguments” (Able, 2008, p. vii). According to Sandra Day O’Connor:

The vast majority of lawyers diligently strive to deserve this trust. It takes only a few betrayals, however, to seriously damage the reputation of lawyers, both individual and collective. If the legal profession is to prevent breaches of trust, it needs to understand how and why they occur (as cited in Able, 2008, p. vii).

Studies

In 2001, Robert A. Clifford, president of the American Bar Association, commissioned a report to examine the public’s confidence in the courts, judiciary, and the legal profession. This study reviewed the potential demand for personal legal services, consumer avoidance of lawyers, and consumer satisfaction with different aspects of working with lawyers (Clifford, 2002). Telephone interviews were conducted with 450 people across the United States and a total of ten focus groups were established with between eight and ten participants per group comprised of half male and half female (Clifford, 2002). Focus group respondents were recruited to represent the demographic composition of their community, and roughly half of the participants in each market had hired a lawyer in the past five years (Clifford, 2002). The focus groups examined public perceptions of lawyers (Clifford, 2002).

Overall, Clifford (2002) noted that “America is ambivalent about its lawyers” (p. 4). On the positive side:

- Americans say that lawyers are knowledgeable about the law, and can help clients navigate through difficult situations.
Personal experiences with lawyers substantiate these positive beliefs. The majority of consumers who have hired a lawyer are satisfied with the service their lawyer provided.

Consumers tell stories of lawyers who apply significant expertise and knowledge to their cases, identify practical solutions, and work hard on behalf of their clients.

Americans also believe that law is a good and even respectable career (Clifford 2002, p. 4).

On the negative side:

Americans say that lawyers are greedy, manipulative, and corrupt. Participants in the study told of their experiences with lawyers which substantiate their beliefs Clifford (2002) stated that consumers told of stories of lawyers who misrepresent their qualifications, over-promise, are not upfront about their fees, charge too much for their services, take too long to resolve matters, and fail to return client phone calls.

Americans are also uncomfortable with the connections that lawyers have with politics, the judiciary, government, big business, and law enforcement. These connections imbue lawyers with a certain degree of power in society. Americans believe that the central place of lawyers in society enables them not only to play the system, but also to shape that very system.

Americans also believe that lawyers do a poor job of policing themselves. Participants viewed Bar associations as clubs to protect lawyers and not as protectors of the public or the public’s interest (Clifford, 2002, p. 4).
Clifford (2002) further noted that for consumers, legal services are among the most difficult services to purchase, particularly because of the uncertainty and risk. Clifford (2002) noted that when it comes to hiring a lawyer, consumers are unable to distinguish a good lawyer from a bad one, and consumers also say that it is particularly unclear exactly what the lawyer will do for them and how much the lawyer will charge. “This uncertainty generates feelings of vulnerability and anxiety in consumers and creates a real potential for tension in the lawyer-client relationship and for the avoidance of lawyers altogether” (Clifford, 2002, p. 34). Consumers in the study also discussed how lawyer advertising also contributes to negative perceptions of lawyers. “Television and Yellow Pages advertising that is geared towards the general public is said to be unprofessional, over-promising, overly dramatic, and targeted to vulnerable people” (Clifford, 2002, p. 13). Clifford (2002) further notes that consumers were more concerned with the way lawyers were advertising instead of the notion of advertising itself.

Clifford (2002) also notes that the greatest number of consumer complaints about lawyers arise around lawyers’ fees. Consumers say that “lawyers charge too much for their services; are often not upfront about their fees; and are unwilling to account for their charges or hours” (p. 14). He also noted that consumers were disturbed and skeptical about the necessity of delays. Consumers believe that “lawyers drag out and overstaff cases unnecessarily” (p. 15). Some participants believed that “lawyers do this deliberately in order to inflate their expenses on a case” (p. 15). Additionally, consumers reported the perceptions that lawyers take cases that they are not equipped to handle, and
experiences with lawyers who “fail to competently represent” (p. 16) them, and the notion that lawyers “promise what they cannot deliver” (p. 16).

Lastly, some consumers in the study believed that lawyers can “do more harm than good” (p. 16). Clifford notes that consumers feel that this is especially true of people going through a divorce, as they say that “divorce lawyers can exacerbate an already difficult situation” (p. 16).

While over seven in ten households have had a possible need for a lawyer in the past year, “less than half of those who might need a lawyer will actually hire one” (Clifford, p. 34). He further notes the irony that so many consumers’ legal needs go unmet, while “many members of the growing legal profession are struggling to secure clients” (p. 34).

Another quantitative survey commissioned by Legal Services Board (LSB) and carried out by Optimisa Research, involved two focus groups and 48 in-depth interviews, searching to explain why people who do not use or trust legal service professionals make the decisions that they do (Rose, 2013, para. 3). Rose (2013) noted several factors that the LSB identified as causes of consumer mistrust and reluctance to utilize legal services; notably, lawyers’ “lack of transparency over cost- rather than the actual cost” (para. 1) of their legal services is a main barrier to consumers seeking legal services and is the “primary cause of a breakdown in trust” (para. 1) between the lawyer and consumer. The LSB further noted that “while the public respects lawyers’ knowledge and expertise” (para. 2), a widespread view was that the customer service the lawyers provide is typically poor. “Consumers felt that lawyers show little empathy for their situation” (para. 4). In keeping with the study of Clifford, consumers also perceived that lawyers
were dishonest about fees and costs due to lack of transparency about the costs. LSB notes:

Lack of transparency within the legal profession is twofold: firstly consumers are not clear how lawyers cost their time and there is a common view that even if a price is quoted at the start of a case, this can escalate throughout the legal journey and end up costing much more than expected (Rose, 2013, para. 5).

Rose (2013) further noted:

…there is a lack of understanding of how lawyers spend their time and what they deliver for the fees they charge. There is a very low awareness of how long specific tasks take and therefore consumers focus on the details provided, such as photocopying, sending letters/e-mails etc. (para. 6).

The LSB contends that this lack of understanding causes consumers to be skeptical about the lawyers’ intentions and motives with legal services, and causes them to be mistrusting and view them as unreliable (Rose, 2013). The LSB states the lack of understanding … leads people to conclude that lawyers are not always honest, which can then make them question the initial perceived reliability of the service they offer. Although people respect their knowledge, there is a view that advice may be skewed towards that which would be most financially advantageous to themselves and their practice” (Rose, para. 7).

Rose (2013) further notes that the research also found that “regulation of the legal services profession is not working as well as it might do to promote trust” (para. 12),
because of a perception that “lawyers are a law unto themselves, low awareness/visibility of regulatory and complaints bodies, and cynicism about the chances of making a successful complaint” (para. 12). Rose (2013) described that among the factors that promote trust in lawyers was the lawyers’ reputations. The study found that among first-time users, “firms that are well established in their local community tend to be perceived as more trustworthy/reliable than chains or less local firms” (para. 10). Consumers believed that firms with perceived good reputations have ‘inside knowledge’ (para. 11) that will create an advantage. Some consumers find it complex to “ascertain whether they have a legal need, whether that warrants formal legal advice, or whether support for their specific type of problem is available” (para. 13).

The findings of a study carried out by Professor John Maule of Leeds University Business School was congruent with the findings of Clifford (2002) and showed that “decisions on whether or not to use legal services were more likely to be made instinctively and based on previous personal experience than on a thorough analysis” (Rose, 2013, para. 15).

Data from the Legal Services Consumer Panel annual tracker survey, which questioned both a representative sample of 1,762 adults and another slightly smaller group of people who had recently used legal services, showed that “confidence in the legal profession, and other professionals, had continued to fall” (Bindman, 2013 para. 3). Bindman’s (2013) survey indicated that “confidence in lawyers’ honesty and in their handling of complaints has fallen for the second year running, although people who have actually bought legal services remain happy with their own lawyer” (para. 1). Public belief that consumer rights will be protected when retaining services from lawyers, or that
“a lawyer can be trusted to handle a complaint, were both down by 7% compared with findings in 2011, to 46% and 44% respectively” (para. 2).

This study also noted that “a large number of people felt much warmer towards their individual lawyer than about the legal profession as a whole” (Bindman, 2013, para. 6). “Almost four out of five people (78%) expressed satisfaction with their own lawyer” (para. 6).

A study in May 1999 was conducted by the National Center and held a national conference on public trust and confidence in the justice system to ascertain what should be done at both local state and national levels to address the issues of public mistrust in the courts. About half of the 500 respondents felt that courts did not adequately monitor the progress of cases, and “80% said cases are not resolved in a timely manner” (Warren, 2000. p. 13). What lawyers need to remember is that “good complaint handling is good for business”, according to Sampson (2012, para. 8). “In law, it remains the case that most clients come via personal recommendation and keeping customers happy is essential to future income” (Sampson, 2012, para. 8).

While it is well established that consumers are distrusting of legal services and experience dissatisfaction with legal services, it is important to note the consequences of the distrust and dissatisfaction of consumers. As such, a review of consumer dissatisfaction behavior is warranted.

**Consumer dissatisfaction behavior.** Examples of consumer dissatisfaction behavior includes “voicing,” where consumers submit complaints and express their grievances, and “exiting,” where consumers disengage from the services and organizations entirely. Albert O. Hirschman suggested,
…individuals dissatisfied with the performance of an organization to which they belong or do business may try to improve their lot either by “exiting” from the organization and thus foregoing the goods or services it provides, or by remaining remain with the organization but attempting to improve its performance by “voicing” their discontent (Gehlbach, 2005, p. 1).

Both types of behaviors are described and discussed.

**Voicing.** Albert O. Hirschman suggested,

…individuals dissatisfied with the performance of an organization to which they belong or do business may try to improve their lot either by “exiting” from the organization and thus foregoing the goods or services it provides, or by remaining remain with the organization but attempting to improve its performance by “voicing” their discontent (Gehlbach, 2005, p. 1).

Voicing behavior would be the submitting of consumer complaints to express dissatisfaction. However there are circumstances that dictate which direction that the dissatisfied consumers should take. Bearden and Mason (1984) showed that “consumers complain when there is a reasonable chance of obtaining redress” (para. 17). Moreover, “if the retailer or manufacturer is perceived as being responsive to consumer efforts to seek redress, consumers are more likely to complain” (para. 16). Bearden and Mason asserted that consumers complain largely when they believe their efforts are likely to meet with success. Since the DDC is publicly perceived to be non-responsive to consumer concerns (Help Abolish Legal Tyranny, 2012), many aggrieved consumers
may not bother to submit complaints even when their complaints are just. The organization Help Abolish Legal Tyranny, (HALT) (2012) further noted that many consumers do not complain out of fear that if they submit complaints, their lawyers may retaliate and sue them. Some states also threaten and punish complainants with fines and imprisonment if they reveal that a complaint was improperly submitted against a lawyer (Help Abolish Legal Tyranny, 2012). The bottom line is that “more than four in ten people still failed to complain even when they were dissatisfied” (Bindman, 2013, para. 5).

The consulting firm Technical Assistance Research Program Worldwide (TARP), has found that “the average business never hears from 96% of its unhappy customers” (Tatikonda, 2013, para. 14) and that “for every complaint received, the average company has 26 customers with problems—six of which are ‘serious’” (para. 15). TARP noted that, “a satisfied customer tells eight people, whereas a dissatisfied customer tells 22” (para. 18). Resolving complaints has been shown to benefit a company in that “customers with satisfactory resolution of complaints showed 8% or more loyalty compared to those who had no problems at all” (para. 35).

Consumers learn vicariously whether or not complaining will be helpful for them, and the driving force behind the decision of whether or not to submit a complaint is based on the perception of whether or not their complaint will be addressed and resolved (Bearden & Mason, 1984). The fact that the DDC receives an average of 3300 complaints annually and processes fewer than 2% for discipline may reduce the number of legitimate complaints because the likelihood of a complaint leading to discipline for the attorney is very small.
Exiting. Besides voicing complaints, consumers of legal services also engage in exiting behaviors. Exiting is leaving an organization or service and essentially taking your business elsewhere. “In principle, both voicing and exiting of response may motivate organizational leaders to be more responsive to their members” (Gehlbach, 2005, p. 1). However, consumers of legal services may not have the option of exiting or the efficiency of voicing at their disposal. In spite of this dilemma, consumers of legal services are no longer satisfied with simply suffering in silence.

Ames and Gough (2013), a leading professional liability insurance brokerage company, points out that in recent years, insurance companies have realized an upsurge in legal malpractice claims. A recent report by the authors noted that insurers had more claims in 2012 than the prior year, including “a significant increase in claims in excess of $50 million” (para. 1). Ames and Gough (2013) note that for the third consecutive year, issues involved in real estate were cited as the area of practice creating the largest number of legal malpractice claims. They stated that issues involved in the areas of trusts and estates, and corporate and securities, ranked second, and “saw the most significant surge in claims in 2012” (para. 11). They noted that “conflict of interest” (para. 12) was the most frequently alleged malpractice error, and two of the insurers in the survey listed “procedural error” as first or second (para. 12).

As law firm clients see their financial circumstances worsen, they are more likely to seek redress from their advisers (Garczynski as cited in Ames & Gough, 2011, para. 3). Also, according to a recent report by the New York State Bar Association (2011), consumers are more willing to fire their lawyer or sue for legal malpractice nowadays if they are not happy with the services (New York State Bar Association, 2011).
Besides legal malpractice cases, voicing and exiting behaviors have the propensity to impose additional impact on the court system and legal profession, as the courts have recently realized more cases handled by pro se litigants (Forsyth, 2008). “Litigants or parties representing themselves in court without the assistance of a licensed attorney are known as pro se litigants” (United States District Court for The Southern District of New York 2011, p. 3). The word pro se is Latin for “in one’s own behalf” (United States District Court for The Southern District of New York, 2011, p. 3).

According to Forsythe (2008) studies show,

The number of people serving as their own lawyers is on the rise across the country, and the cases are no longer limited to uncontested divorces and small claims. Even people embroiled in child-custody cases, potentially devastating lawsuits, and bankruptcies are representing themselves (para. 2).

In spite of the rise in pro se litigation and increase in malpractice lawsuits, there are many reasons for consumer dissatisfaction with legal services and lawyer-consumer conflict. There are also some internal circumstances within the legal profession that may be the underpinnings of consumers’ dissatisfaction.

Internal crisis as reasons for consumer dissatisfaction. While consumer mistrust and dissatisfaction is at the root of any crisis in the legal profession, the profession itself is facing its own internal woes. Wells (2010) reports that “the economy has taken its toll on all businesses today and law firms are no exception” (para. 1). Wells refers to Michele Wade, executive vice president of Lockton Co. by noting that “downsizing the number of attorneys and staff often leads to clients falling through the cracks” (para. 5). This downsizing may lead to consumer neglect as there are fewer
lawyers to help them (Wells, 2010). Wade notes that lots of law firms are “hiring independent contractors rather than full time lawyers” (Wells, 2010, para. 5).

A concern is that many legal malpractice claims stem from what Wade refers to as “‘door law,’ a circumstance where law firms might choose to represent any client that walks in the door, even when the case involves unfamiliar territory” (Wells, 2010, para. 6). He reports, “the competition for new business is leading many firms to go after clients not typically within their legal specialty” (para. 6). The bad economy makes lawyers take cases they “wouldn’t typically take in good economic times” (para. 6), which leads to mistakes, and it often also can lead to “putting that client on the back burner when a real case that is in their expertise comes along” (para. 7).

A study was conducted to assess how to limit exposure to complaints and increase consumer satisfaction. Jorgensen (2003) notes “although discipline for fee-related issues is limited, the number of fee-related complaints is disproportionately high” (para. 5). Jorgensen (2003) believes that many of the complaints are due to unrealistic consumer expectations of results and costs. “Many ethics complaints are attributable to unrealistic client expectations about the results that can be achieved or the amount of legal fees” and “impractical estimates about fees often become the baseline for dissatisfied clients and constitute their subjective justification for filing ethics complaints” (Jorgensen, 2003, para. 3). “Similarly, idealistic lawyer predictions about probable outcomes increase the potential for disgruntled clients regardless of the quality of the legal services” (para. 3).

The internal trouble in the legal profession is a crucial element in the understanding of why its consumers are experiencing difficulty. As such, a look into the intimate difficulties of the professionals is also suitable.
**Lawyer ailments.** “It is a disparagement of the Government, who put an ill man into office” (Holt, C. J., Regina vs. Langley, 1703, as cited in Norton-Kyshe, 2009, p. 215).

In the interest of institutional effectiveness, the legal profession is assertively focusing on the internal trouble with its members. For instance, according to New York State Chief Judge Judith Kaye, president of the Conference of Chief Justices, disciplinary bodies discover that chemical dependency problems are the basis of 40 to 70% of complaints about lawyers (Marlowe, as cited in Silver, 2004). Bernard and Gibson (2004), state that a growing body of research is suggesting that more and more legal professionals are being diagnosed with, characteristics of mental illness with respect to severe ethical violations. Also, Dolan (1995) previously noted that the American Bar Association estimated that 15 to 20% of all U.S. lawyers suffer from alcoholism or substance abuse. According to a previous Johns Hopkins University study, researchers found that lawyers lead professions in the United States with the highest incidence of depression (Eaton, 1990). Able (2008), asserts that strain from economic hardship, drug abuse, psychological strain and mental illness are the primary causes of the breakdown of lawyer-consumers relationships, which are vital to trust in the legal profession.

While the prevalence of lawyer impairments is a crucial component in reviewing the roots of conflict between consumers and lawyers, a review of notable examples of the occurrences which affect both the legal profession and the consumers is suited.

**“Bad apples”**. The legal profession, like any other profession, is not perfect. Legal professionals are human, and as just reviewed, they suffer from ailments and other difficulties just as, or more than, others in any other profession. Considering the nature
of the legal profession and what is at stake, and because legal professionals are left to their own devices with no external oversight, sometimes tragedy at the expense of the consumer is the result. The following are some examples.

**Example 1.** “Martha Brosius, a lawyer with Brosius & Associates in Great Neck, [NY] is charged with three counts of second-degree grand larceny” (Keshner, 2013, para. 1). As a Long Island elder law attorney, she has been accused of stealing more than $150,000 from clients and a ward during the last four years (Keshner, 2013). Although Brosius was tasked to watch over a 77-year-old incapacitated man as his court-appointed guardian, Brosius allegedly spent money from the man's accounts for her office, payroll and personal expenses (Keshner, 2013). In another consumer case, “Brosius deposited an almost $85,000 check into her escrow account to handle a deceased woman's estate, then allegedly wired more than $14,000 to the woman's son but transferred $70,000 to her operating account” (Keshner, para. 2). Brosius is charged with three counts of second-degree grand larceny and “faces up to 15 years in prison if convicted” (para. 1).

**Example 2.** “A Brooklyn real estate lawyer will be disbarred after faking approval letters from the Attorney General's office that are needed to create and sell condominiums” (Ross & Jacobs, 2013, para. 2). Eduard Fridman, 36, pleaded guilty in Manhattan Supreme Court in a deal struck with the attorney general's office over the document forging, with the intent to illegally create 88 condos at six buildings in Brooklyn and Queens (Ross & Jacobs). Attorney General Eric Schneiderman stated: “It's shocking that a member of the bar would forge the signatures of attorneys in my office to fraudulently sell condominiums to the public” (para. 4). “It was not a shortcut worth taking” (para. 1).
Example 3. “David Ehrlich of Cohoes, a disbarred Albany-based lawyer, changed his plea from not guilty to guilty to an obstruction of justice charge” (Gavin, 2013, para. 1). “The one-time assistant district attorney in Albany was disbarred for allegedly falsifying documents and informing a client that he got him a divorce when he had not” (para. 5). “Ehrlich was indicted on scheming to fraud charges alleging he devised an illegal scheme to defraud clients of money with ‘materially false and fraudulent pretenses, representations, and promises,’ between August 2007 and September 2009” (para. 6). The indictment also accused Ehrlich of failing to file an appeal on behalf of a client, which led to the appeal being thrown out (Gavin, 2013). Ehrlich allegedly prepared a brief for the consumer’s wife “that falsely made it appear that the 2nd Circuit denied the appeal” (Gavin, 2013, para. 7). The indictment stated ‘in truth and fact’ (para. 8) when charging Ehrlich with obstruction of justice, and stated that "the defendant well knew, he had not filed any appellate brief and the Court of Appeals had not rendered that decision" (para. 8). In a news release, U.S. Attorney Richard Hartunian's office said:

Ehrlich made materially false and fraudulent representations to clients regarding legal services he claimed to have performed on their behalf, and he created documents he falsely represented to be the decision and judgment of a court in order to make it appear that he had taken action on behalf of clients when he had not done so (Gavin, para. 10).

Example 4. Charles Diven Jr., “a Yorktown lawyer who was disbarred in 2012 was arraigned on 13 felony charges, after authorities said he stole more than $400,000” (Shilling, 2013, para. 1). Charles Diven Jr. “had a long history of attorney misconduct” even before the criminal charges, which carry up to 15 years in state prison” (para. 2).
“A state appellate court suspended him from practicing law for five years in 2009 after he faced a series of accusations involving two clients, amounting to ‘gross misjudgment’” (para. 3).

**Example 5.** Yves-Merry Telemaque, “a lawyer who was responsible for overseeing the estate of an elderly woman, has been charged with stealing from the proceeds of a real estate transaction” (Timesledger, 2013, para. 1). “According to a statement from the District Attorney’s office, Yves-Merry Telemaque, was appointed as the guardian of an elderly woman in 2007” (para. 1). In 2008, Telemaque was given permission to sell property owned by the elderly woman and to deposit the proceeds, “amounting to $311,597 into a bank account, the District Attorney said” (para. 2). According to the District Attorney, the elderly woman died soon afterward at the age of 92. After the sale of the property, “Telemaque deposited the money into the pre-selected account, but then allegedly withdrew more than $50,000 without authority or permission, the District Attorney said” (para. 3). “The defendant was appointed by the court to look out for the financial affairs of a person incapable of doing so for herself....It is unacceptable that she then allegedly took the deceased’s money for her own use” (para. 4). “Telemaque was charged with grand larceny and if convicted, she faces up to 15 years in prison” (para. 5).

In spite of the fact that lawyer alcoholism, drug abuse, and depression are well known, and that unethical and criminal behavior is pervasive throughout the legal profession, the legal profession continues to perceivably neglect consumer complaints, and lawyers in New York State are afforded mitigating factor accommodations when they
engage in unethical and criminal behaviors. These accommodations are even afforded lawyers that engage in these behaviors directly against consumers of legal services.

Concessions and mitigating factors in lawyer discipline. “If public officers will infringe men's rights, they ought to pay greater damages than other men, to deter and hinder other officers from the like offences” (Holt, C. J., Ashby v. White, 1703 as cited in William Green and Sons, 1909). As officers of the court, lawyers are in the realm of public officers. In recent years, bar associations have made concessions for attorneys who claim to be mentally impaired when faced with egregious ethical violations and criminal activity (Silver, 2004). Every state now operates a lawyer assistance program to provide confidential help to lawyers and judges with drug, alcohol, and other addiction problems (Marlowe, 1997 as cited in Silver, 2004). Most states also offer mitigating considerations with discipline for drug addiction, alcoholism, and mentally ill legal professionals (Marlowe, 1997 as cited in Silver, 2004). According to the American Bar Association’s 1992 Standard for Imposing Lawyer Sanctions, mental disability, alcoholism, or drug abuse may be considered mitigating factors when:

1. there is medical evidence that the respondent is affected by a chemical dependency or mental disability
2. the chemical dependency or mental disability caused the misconduct
3. the respondent’s recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation
4. the recovery arrested the misconduct and recurrence of that misconduct is unlikely (Marlowe, 1997 as cited in Silver, 2004, p. 10).
Jurisdictions differ on their positions regarding mitigation. New York courts, along with those of many other jurisdictions, are inclined to consider chemical dependency a mitigating factor, although it depends on the circumstances (Marlowe, 1997 as cited in Silver, 2004). In a comparison, New Jersey, however, has resisted consideration of alcoholism as a mitigating factor in determining attorney discipline (Bloom & Wallenger, 1988, as cited in Silver, 2004). Regardless of the lawyers’ purported impairments, disbarment always is the result in New Jersey when the lawyer’s conduct involves misappropriation of client funds (Bloom & Wallenger, 1988, as cited in Silver, 2004).

New Jersey also argued for a strict link between crime and punishment: “once a crime was committed it should be punished accordingly, with no room for mitigating circumstances to be taken into account” (Cochrane, Melville, & Marsh, 2004, p. 8). Bloom & Wallenger (1988) state that alcoholism as a mitigating factor in lawyer disciplinary proceedings fails to protect the public from impaired lawyers (Silver, 2004). Once harmed, short of re-entering the same venue and process that caused the harm, the consumer does not have many feasible opportunities to be made whole. According to the state of Texas Bar Association:

The State Bar disciplinary process is intended to protect the general public by punishing lawyers who commit professional misconduct. However, the State Bar cannot force a lawyer to pay a debt. Nor can the State Bar force a lawyer to reduce or refund a fee. The State Bar can punish a lawyer for failing to return a client's file, but cannot force a lawyer to return the file (Office of the General Counsel State Bar of Texas n. d., para. 6).
While ethical guidelines and mitigating factors are stated, albeit not measurable, there are no clear statements as to the state of the consumer of legal services throughout the lawyers’ chemical and alcohol addiction, mental illness, and any other approved mitigating circumstances. In fact, the only recourse for the consumer who has been victimized, is to go back to the offending source.

Consumers to victims. Notably, there are major differences in how offenses against consumers of legal services and lay citizens outside of the legal system are viewed. Additionally, offenses and violations committed in the practice of law are not equally regarded with respect to criminal law or the offender. Therefore, the status of dissatisfied consumer of legal services renders consumers less likely to get recourse or resolve after experiencing abuse. It may be asserted that a major conceptual flaw as well as an impediment to the fair and consistent administration of justice is the failure to recognize and include the status, sufferings, and hardships of the victims of lawyer abuse. Identifying the victimization aspect of aggrieved consumers of legal services may help with constructing responses and remedies to the offenses.

Dissatisfied consumers of legal services typically report experiences consistent with the victimization of elder abuse and domestic abuse. In 2013 the American Bar Association (ABA) highlighted notable studies in abuse and these are presented to show similarities. For instance, the ABA notes that “according to the best available estimates, between 1 and 2 million Americans age 65 or older have been injured, exploited, or otherwise mistreated by someone on whom they depended for protection” (American Bar Association, 2013, para. 72). Consumers of legal services typically depend on the lawyer for protection from abuse and various types of conflict. Data on elder abuse in domestic
settings suggest that “1 in 14 incidents, excluding incidents of self-neglect, come to the attention of authorities” (para. 74). Current estimates suggest that “there may be at least 5 million financial abuse victims each year” (para. 74). “It is estimated that for every one case of elder abuse, neglect, exploitation, or self-neglect reported to authorities, about five more go unreported” (para. 76).

Fifty-six percent of women who experience partner violence are diagnosed with a psychiatric disorder (American Bar Association, 2013). “Twenty-nine percent of all women who attempt suicide were battered, 37% of battered women have symptoms of depression, 46% have symptoms of anxiety disorder, and 45% experience post-traumatic stress disorder” (para. 108).

Victimization. Historically, criminologists focused their attention strictly on the role of the criminal. According to McGrath, (2009) over the years it has been discovered that the role of the victim is actually very important, as it can shape and inspire a criminal. Today, many theories attempt to explain victimization and its causes. A few of the most common and important theories are the victim precipitation theory, the lifestyle theory, the deviant place theory and the routine activities theory (Siegel, 2006 as cited in McGrath, 2009; Siegel & McCormick, 2012).

Passive precipitation occurs when the victim shows factors that motivate or threaten the attacker (McGrath, 2009; Siegel, & McCormick, 2012). These types of crimes can exist due to personal conflicts such as a love interest, a promotion, a job, or any other desired commodity (Siegel & McCormick). The precipitation may also exist when a victim is part of a particular group that offends or threatens someone's economic
well-being, status or reputation (Siegel, as cited in McGrath, Siegel, & McCormick, 2012).

Siegel (2006) states that the routine activities theory is linked to three variable interactions: available and suitable targets; the lack of proper guardians, and the existence of needy offenders, such as drug addicts and people with financial needs (as cited in McGrath, 2009, Siegel, & McCormick, 2012). The presence of such components increases the probability that predatory crime will occur (Siegel, 2006 as cited in McGrath, 2009, Siegel, & McCormick, 2012). Therefore, targets are more likely to become victimized if they are engaging in dangerous activities and behaviors, lack guidance, and are frequently exposed to a large population of offenders (Siegel 2006, as cited in McGrath, 2009, Siegel, & McCormick, 2012). However, as noted in passive victim precipitation, targets do not necessarily have a way of preventing their own victimization and may be selected for victimization just because of what they possess or represent. Siegel & McCormick (2012) note that another reason for victimizing others, is the result of acceptable social norms. People are sometimes victimized just because it is socially acceptable and popular to abuse certain groups.

Particular limitations with victim precipitation are that the responsibility for the victimization may be acceptably placed on the victim, and that this theory makes excuses for offenders’ behaviors (Siegel & McCormick, 2012). This type of limitation causes the specific needs of consumers to be ignored, and it perpetuates further experiences of dissatisfaction and conflict.

**Consumer needs.** Noriaki Kano, a professor at the Tokyo University of Sciences, classified consumer requirements into three levels based on their importance to,
and impact on, satisfaction: threshold attributes (dissatisfiers), performance attributes (satisfiers), and delighting attributes (exciters) (Tatikonda, 2013). Tatikonda (2013) states that threshold attributes are the attributes needed to meet basic expectations and that they must be present for the product or service to be acceptable to customers. Tatikonda (2013) also notes that adding more threshold attributes or enhancing the performance of the existing threshold attributes does not increase customer satisfaction.

Delighting attributes create a pleasant surprise in customer and inspire a sense of higher value (Tatikonda, 2013). Customers generally do not think about certain unexpected attributes on a product but are happy when they surprisingly find out that the product has it (Tatikonda, 2013). While their absence may not have much influence on customer satisfaction, or even the product’s performance, their surprising presence results in higher levels of customer satisfaction due to consumer excitement (Tatikonda, 2013).

Another aspect of consumer needs is expectations. “Expectancy disconfirmation theory holds that consumers form judgments about products or services using their prior expectations about the characteristics or benefits offered by the given product or service” (Oliver, 1980 as cited in Van Ryzin & Gregg, 2006, para. 3). “After experiencing the product’s actual performance, these prior expectations then serve as a comparative referent for forming or not forming a satisfaction judgment” (Oliver p. 600 as cited in Van Ryzin & Gregg, 2006, para. 3). Disconfirmation is “the discrepancy between the anticipated quality of the good or service and the quality that was actually received or experienced” (Oliver, 1980, 1997, as cited in Van Ryzin & Gregg, 2006, para. 5).

Bradley, McColl-Kennedy, Sparks, Jimmieson, & Zapf-Dieter (2010) introduced the Service Encounter Needs Theory (SENT) developed by the Australian Research
Council's Discovery Projects. The theory “aims to elucidate the mechanisms through which service encounter behaviors affect outcomes for customers and employees” (Bradley et al., 2010, p. 5). It focuses primarily “on the mechanism through which behaviors within service encounters affect the parties involved” (p. 5). The study addresses both the needs of consumers as well as the needs of the service providers, and emphasizes that both parties need to have their needs fulfilled in order for interactions to be successful (Bradley et al., 2010). They note that “as in any social interaction, service encounters have both task and socio-emotional dimensions” (Wazlawik, Beavin, & Jackson, 1969, as cited in Bradley et al., 2010, p. 3). “At a task level, customers expect to receive a desired service at an agreed price, while employees seek to provide the service to standards that at least meet, if not exceed, customer and organizational expectations” (Bradley et al., 2010, p. 3). SENT’s underpinning is the idea that “motivation, cognition, and emotion are interdependent systems” (Bradley et al., 2010 p. 4). According to Bradley, all three are critical to the management of service interactions.

The needs are especially pertinent in the attorney-client relationship due to the sensitive nature and vulnerability of the client. Lawyers have expressed their own concerns with the profession and its structure. Bradley et al. (2010), acknowledge that satisfying each need is contingent on the type of service provided and role of the service provider and the consumer. A consumer of legal services enters the service relationship with a certain level of vulnerability. The sensitivity of the relationship would require a specific look at the particular needs of that consumer as well as the role of the provider.

Bradley et al. provide the following definitions:
• A service provider is a service firm employee who occupies a boundary-spanning role involving contact with customers.

• A service encounter is an interaction between a customer and a service provider. Service encounters can occur face-to-face or can be mediated by technical devices (e.g., by telephone).

• A service failure is an instance of service delivery that does not meet a customer’s expectations. Service failures can be grouped into core and process failures.

• A service recovery is an act(s) performed by a service provider that returns the aggrieved customer to a satisfied state (Sparks & McColl-Kennedy, 2001, as cited in Bradley et al., 2010, p. 4).

“‘All service encounter acts, such as greetings, requests, explanations, apologies, and accusations, can affect psychosocial need fulfillment’ (Bradley et al., 2010, p. 3).

Bradley, et al (2010) further state that consumers and providers in service encounters can both meet their needs through a conscientious approach to understanding each other’s needs, and being attentive to early indicators of needs violations. “Planned interventions that focus on these aspects of need fulfillment lead to more satisfied and loyal customers, as well as more satisfied and loyal service employees” (Bradley et al., 2010, p. 37).

Table 2.1 depicts the psychological needs of consumers and examples of service encounter acts that facilitate and hinder need satisfaction.

When understanding consumer needs and expectations, a suitable step is to review stated policies and promised by entities to consumers. As such, a review of the illocutionary and perlocutionary statements by the legal profession is warranted.
In a document entitled *Illocutionary and Perlocutionary Actions By The Legal Profession Regarding Consumer Dissatisfaction: Stated Policies and Promoted Practices* the statement is made: “Determining the dynamics associated with the schema ensures clarity about the meaning of the natural language labels we give to the affordances” (International Conference on Informatics and Semiotics in Organisations, 2013, p. 5). “If we do not know how to determine when a thing starts and finishes its existence, we are unsure about the meaning of the label we use or we are unsure about who bears responsibility for the meaning assigned” (p. 5).
Table 2.1

Proposed Service Encounter Behaviors that Facilitate and Hinder the Eight Psychosocial Needs

<table>
<thead>
<tr>
<th>Psychosocial Needs Pertaining to:</th>
<th>Examples of Service Encounter Acts Proposed to Facilitate Other’s Need Satisfaction</th>
<th>Examples of Service Encounter Acts Proposed to Hinder Other’s Need Satisfaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>2- Competence (self-efficacy, mastery, accomplishment)</td>
<td>Statements that specify clear and manageable expectations. Acts that structure the other’s tasks in ways that facilitate successful performance. Statements by another that exonerate oneself from blame, and accept one’s proposals for action or problem resolution.</td>
<td>Use of technical/specialist terms. “Faulting”, i.e., statements that one has done poorly. Statements that dismiss one’s suggestions and solutions to problem. Inefficient and inaccurate mode of expression that interferes with role performance. Help-rejecting behaviors.</td>
</tr>
<tr>
<td>4- Power (dominance over the other party)</td>
<td>Submissive and deferential behaviors and forms of address. Statements that invite the other to voice opinions, take the lead, lay down ground rules, and in other ways assert themselves.</td>
<td>Coercive social influence strategies, e.g., giving orders., interrupting, belittling, bluffing, threatening, and intimidating. Inflexible positional statements.</td>
</tr>
<tr>
<td>6- Trust (faith in the other’s competence and benevolence)</td>
<td>Non-verbal indicators of honesty, e.g., eye contact and open postures. Statements of understanding. Taking responsibility/ “owning the problem”.</td>
<td>Non-verbal indicators of deceit, e.g., avoidance of gaze. Suppression/distortion of information. Violation of promises. Inauthentic displays of emotions. Deceitful and cheating behaviors</td>
</tr>
<tr>
<td>7- Respect (dignity, esteem, status)</td>
<td>Acknowledging other’s presence, status and individual needs. Provision of opportunities to “voice” problems and suggestions. Active listening. Personalizing information and solutions.</td>
<td>Rudeness and impoliteness (e.g., in direction of gaze, use of time, vocal qualities, modes of address). Impervious or interrupting responses. Appearing to not listen. ‘Hollow’ expressions of concern.</td>
</tr>
<tr>
<td>8- Pleasant Relations (rapport, liking, supportiveness)</td>
<td>Appropriately personal forms of address. Smiling, joke-sharing. Finding common ground. Statements of appreciation, compliments.</td>
<td>Accusations, insults, name-calling, and other instances of hostility, incivility and abuse</td>
</tr>
</tbody>
</table>
Table 2.2 presents an outline of proposed affective consequences of violation of the eight psychosocial needs.

Table 2.2

*Examples of Proposed Affective Consequences of Violation of the Eight Psychosocial Needs*

<table>
<thead>
<tr>
<th>Psychosocial Needs pertaining to …</th>
<th>Basic Emotions Evoked by Need Violation</th>
<th>Cognitive-Affective Response to Need Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cognition</td>
<td>anxiety, apprehension</td>
<td>feelings of bewilderment</td>
</tr>
<tr>
<td>2. Competence</td>
<td>guilt, shame, embarrassment</td>
<td>feelings of being useless</td>
</tr>
<tr>
<td>3. Control</td>
<td>anxiety, anger</td>
<td>feelings of helplessness</td>
</tr>
<tr>
<td>4. Power</td>
<td>anger, fear, hostility</td>
<td>feelings of impotence</td>
</tr>
<tr>
<td>5. Justice</td>
<td>anger, indignation, envy/guilt</td>
<td>feelings of being cheated</td>
</tr>
<tr>
<td>6. Trust</td>
<td>anger, suspicion, disappointment</td>
<td>feelings of being betrayed</td>
</tr>
<tr>
<td>7. Respect</td>
<td>anger, resentment, loathing, contempt</td>
<td>feelings of being devalued</td>
</tr>
<tr>
<td>8. Pleasing Relations</td>
<td>sadness, boredom, jealousy</td>
<td>feelings of alienation</td>
</tr>
</tbody>
</table>

The set of basic emotions was taken from a range of sources including models proposed by Plutchik (2001) and Warr (2007) (as cited in Bradley et al., 2010). In order to ascertain the roots of disconnect between consumer and lawyer ideals and realities, we must first focus on the mechanisms that enable us to construct a shared reality. Those mechanisms are in the form of written rules, policies, consumer rights and responsibilities, and illocutionary actions by authorities.

When we model a social world involving dialogues among people they perform illocutionary and perlocutionary acts with signs. Those signs may stand for things that exist no longer or not yet, or well outside the here-and-now. Information, therefore, provides the escape route to other times and
places. Far from presentism imprisoning us, it supplies sharp tools to make
our escape... Where our model of the world needs to reach beyond the
here-and-now (the substantive reality) must construct a semiological
reality, using signs of all kinds (International Conference on Informatics
and Semiotics in Organisations, 2013, p. 4).

What is the DDC? According to the Lawyer’s Fund for Client Protection for the
state of New York:

The authority to regulate and discipline lawyers in New York State is vested in
the Appellate Divisions of the New York State Supreme Court” (The Lawyers’
Fund For Client Protection, 1997-2012, para. 1). The Appellate Divisions of each
county are responsible for the overall regulation of the grievance committees
relegated to their jurisdiction (New York State Unified Court System, 2006). In
NYS, there are four main Attorney Grievance Committees of which a person may
submit a complaint against an attorney licensed by the state of New York (New
York State Unified Court System, 2006). The Appellate Court is the entity that
selects the committee members and is ultimately responsible for the function of
the grievance committee (New York State Unified Court System, 2006).

While each grievance committee has a separate and distinct jurisdiction,
chairman, committee, staff, and operating budget, all of the grievance committees
throughout NYS are collectively bound by the rules and standards of the NYS Bar
Association and NYS legislature (New York State Unified Court System, 2006).

The First Department Disciplinary Committee, which is the entity related to this
study, covers Manhattan and Bronx New York counties, and is also known as the
Departmental Disciplinary Committee for the First Department (DDC) (New York State Unified Court System, 2006). Throughout this paper, the Departmental Disciplinary Committee for the First Department will be indicated as DDC.

**Purpose of the DDC.** According to the purpose statement publicized on the NY courts official website, the purpose of the DDC is to protect the public and the legal profession by ensuring that lawyers adhere to the ethical standards set forth in the Rules of Professional Conduct. It states:

The purpose of the Committee is to protect the public and the legal profession by ensuring that lawyers adhere to the ethical standards set forth in the Rules of Professional Conduct. The Committee protects the public by reviewing and investigating complaints against lawyers and by recommending sanctions against those who are proven to have violated the Rules. It protects the legal profession by enforcing high standards of conduct, while at the same time ensuring that complaints are dealt with fairly (New York State Unified Court System, 2006, para. 6).

In addition to, and in fact within its statement of purpose on its official website, the DDC provides a highlighted link entitled Rules of Professional Conduct that will route the reader directly to another official webpage of the NY Courts, entitled: Uniform Rules. The Uniform Rules webpage allows the consumer to access the rules of the court, including but not limited to lawyer behavior, as well as the Standards and Administrative Policies for the Unified Court System (New York State Unified Court System, 2006). It informs the public on how to proceed with complaints in the event a rule is violated, or perceived to be violated, and it further outlines a breakdown of the complaint process.
from where to send the complaint, through the establishment of a decision by the attorney
grievance committees and the courts. This public information includes: where to send the
complaint against an attorney; what the grievance committee is; what the grievance
commitee does; what the grievance committee cannot do; how to file a complaint; the
cost of complaints, how complaints are processed; confidentiality rules; length of the
process; reinstatements of legal licenses; disciplinary resignations; and other sources of
help (New York State Unified Court System, 2006).

**Funding and oversight.** The DDC is funded solely by the state of New York
through the New York State legislature, and this funding is regulated by the office of the
NYS Comptroller (New York State Unified Court System, 2006). Although the DDC
receives its funding from the state of New York (hereinafter, NYS) and is governed by
SCAD, there are currently no performance oversight or evaluation mechanisms in place
by NYS or SCAD. There are also no annual performance audits performed by SCAD,
NYS, nor any outside agencies to ensure that the publicly stated goals of the DDC under
the governance of SCAD and the funding of NYS are being met, and that the public is in
fact being protected. According to an administrator familiar with the policies and
practices of the DDC, auditing is only done when the DDC itself identifies a need for an
internal review, and then that review of the DDC is performed by its own staff members
at the DDC and is not accountable to an external entity.

**What the DDC can do.** The Committee has the authority to take the following
actions, depending upon the seriousness of the lawyer's conduct and the circumstances
surrounding it:
• Refer the complaint to a special Mediation Program, in which a trained volunteer mediator meets with the lawyer and the client to assist them in resolving the complaint privately;
• Issue a private sanction to the lawyer (a "Letter or Admonition");
• Recommend to the Court that the lawyer receive a public condemnation ("censure");
• Recommend to the Court that the lawyer's right to practice law be taken away for a specified period of time ("suspension"); or
• Recommend to the Court that the lawyer's license to practice law be taken away ("disbarment") (New York State Unified Court System, 2006, para. 7).

What the DDC cannot do. In response to complaints, the Committee is limited to disciplining the offending lawyer or referring the matter to a mediator (as outlined above). The Committee cannot:

• Give you legal advice or represent you in a civil suit against your lawyer, including a suit for legal malpractice or any other claim. If you wish to obtain money from your lawyer on your claim of improper conduct, you should consult an attorney knowledgeable in that field for advice and representation. There are time limits for making certain claims, so you should seek legal advice promptly, whether or not you file a complaint.
• Determine fee disputes between you and your lawyer. Lawyers are required to participate in mandatory arbitration of fee disputes subject to certain conditions.
• Collect money for you. If an attorney owes you money, and you have not
obtained a judgment, you should consider hiring a lawyer to collect your
money. Generally speaking, immediately act on your complaint if there is
pending litigation as to the same material and substantial issues (New York
State Unified Court System, 2006, para. 8).

It states: “reciprocal trust, courtesy and respect are the hallmarks of the attorney-
client relationship. Within that relationship, the client looks to the attorney for expertise,
education, sound judgment, protection, advocacy and representation” (New York State
Unified Court System, 2006, para. 1). It notes the rights and responsibilities of
consumers with legal services and notes that these rights and responsibilities must be
complied with in order to achieve consumer expectations.

Legal service consumers’ rights and responsibilities. According to the New
York State Unified Court System, certain rights are afforded consumers, and
responsibilities are expected of consumers, by virtue of contracted legal services.

Statement of client’s rights. A description of consumer rights is outlined in the
following list.

1. You are entitled to be treated with courtesy and consideration at all times by
your lawyer and the other lawyers and non-lawyer personnel in your lawyer’s office.

2. You are entitled to have your attorney handle your legal matter competently
and diligently, in accordance with the highest standards of the profession. If you are not
satisfied with how your matter is being handled, you have the right to discharge your
attorney and terminate the attorney-client relationship at any time (court approval may be
required in some matters, and your attorney may have a claim against you for the value of
services rendered to you up to the point of discharge).

3. You are entitled to your lawyer's independent professional judgment and
undivided loyalty uncompromised by conflicts of interest.

4. You are entitled to be charged reasonable fees and expenses and to
have your lawyer explain before or within a reasonable time after
commencement of the representation how the fees and expenses will be
computed and the manner and frequency of billing. You are entitled to request
and receive a written itemized bill from your attorney at reasonable intervals.
You may refuse to enter into any arrangement for fees and expenses that you
find unsatisfactory. In the event of a fee dispute, you may have the right to seek
arbitration; your attorney will provide you with the necessary information
regarding arbitration in the event of a fee dispute, or upon your request.

5. You are entitled to have your questions and concerns addressed
promptly and to receive a prompt reply to your letters, telephone calls, emails,
 faxes, and other communications.

6. You are entitled to be kept reasonably informed as to the status of your matter
and are entitled to have your attorney promptly comply with your reasonable requests for
 information, including your requests for copies of papers relevant to the matter. You are
entitled to sufficient information to allow you to participate meaningfully in the
development of your matter and make informed decisions regarding the representation.
7. You are entitled to have your legitimate objectives respected by your attorney. In particular, the decision of whether to settle your matter is yours and not your lawyer’s. (Court approval of a settlement is required in some matters.)

8. You have the right to privacy in your communications with your lawyer and to have your confidential information preserved by your lawyer to the extent required by law.

9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the New York Rules of Professional Conduct.

10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability (New York State Unified Court System, 2006, para. 3-12).

Statement of client's responsibilities. A description of consumer responsibilities is outlined in the following list.

1. The client is expected to treat the lawyer and the lawyer’s staff with courtesy and consideration.

2. The client’s relationship with the lawyer should be one of complete candor and the client should apprise the lawyer of all facts or circumstances of the matter being handled by the lawyer even if the client believes that those facts may be detrimental to the client’s cause or unflattering to the client.

3. The client must honor the fee arrangement as agreed to with the lawyer to the extent required by law.

4. All bills tendered to the client for services rendered pursuant to the agreed upon arrangement regarding fees and expenses should be paid when due.
5. A client who discharges the attorney and terminates the attorney-client relationship must nevertheless honor financial commitments under the agreed to arrangement regarding fees and expenses to the extent required by law.

6. Although the client should expect that his or her letters, telephone calls, emails, faxes and other communications to the lawyer will be answered within a reasonable time, the client should recognize that the lawyer has other clients who may be equally deserving of the lawyer’s time and attention.

7. The client should maintain contact with the lawyer, promptly notify the lawyer of any change in telephone number, address, email, or other electronic contact information, and respond promptly to a request from the lawyer for information and cooperation.

8. The client must realize that the lawyer is required to respect only legitimate objectives of the client and that the lawyer will not advocate or propose positions that are unprofessional or contrary to law or the New York Rules of Professional Conduct.

- The lawyer may decline to accept a matter of the lawyer has previous personal or professional commitments that will prohibit the lawyer from devoting adequate time to representing the client competently and diligently.

- A lawyer is under no obligation to accept a client if the lawyer determines that the cause of the client is without merit, a conflict of interest would exist or a suitable working relationship with the client is not likely (New York State Unified Court System, 2006 para. 2-11).
While the legal profession promotes stated policies and gives consumers reasons to have certain expectations with legal services, these expectations are still unrealized (Jorgensen, 2003 & Clifford, 2002). As such consumers of legal services continue to feel unprotected against poor business practices of lawyers. As such, it is necessary to review the public protection efforts and suggestions for consumers of legal services.

Public Protection Measures

**Transparency.** “Transparent relationships are stronger” (Viewabill, 2013, para. 3). Many relationships between lawyers and consumers were the result of lawyer advertisements and solicitation practices (Moliterno, 2012). The 1977 court case of *Bates & Osteen -vs- The State bar of Arizona* gave First Amendment free speech rights to members of the legal profession, therefore banning states and Bar Associations from prohibiting lawyers’ use of advertising, according to Traylor & Mathias (1983). In previous court cases, the court established that “the use of advertising by lawyers was not protected by free speech because the “speech” was used for commercial reasons and for economic gain” … That notion was established in the “commercial speech doctrine” by the courts ... The courts believed that this type of speech “must be regulated in order to protect the consumer” (p. 42). However, in *Bates & Osteen -vs- The State Bar of Arizona* (1977) the court believed that “while the consumer did in fact need protection, the consumer also needed information to be able to make informed choices in the marketplace” (p. 42). Ultimately, “decisions regarding lawyer advertising and the facilitating of the advertisements, were left up to the discretion of the individual states” (p. 42).
Besides written and stated policies by the legal profession, lawyers also use advanced technology as a venue to promote their abilities and services. “Technological advances and globalization have changed our profession in ways not yet reflected in our ethics codes and regulatory structure” (Lamm, 2009 as cited in Kane, 2010, para. 2). “Technologies such as e-mail, the Internet and smart phones are transforming the way we practice law and our relationships with clients, just as they have compressed our world and expanded international business opportunities for our clients” (para. 2). With the ubiquitous internet at the public’s disposal, it is imperative that the concept of advertising in the legal profession must be reviewed (Lamm, 2009 as cited in Kane, 2010).

Technology has advanced and people are now relying on the use of the internet for information. Help Abolish Legal Tyranny (HALT) (2012) notes that “in today’s online information age, consumers can easily learn where a lawyer went to school, how long he or she has been in practice, whether or not the attorney is in good standing with the state bar and in some instances, what they typically charge for services” (para. 2). However, “what the vast majority of Americans cannot easily discover, however, is whether the attorney they are considering hiring has a disciplinary record” (Help Abolish Legal Tyranny, 2012, para. 2). Consumers essentially learn what the lawyers makes available for them to learn about the lawyers, therefore, “unless an attorney volunteers that information directly, or a state bar or disciplinary office makes it available to the public, consumers are left in the dark” (Help Abolish Legal Tyranny, 2012, para. 2). Consumers “have no way of knowing the number of complaints, the type of misconduct alleged, the number of investigations started, the number dismissed, and if misconduct is found, the type of severity of discipline imposed” (Help Abolish Legal Tyranny, 2012, para. 2).
HALT (2012) further noted exceptions to these secret practices, as they pointed out that the state of Oregon allows the legal consumer to be informed of the complaints submitted against the lawyer at the complaint stage. Besides Oregon, no other state provides this (Help Abolish Legal Tyranny, 2012). HALT (2012) also notes that New York State is one of the least transparent states regarding disciplinary information of lawyers.

Disciplinary information about an attorney does not become available to the public until a formal public disciplinary sanction has been officially implemented against a lawyer (Help Abolish Legal Tyranny, 2012). In these cases, a legal consumer is highly vulnerable to unknowingly hiring an attorney who has been found to have acted unethically but has not yet received a formal penalty (Help Abolish Legal Tyranny, 2012). “By withholding this information, sometimes for several months as disciplinary proceedings make their way to completion, these attorney regulation agencies fail in their responsibility to protect the public in a timely way” (para. 8).

Only one state, California, currently meets HALT’s standards (Help Abolish Legal Tyranny, 2012). By searching a lawyer’s name in the State Bar of California’s online directory, a consumer has complete access to all relevant past disciplinary sanctions and ongoing proceedings in one centralized setting (Help Abolish Legal Tyranny, 2012). California’s practices with attorney discipline records serve as models to measures that ensure the public’s best interests in its engagement with the legal profession, as consumers have the benefit of accessing and finding all disciplinary information regarding the lawyer with one simple search (Help Abolish Legal Tyranny, 2012).
With further respect to transparency for consumer protection, Congresswoman Elizabeth Warren states:

Americans aren’t looking for a free ride. They expect to be held responsible for their debts and purchases. And they understand that there are consequences to not keeping up with payments. When consumers are presented with a choice between two financial products, and they know the true costs, the actual benefits, and the real risks of those products, they will be better able to make good decisions for themselves and their families. A level playing field encourages personal responsibility and smart decision-making. Americans are looking for an honest marketplace. They want to know the costs up-front, so that they’re not blindsided by hidden fees, interest rate changes, or payment shocks. A properly functioning market relies on consumers’ getting the information necessary to make the best decision for themselves and their families (Warren, 2011, para. 3-4).

The Watergate scandal inspired the legal profession to declare a need for public protection measures (Moliterno, 2012). “We have been compelled to recognize that we must move deliberately but more quickly to provide additional protection for the public and to discipline those among us who are not following the highest principles of the profession” (Smith 1974, as cited in Moliterno, 2012, p. 323). The legal profession saw disciplining lawyers as additional protection to the public. The 1975 American Bar Association noted that the Watergate scandal was not merely a matter of disciplining lawyers, but a national problem (Moliterno, 2012).

In response to the humiliation and diminished public image that the legal profession faced after the Watergate scandal, the Kutak Commission was created
(Moliterno, 2012). It was created to transform legal ethics from an internal fraternal culture to a public code of law, and was designed to respond to the diminishing faith in lawyers (Moliterno, 2012).

HALT's Lawyer Accountability Project is a major reform effort to strengthen consumer protections that apply to the attorney discipline system (Help Abolish Legal Tryanny, 2012). HALT (2012) notes that more than 30 years ago, retired Justice Tom Clark of the United States Supreme Court examined the system of lawyer discipline for the American Bar Association and reported a "scandalous situation" that required "the immediate attention of the profession" (para. 2). The Clark Committee pointed out that “a panel of lawyers, rather than judges or lay persons, were running the disciplinary system” (para. 2), and the Committee charged that “this institutional bias rendered the system ineffective” (para. 2).

Twenty-two years later, an American Bar Association commission chaired by academic Robert McKay found that the public held a ‘growing mistrust of secret, self-regulated systems of lawyer discipline’ (Help Abolish Legal Tyranny, 2012, para. 3). HALT (2012) notes that the commission acknowledged that “where elected bar officials controlled all or parts of a state disciplinary system, a conflict of interest was created” (para. 3). Ultimately, the omission reported that the public viewed lawyer discipline as ‘too slow, too secret, too soft, and too self-regulated’ (para. 3). “Despite decades of repeated calls for reform, nothing has changed. HALT's 2006 Lawyer Discipline Report Card reveals a system of self-regulation that is still badly broken and in need of urgent reform” (para. 4).
According to the annual reports from the DDC, each year it receives approximately 3,300 complaints. Of the 3,300 complaints submitted annually, less than 2% result in disciplinary action annually. For example, in 2011, there were 3,133 complaints submitted to the DDC with claims of unethical conduct of Bronx and Manhattan New York attorneys. Of the 3,133 complaints, 59 (approximately 1.8%) were processed for public discipline. In 2010, the DDC received 3,137 complaints and of them 55 (approximately 1.8%) were publicly disciplined, and in 2009, the DDC received 3324 complaints and of those complaints 52 (approximately 1.6%) were publicly disciplined (New York State Unified Court System, 2002-2011). This statistic highlights the incongruence between the purported ideology and reality of the legal profession, and it also highlights the disconnect between the legal profession and the public. Furthermore, it depicts the contrast in the expectations of and experiences in the legal profession by its consumers. A system that dismisses over 90% of complaints, and conceals information about their own process, does not inspire consumer confidence (Rhode, 2000). Many disputes could possibly be prevented if consumers had better access to information about how their legal rights are protected and their lawyers past performance with other consumers (Rhode, 2000).

While it is noted that transparency and other factors are key barriers to consumer satisfaction and effective lawyer-consumer relationships, it is suggested that the implementation of best practices may help ameliorate future difficulties.

**Suggested best practices.** There are notable measures to be implemented by the legal profession, and legal professionals, which may improve consumer satisfaction.
These measures include: communication, practices of including consumers, revising billing practices, and extended lawyer training, which are described below.

**Communication.** To prevent occurrences of ethical complaints and consumer dissatisfaction, Jorgensen (2003) and Clifford (2002) suggest proper communication with consumers. “Only through frank and candid discussions about fees, results, and the probability of obtaining such results can lawyers avoid complete responsibility for this problem” (Jorgensen, para. 4). Jorgensen (2003) suggests that by lawyers being better communicators with consumers, public confidence in lawyers would improve. Clifford (2002) notes that “lawyers must communicate more clearly and effectively with clients about their legal matters and legal fees (p. ii).” Clifford (2002) and Jorgensen (2003) reinforce this idea with respect to transparency with the costs involved. Jorgensen (2003) states “many clients view legal problems from a cost-benefit perspective only after the work is completed and the final bill is due” (para. 4). Also, “competent and professional advice requires that lawyers advise clients whether the remedy sought is worth the time or cost involved” (Jorgensen, 2003, para. 4).

Jorgensen (2003) continues. “Lawyers who lack candor in communicating with clients about errors, omissions, or bad results run the risk of converting a small or inconsequential problem into one of major import” (para. 9). Jorgensen (2003) believes that lawyers “have transformed minor or insignificant violations into suspension and other forms of public discipline by being less than honest with their clients” (para. 9).

Clifford (2002) reported that when survey respondents were asked to rate some different things that lawyers and the legal profession could do to improve their reputation in society, their recommendations spoke to the individual lawyer, and to the profession as
a whole. “For the individual lawyer 80% of consumers recommended that lawyers do a better job of communicating with their clients, and 69% suggested that they do a better job of explaining their fees to their clients” (p. 32). For the legal profession, “81% of consumers say that they would most like to see the legal profession educate the public about handling common legal problems, and 78% suggested the legal profession do a better job of policing and regulating themselves” (p. 32). Further, “45% of consumers in the study suggest that lawyers change the way that they advertise, and 27% stated that lawyers should stop advertising altogether” (p. 32). Also, “46% believe that lawyers should be selective about the cases that they take, and 57% believe that lawyers should lower their fees” (p. 32).

Since consumers are sometimes unaware of the breadth of services available from lawyers, “there may be an opportunity for the profession to raise public awareness of the range of services on offer and the benefits of utilizing a lawyer in specific circumstances where consumers would not automatically think of the legal profession as the place to turn” (Rose, 2013, para. 13). Clifford (2002) contends that potential lawyers must be taught the importance of lawyer-consumer relationships in law school, and also believes that they should be obligated to talk to and work with the public to enhance understanding of the justice system.

**Include consumers.** Moliterno (2012) says the legal profession “tends to exclude or reduce to a minimum the views of those outside the profession, characterizing outsiders as ill-informed and lacking in understanding of the true nature of the legal profession” (p. 308), and “only when the legal profession welcomes the influence, views,
and expertise of the world outside its membership will effective, forward-looking regulation of the legal profession be possible” (p. 308).

In keeping with Supreme Court Justice Sandra Day O’Connor’s statement that “No one learns more about a problem than the person at the bottom” (Lewis, 2012, para. 2), Executive Order 13563 states that the public should be invited to provide suggestions regarding the retrospective review of existing regulations, since people who are directly and indirectly affected by the existing regulations have important information about their actual effects. Executive Order 13563 states:

Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole (The White House Office of the Press Secretary, 2011, para. 6).

The order further states that members of the public, including those directly and indirectly affected by regulations are valuable, as they could provide important information about the actual effects of existing regulations (The White House Office of the Press Secretary, 2011). For this reason, and consistent with Executive Order 13563, “agencies shall invite, on a regular basis, public suggestions about regulations in need of retrospective review, and about appropriate modifications to such regulations” (The White House Office of the Press Secretary, 2011, para. 7). “To promote an open exchange of information, retrospective analyses of regulations, including supporting data, shall be released to the public online wherever practicable” (para. 8). In further keeping
with the views of Sandra Day O’Connor, and as assertive measures to include the public
into legislative discussions, the president instructs: “before issuing a notice of proposed
rulemaking, each agency, where feasible and appropriate, shall seek the views of those
who are likely to be affected, including those who are likely to benefit from and those
who are potentially subject to such rulemaking” (The White House, 2011, para. 8).

**Revise billing practices.** With respect to the big law firms’ roles in the legal
profession’s crisis, Harper (2013) notes that “billable hours, high leverage ratios, high
billing rates and growth for the sake of growth rules the day” (as cited in Bellamy, 2013,
para. 13). To address the profession's crisis, Harper calls for fundamental change, urging
firms to:

- Revise the billable hour system
- Reconsider whether big is better
- Reduce the leverage ratio
- Recruit law school graduates thoughtfully
- Eliminate two-tiered partnerships
- Adopt mandatory retirement policies (as cited Bellamy, 2013, para. 14).

**View a bill.** “Unexpected bills and last-minute questions become rushed problems
and, subsequently, major causes for distrust in many professional relationships”
(Viewabill, 2013, para. 4). “When working with an attorney or accountant or any other
hourly professional, you may still be left in the dark concerning your bill” (para. 4).
Uncertainty with costs can be a significant obstacle to consumer satisfaction and
functional lawyer-consumer relationships, particularly because “a consumer is faced with
not knowing what’s been done or what is owed until an invoice is received” (para. 4).
“When invoices do arrive, they can be surprisingly high and unclear” (para. 4). “Each time-entry through Viewabill includes the timekeeper, rate, duration, and activity narrative and is delivered in real time” (para. 6). “There's no need to wonder how many attorneys were quietly billing for a phone call or conducting research, because time entries say it all” (para. 6).

**Extended lawyer training.** In 1986, the ABA House of Delegates mandated training for active lawyers (American Bar Association, 2013). In New York State, lawyers are mandated to take 24 hours of continuing legal education (CLE) every two years. Also required are four hours of ethics and professionalism specialty training (New York State Unified Court System, 2006, para. 2).

**International Primerus Law Society.** Their byline states that this society is made up of “The Finest Lawyers: Anywhere in the World” (Primerus, 2012, para. 1). Primerus is an international law society founded in 1992 to restore honor and dignity to the legal profession and to help rebuild the public’s trust in lawyers and the judicial system (para. 1). Currently, Primerus has over 200 member firms in 125 cities located in nearly 40 countries around the world, and works to set the standard in legal service for consumers (The Primerus Paradigm, 2013). Primerus’ client service also includes a quality assurance component to “ensure every client is satisfied, every time” (The Primerus Paradigm 2013, p. 7). “The Primerus Quality Assurance Board was created to ensure high quality service is provided to all Primerus clients by reviewing the performance of member firms, facilitating client matter referrals and identifying best practice standards” (p. 7). Primerus invites members into the society, through face-to-face meetings and at various member events and webinars (Primerus, 2012). Every lawyer in Primerus shares
a commitment to a set of common values known as the Six Pillars (Primerus, 2012). A brief description of the pillars is presented, then outlined in Table 2.3.

**Integrity.** Research shows that integrity is the number-one quality clients want from their lawyers. We believe clients should be able to trust their attorney completely (Primerus, 2012, para. 2).

*Excellent Work Product correct format for level 5 headings per paragraph above*

Work product is more than winning or losing. It means that all of a lawyer’s work for clients is of consistent, high quality. It means that records, as well as communications with clients, are detailed and clear. It means phone calls are returned, deadlines met and promises kept. There are two ways Primerus ensures quality of members’ work product. One is through reputation and strict pre-screening, checking with clients, judges and other local attorneys. The other is by choosing members who specialize in certain areas of law such as business or family law (Primerus, 2012, para. 3-4).

**Reasonable Fees**

Primerus member firms may work by the hour, on a contingency plan (pay if you win) or on other fee arrangements. But regardless of the structure, the fees must be reasonable, based on what is customary in their geographic area, and on the individual attorney’s knowledge and experience. We know clients are looking for value now more than ever, and Primerus members are here to deliver high-quality legal services for a good value (Primerus, 2012, para. 5).

*Continuing Education*
For Primerus members, education doesn’t end with a law degree. Primerus attorneys are required to complete an average of 30 hours of CLE per year. This is more than twice the typical state bar CLE requirement (Primerus, 2012, para. 6).

*Civility*

Primerus members still hold the courtroom to be a place of honor. Accordingly, as officers of the court, all lawyers and judges deserve our respect, even when in disagreement. Members may express themselves strongly, but never rudely. Primerus attorneys pledge professionalism, in accordance with the profession’s noblest traditions (Primerus, 2012, para. 7).

*Community Service*

That law, in its purest sense, is community service. The law, fundamentally, exists to hold communities together. Primerus members pledge themselves to numerous community service endeavors including pro bono services for those who cannot afford legal counsel (Primerus, 2012, para. 8).
Table 2.3

*International Primerus Law Society Outline*

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<thead>
<tr>
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<th>In Action</th>
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While the legal profession is self-regulated and self-accountable, ‘good apples’ in the legal profession who take personal initiatives to advance the image of the legal profession are noteworthy. However, throughout this study, literature on the bad apples in the legal profession was dominant. As such, a review of alternatives to self-regulation, was suitable.

**External oversight and accountability.** “In the 2000s, there were widespread failures in consumer protection and rapid growth in irresponsible mortgage lending practices” (Consumer Financial Protection Bureau, n.d., 2013, para. 2). “Many lenders took advantage of the gaps in the consumer protection system by selling mortgages and other products that were overly complicated” …many Americans were left with “loans that they did not fully understand and could not afford” (para. 3). According to the Bureau, while some borrowers knowingly took on too much debt, millions of responsible Americans were lured into unaffordable loans by misrepresentations in the loan contracts. “The honest lenders that resisted the pressure to sell complicated products had to compete with their less responsible competitors” (para. 3).

President Barack Obama (2012) stated, “Too often, we’ve seen Wall Street firms violating major antifraud laws because the penalties are too weak and there’s no price for being a repeat offender … No more. I’ll be calling for legislation that makes those penalties count so that firms don’t see punishment for breaking the law as just the price of doing business” (Wyatt, January, 2012, para. 8).

In June 2009, in order to “address the failures of consumer protection and heighten government accountability, the Obama administration proposed to establish a
new financial agency which would focus on consumers rather than on bank safety and monetary policy” (Consumer Financial Protection Bureau, 2013, para. 2). The new agency, as proposed, would also have oversight and regulatory responsibilities that would be consolidated into one place, instead of in different governmental agencies. The new agency “would have responsibility for supervision and enforcement with respect to the laws over providers of consumer financial products and services that escaped regular Federal oversight” and it would “protect families from unfair, deceptive, and abusive financial practices” (para. 5). At the urging of President Obama, in July 2012, Congress passed and the president signed, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Consumer Financial Protection Bureau, 2013, para. 3). This law now gives the consumer agency the same accountability and independence that the other banking agencies have, and also provides for sufficient funding so it could operate effectively and ensure that powerful financial companies would comply with consumer laws (Consumer Financial Protection Bureau, 2013, para. 3).

The Dodd Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau (CFPB) (Consumer Financial Protection Bureau, n. d.). The CFPB consolidates most federal consumer financial protection authority in one place and asserts that it is focused on only one goal: “watching out for American consumers in the market for consumer financial products and services” (Consumer Financial Protection Bureau, 2013, para. 6). Furthermore, the CFPB acknowledges that: “an informed consumer is the first line of defense against abusive practices” The CFPB (2012) states:
… it will ensure transparent practices so that consumers get the information they need to make the financial decisions they believe are best for themselves and their families, ensure that prices are clear up front, that risks are visible, and that nothing is buried in fine print (para. 5).

Elizabeth Warren, Special Advisor to the Secretary of the Treasury and newly elected congresswoman, stated: “Across the country, there are responsible financial institutions offering products and services that provide real value to their customers. But finding those products in a sea of fine print and complex terms can overwhelm even the most diligent consumers” (Warren, 2011, para. 5).

The design for the consumer bureau’s statutory obligations was to make markets for consumer financial products and services work in a fair, transparent, and competitive manner. This partially means, “creating a level playing field where all providers of consumer financial products and services are subject to meaningful oversight to ensure that they play by the rules” (para. 2).

New York State Governor Andrew Cuomo supports the President’s opinion of accountability and oversight, and the elimination of self-regulation. Fed up with political corruption at the hands of illegal political contributions and inappropriate deal making, Cuomo vowed to convene an investigative panel through the Moreland Act to study campaign contributions of state lawmakers (Short, 2013). During a June, 2013 press conference, Governor Cuomo made it clear that he would not be interested in continued systems of self-policing and self-regulation, as he stated: “I don’t believe in the concept of self-policing” (para. 16). The Moreland Commission was created in New York State
as an external entity to ensure accountability of state officials regarding campaign
financing.

An international peek at oversight. Another illustration of improving
transparency is a look at how other countries are responding to the threat of self-
regulation. Lederer (2012) reports that in the Visegrad Four (V4) countries, the system of
public procurement, the expenditure by public authorities and institutions on goods and
services, is one of the most important channels of government spending. “With 11 to
17% of gross domestic product in the V4 countries, public procurement accounts for a
substantial part of the domestic and regional economy” (Lederer, 2012, para. 1). Public
procurement is a system with huge corruption risks (Lederer, 2012). “Good regulation
and transparent procedures are necessary to minimize these risks, and also to create a
market of tenders that makes government procurements effective and fosters competition
at the same time” (para. 2). “According to estimates of Transparency International –
Czech Republic, 75% of Czech corruption is related somehow to public procurements,
however, prosecution, however, is a rarely initiated” (para. 3). While it is noted that the
legal framework is not able to stop misconduct and corruption in public procurements,
“transparency, though, can make it harder to misuse the procurement systems for criminal
moneymaking” (para. 4). He notes that “it is not surprising that the biggest scandals in
this field were uncovered first by the press and not by the authorities” (para. 4).

Now, “procurements over EU thresholds have to be published in the Tender’s
Electronic Diary” (Lederer, 2012, para. 5). “With some exceptions (e.g., business
secrets, classified information), information on public procurements are data of public
interest, hence available for every citizen” (para. 6). A limitation, however, is that
“available” is not operationally defined and may mean that the data is still not easily accessible to the public. For example, “the Public Procurement Bulletin is published every few days in print, pdf and html formats, but not as a database” (para. 6), as recommended in the United States’ Executive Order 13563, which makes it impossible to access (Lederer, 2012). Lederer (2012) also states,

It is difficult to assess for sure how effective transparency of the public procurement processes can fight off corruption and abuse. Nevertheless, it is obvious that obscure and non-transparent circumstances inevitably facilitate illegal moneymaking, dirty businesses, distort competition, and reduce the efficiency of public spending (para. 11).

**Importance of reform.** Elisabeth Davies, chair of the Legal Services Consumer Panel states, “government plans to stimulate the economy through consumer spending would be harmed by falling trust” (Bindman, 2013, para. 9). As noted by Bindman is the need to “maintain a strong safety net to protect consumers alongside market liberalization reforms” (para. 9). Also, “consumers need assurance that quality standards will be upheld, that regulators are active and on their side, and that whatever their legal need, they can complain to an independent body if things go wrong” (para. 10). Currently, he continues, there is no independent body in the United States for consumers of legal services to complain to, and no external or independent oversight for accountability of lawyers’ behaviors. However, this study provides a look at independent and external oversight measures for consumers in other nations and professions.

**Ombudsman programs for consumers.** An ombudsman is:
… a person who acts as a trusted intermediary between an organization and some internal or external constituency while representing not only but mostly the broad scope of constituent interests. An indigenous Danish, Norwegian, and Swedish term, ombudsman is etymologically rooted in the Old Norse word umboðsmaðr, essentially meaning ‘representative’. An ombudsman is an official, usually appointed by the government or by parliament, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens (Internet Corporation for Assigned Names and Numbers, 2013, para. 1).

There are several different types of ombudsman programs in different agencies that strive to ensure consumer protection. Some of the types are outlined in this review.

**Education ombudsman.** “The Office of the Education Ombudsman (OEO) resolves complaints, disputes, and problems among families and Washington State elementary and secondary public schools in all areas that affect student learning” (Office of the Education Ombudsman, 2012, para. 1). “OEO is a statewide agency that functions independently from the public school system (para. 2). The services are “free, confidential and available to families and students from Kindergarten to 12th grade” (para. 2). Their work “provides an alternative to costly lawsuits and administrative hearings, contributes to the improvement of the education system, the closing of the achievement gap and promotes family engagement in education” (para. 3). “OEO is the only agency of its kind in the nation” (para. 3).

OEO intervenes in “issues such as: bullying/harassment, cyber bullying, suspensions, expulsions, special education, enrollment, transportation, discipline,
academic progress, truancy, transition from pre-school to kindergarten and more” (Office of the Education Ombudsman, 2012, para. 4). “OEO facilitates and/or mediates discussions between parents and school officials, guides all parties towards resolution focusing on what is best for the student, and advocates for fair processes for students in public schools” (para. 4).

OEO serves parents, legal guardians, students, and K-12 educators who need to resolve a problem affecting a student, and it also provides consultations and information about public education to other professionals working with the families (Office of the Education Ombudsman, 2012, para. 5).

**FDIC ombudsman.** “The Federal Deposit Insurance Corporation (FDIC) Office of the Ombudsman is a confidential, neutral and independent source of information and assistance to anyone affected by the FDIC in its regulatory, resolution, receivership, or asset disposition activities” (Federal Deposit Insurance Corporation, 2013, para. 1). “If a person has a problem or complaint with the FDIC that is not involved in litigation, arbitration, or mediation, they may contact the Office of the Ombudsman for confidential assistance” (para. 1). The office notes that it will work with other FDIC divisions and offices as a liaison to resolve the issue. “People may also contact the FDIC with questions about FDIC policies and procedures, and they will be referred to a subject matter expert within the FDIC, or independently research the issues to provide answers to their questions” (para. 2).

**Legal service ombudsman.** "The Association is established for the purposes of cultivating the science of jurisprudence, facilitating and improving the administration of
justice, and cherishing the spirit of collegiality among the members thereof” (New York City Bar Association, 2012, para. 2).

While the Bar association and its policies and practices are “cherishing the spirit of collegiality among the members,” who is looking out for the aggrieved non-members?

Complaints have been a dilemma for the legal profession for years (Clifford, 2002; Jorgensen, 2003; & Sampson, 2012). “The failure to command consumer confidence on the part of successive complaints organisations run by the Law Society in the UK, resulted in Parliament using the Legal Services Act to set up the Legal Ombudsman, an independent, statutory complaints scheme, which opened for business in October, 2010” (Sampson, 2012, para. 4). “Critically, the scheme put an end to the unedifying spectacle of lawyers judging complaints about lawyers” (Sampson, 2012, para. 4). The Legal Services Ombudsman is appointed by the government on the nomination of the Minister (Legal Services Ombudsman Act, 2009, p. 7). Among the functions of the ombudsman is the responsibility to investigate complaints against lawyers (Legal Services Ombudsman Act, 2009, p. 7). A person is not eligible for appointment as the Legal Services Ombudsman if he or she is a practicing barrister or a practicing solicitor (Legal Services Ombudsman Act, 2009, p. 7).

Sampson (2012) states that the biggest obstacle with complaints against lawyers by consumers is fear. “Law is a mysterious business with its own language and traditions, not easily accessible to the layperson” (para. 7). Many complainants feared that the response from the lawyer would be useless and met with retaliation (Sampson, 2012). There have even been cases where lawyers charged clients for responding to complaints about overcharging (Sampson, 2012).
Summary

This chapter has presented a review of studies and articles that address areas which speak to consumer dissatisfaction and measures to address this phenomenon. The following chapter, Chapter 3, will present the methods used for this study.
Chapter 3: Research Design Methodology

Introduction

This study investigated the participants’ perceptions of the experience of dissatisfaction as consumers of legal services in Manhattan, NY. An interpretative phenomenological analysis (IPA) was applied to five case studies of dissatisfied consumers of legal services in Manhattan, New York.

This study used a small “information oriented selection” (Flyvbjerg, 2006, p. 230) of five participants, which consisted of people who have been dissatisfied consumers of legal services in Manhattan, NY within the past 10 years. While this study was conducted within the specific conditions and context of Manhattan, NY, the participants were chosen strategically in order to be able to generalize the findings to the legal profession at large. Flyvbjerg (2006) stated regarding social science research, “the strategic choice of case may greatly add to the generalizability of a case study” (p. 226). Husserl believed that the “essential features of an experience would transcend the particular circumstances of their appearance, and might then illuminate a given experience for others too” (Smith, Flowers, & Larkin, 2009, p. 12). The results of this study may also be generalizable, as the structure of the legal profession and the way it is practiced is similar across the United States and is guided by the principles and guidelines of the American Bar Association. However, even if results from a case study cannot be generalized, they may still contribute to the “collective process of knowledge
accumulation in a given field or in a society” (Flyvbjerg, 2006, p. 227). More details on the sample and how it was selected are provided in this chapter.

This chapter outlines the study’s design with its research questions, context, participant selection process, data collection instruments, techniques, and data analysis procedures. The chapter begins with a description of the phenomenological underpinning and methodology on which this study is based.

**Research Design**

Using an interpretative phenomenological analysis (IPA) to investigate a series of qualitative case studies, this study was guided by a primary research question and four supporting subquestions.

**Primary research question and subquestions.** The following primary research question was developed based on the goals of the study.

*RQ1:* What were the participants’ perceptions of the conditions, reasons, and solutions related to consumer dissatisfaction with legal services in Manhattan, NY?

*Sub-questions.* The following four sub-questions were developed to provide additional insight the nature of the phenomenon. The sub-questions are designed to move from the participants’ overall perception of the legal perception to the specifics of their experiences without making researcher assumptions about that experience.

1. What was the current perception of the legal profession as a whole among dissatisfied consumers?
2. How did the participants describe the conditions in which the unsatisfactory legal services were provided?
3. What did the participants perceive as central to their dissatisfaction with legal services they received?

4. What did dissatisfied consumers of legal services perceive as the best ways to improve legal services and reduce the number of dissatisfied consumers?

**Interpretative phenomenological analysis.** Interpretative phenomenological analysis (IPA) is a qualitative method of research with a psychological underpinning that seeks to understand how people are making sense of their lived experiences. “The primary concern of IPA is the lived experience of the participant and the meaning which the participant makes of that lived experience” (Smith et al., 2009, p. 80). IPA relies on the analysis and interpretation of the researcher to make sense of how the participant views and understands their world. With an IPA approach, “the end result is always an account of how the analyst thinks the participant is thinking” (Smith et al., 2009, p. 80). As a result, “the truth claims of an IPA analysis are always tentative and analysis is subjective” (Smith et al., 2009, p. 80).

IPA “is an interpretative endeavour and is therefore informed by hermeneutics, the theory of interpretation” (Smith et al., 2009, p. 3). IPA requires the researcher to participate actively in the interpretation of the participants’ accounts of their experiences. Smith et al. (2009) states, “the analysis is a joint product of the participant and the analyst” (p. 80). Smith et al, further state that the IPA researcher is “engaged in a double hermeneutic because the researcher is trying to make sense of the participant trying to make sense of what is happening to them” (p. 3).

Further IPA is ideographic, in that “it wants to know in detail what the experience for this person is like, what sense this particular person is making of what is happening to
them” (Smith et al., p. 3). This idiographic approach is also a phenomenological approach.

While traditional phenomenology is a philosophical approach to the study of experience, IPA is rooted in and best known in the field of psychology (Smith et al., 2009). However, IPA is “increasingly being picked up by those working in cognate disciplines in the human, social, and health sciences” (Smith et al., p. 1). IPA is phenomenological as it aims toward “exploring experience in its own terms” (Smith et al., p. 1). The focus on lived experiences, the emphasis on the role of the researcher as an interpreter, the ideographic focus, and use of phenomenology, as a foundation all point to IPA as an effective approach to better understand consumers’ perceptions of the conditions, reasons, and solutions to dissatisfaction on the part of consumers of legal services in Manhattan, NY.

**Phenomenology.** Smith (2008) noted that “phenomenology is the study of ‘phenomena’: of things, or things as they appear in our experience, or the ways we experience things, thus the meanings things have in our experience” (para. 4). According to the philosophy of Husserl (as cited in Smith et al., 2009), “the founding principle of phenomenological inquiry is that experience should be examined in the way that it occurs, and on its own terms” (p. 12). As Husserl stated, “we have a predilection for order and endeavor to fit factors in our “pre-existing categorization system” (Smith, et al., 2009, p. 12). The authors stated,

Through reflection, instead of grasping the matter straight-out—the values, goals, and instrumentalities—we grasp the corresponding subjective experiences in which we become ‘conscious’ of them, in which (in the broadest sense) they
‘appear.’ For this reason, they are called ‘phenomena’ and their most general essential character is to exist as the ‘consciousness-of’ or ‘appearance-of’ the specific things, thoughts (judges states of affairs, grounds, conclusions), plans, decisions, hopes, and so forth (pp. 12-13)

This approach served as a basis for fully understanding how the participants perceived their experience of dissatisfaction and how those experiences influenced their view of the legal profession on a whole. The phenomenological approach can also shed light on the roots of the disconnection between consumers and members of the legal profession. As Willis (2007) stated, “phenomenology is the study of people’s perception of the world” (p. 107). He further stated that the focus of phenomenology is on understanding from the perspective of the person or persons being studied (p. 107).

A phenomenological approach thus distinguishes between the ‘real-world’ and our perceptions of that world. As Audi (2003) put it, “phenomenology appears to bridge the most important gap between sensory experience and perception of objects: since the objects are internal and directly experienced, it seems natural to say that they must be as they appear to be” (p. 46).

IPA and case study design. IPA guided the decisions about what and how data would be gathered in this study. However, at a broader and more comprehensive level, the research process was guided by case study methods. The study used the case study method to investigate the phenomena under review. This study used a sample of five case studies. The case study method has many progressive advantages and was well suited to the topic of this study. Many scholars, as noted below, believe case studies play a crucial role in advancing research in the social sciences. Creswell (2007) notes “The case study
approach is familiar to social scientists because of its popularity in psychology (Freud), medicine (case analysis of a problem), law (case law), and political science (case reports)” (p. 73).

Daymon and Holloway (2002) asserted that "the purpose of case study research is to increase knowledge about real, contemporary communication events in their context" (p. 105). Swanborn (2010) stated that case studies are one way of intensively studying a few instances of the phenomenon under review (p. 22). According to Daymon and Holloway (2002) “case study inquiry enables you to collect 'rich', detailed information across a wide range of dimensions about one particular case or a small number of cases” (p. 106). Yin (2009) noted that “the case study method allows investigators to retain the holistic and meaningful characteristics of real life events” (p. 4).

Stake (1995) contended that organizing the study around an issue is often useful (p. 133). The issues, according to Stake, are “problems about which people disagree,” and also include “complicated problems within situations and contexts” (p. 134). This study was organized around the issue of the public’s dissatisfaction with, and negative image of, the legal profession. Flyvbjerg asserted “the case study is useful for both generating and testing of hypotheses but is not limited to these research activities alone” (p. 229). He referred to the works of both Walton (1992) and Eckstein (1975) to make the point that case studies, just as other methods of research, are well positioned to test or develop theories (e.g., explanations). Flyvbjerg (2006) highlighted Walton’s (1992) claim that “case studies are likely to produce the best theory” (p. 129). Flyvbjerg stated that Eckstein (1975) believed case studies “are valuable at all stages of the theory-building process, but most valuable at that stage of theory-building where least value is
generally attached to them: the stage at which candidate theories are tested” (p. 229).

With further respect to case studies, Flyvbjerg (2006) stated,

…for researchers, the closeness of the case study to real-life situations and its multiple wealth of details are important in two respects. First, it is important for the development of a nuanced view of reality, including the view that human behavior cannot be meaningfully understood as simply the rule governed acts found at the lowest levels of the learning process and in much theory. Second, cases are important for researchers’ own learning processes in developing the skills needed to do good research (p. 223).

Cases provide the researcher with the context-dependent knowledge required to achieve expert qualifications and status as a researcher, and case studies are important “for the development of a nuanced view of reality” (Flyvbjerg, 2006, p. 223). Using the case study method to capture the essence of the participants’ experiences is important in part because researchers may not be able to fully grasp the emotional aspects of experiences through surveys, documents alone, or even observation. Flyvbjerg noted that “human behavior cannot be meaningfully understood as simply the rule-governed acts found at the lowest levels of the learning process and in much theory” (p. 223). He also stated that the distance from the object of study that primarily comes with quantitative approaches may “easily lead to a stultified learning process, which in research can lead to ritual academic blind alleys, where the effect and usefulness of research becomes unclear and untested” (p. 223).

In his valuation of the small samples that are typical of case study research, Flyvbjerg (2006) quoted Beveridge’s comment that, “more discoveries have arisen from
intense observation than from statistics applied to large groups” (p. 226). Flyvbjerg (2006) did not discount the value of large samples; however, he did emphasize the crucial role that small samples have played in scientific research. As Husserl also noted, “an extensive and rigorous phenomenological account of the world as is it experienced would be an essential precursor to any further scientific account” (as cited in Smith et al., 2009, p. 15).

In continued reference to the works of Walton (1992) and Eckstein (1975) regarding the position of case studies in scientific research, Flyvbjerg (2006) stated that just as other methods of research do, case studies are well positioned to make generalizations. Yin (2009), however, pointed out a concern regarding case studies by arguing that contrary to quantitative approaches, case studies are perceived to “provide little basis for scientific generalization” (p. 15). To refute that notion, Flyvbjerg (2006) referred to Popper’s (1959) *Theory of Falsification* (p. 227) which “is one of the most rigorous tests to which a scientific proposition can be subjected” (p. 228). The theory of falsification argues “if just one observation does not fit with the proposition, it is considered not valid generally and must therefore be either revised or rejected” (p. 227). This is where Flyvbjerg (2006) emphasized how a case study can be ideal to assess generalizations. To make the point, Popper (1959) used the example ‘all swans are white’ (Flyvbjerg, 2006, p. 228) as he “proposed that just one observation of a single black swan would falsify this proposition and in this way have general significance” (p. 228). Further according to Popper (1959), “such a finding would “stimulate further investigations and theory building” (Flyvbjerg, 2006, p. 228). In the white swan example, “the case study is well suited for identifying ‘black swans’ because of its in-
depth approach: What appears to be ‘white’ often turns out on closer examination to be ‘black’ (Flyvbjerg, 2006, p. 228). However, while Flyvbjerg’s argument for the value of case studies used many examples of traditional hypothesis-based research, case studies may be even better suited to research where understanding rather than laws or very rigid generalizations are the expected outcome. This is particularly true in the case of approaches such as IPA that have a phenomenological foundation.

Notably, phenomenological studies do not always aim to generalize in the traditional scholarly sense of that word. Flyvbjerg (2006) noted that while studies that aim to generalize results are essential and effective means of scientific development, phenomenological studies that do not aim to generalize but endeavor to contribute advanced understandings of social problems are also valued in scientific research. Flyvbjerg (2006) further purported, “a purely descriptive, phenomenological case study without any attempt to generalize can certainly be of value in this process and has often helped cut a path toward scientific innovation” (p. 227).

Flyvbjerg (2006) referred to the recent changes in how case studies are regarded in the research when he noted that initially, Eysenck (1976) believed that case studies could only provide “anecdotes” (Flyvbjerg, 2006, p. 224), but later recognized the importance of learning through individual cases. To support Eysenck’s (1976) point, Flyvbjerg (2006) stated, “proof is hard to come by in social science because of the absence of ‘hard’ theory, whereas learning is certainly possible” (p. 224).

Lastly, Flyvbjerg (2006) supported case study methods by highlighting a Kuhnian concept that
...a scientific discipline without a large number of thoroughly executed case studies is a discipline without systematic production of exemplars, and a discipline without exemplars is an ineffective one. Social science may be strengthened by the execution of a greater number of good case studies (Flyvbjerg, 2006, p. 219).

**Research Context/Location**

This study was conducted in Manhattan, NY. The Departmental Disciplinary Committee (DDC), which is the agency that addresses complaints against lawyers in the Bronx and Manhattan, NY receives approximately 3,300 complaints annually, primarily from consumers of legal services and less than 2% of the complaints resulted in disciplinary action. In 2009, several complaints regarding consumer dissatisfaction with legal services were made to members of the NYS legislature. Senator John Sampson, who was the chairman of the Judiciary Committee of the NYS legislature, attempted to address the matter through public hearings he hoped might lead to possible legislation to address the problem. The hearings were never completed and a major effort to find legislative solutions to the dissatisfaction of legal services consumers never emerged. This research is an effort to develop a better understanding of that dissatisfaction through a series of interviews with participants connected in some way with the DDC complaint process.

The interviews were held on weekdays between the hours of 9:00 a.m. and 7:00 p.m., at a church in Manhattan, NY. The hours were chosen because the church was not using the space during those times. That setting provided a private and safe environment where the participants and researcher could interact openly and freely about sensitive
matters. Morton-Williams (1985), highlighting the importance of considering relationships and interactions in particular places, stated that participants might be uncomfortable speaking freely about issues in some places where other people are present and may overhear their conversation. The privacy of the church made for effective interviewing.

Research Participants

This study used a convenient, purposive sample of participants. The participants selected for the study were people who were dissatisfied consumers of retained legal services in Manhattan, NY between 2002 and 2011. The participants were selected purposively with the goal of gaining insight into the phenomena of consumer perceptions about of the experience of dissatisfaction with legal services (Smith et al., 2009). “Participants were selected on the basis that they can grant access to a particular perspective on the phenomena under study. That is, they ‘represent’ a perspective, rather than a population” (Smith et al., 2009, p. 49). A phenomenological study is an idiographic approach that aims to understand specific phenomena in a specific context, and these studies are conducted typically done using small, homogeneous samples (Smith et al., 2009).

The convenient, purposive sample for the research consisted of four case study participants. With respect to quantitative research, Daymon and Holloway (2002) stated, “the use of two or more case studies enables some measure of generalization to a wider universe. It also allows you to identify distinctive features by exploring similarities and contrasts between cases" (p. 108). Although Creswell (2007) suggested using 10 participants for achieving saturation, Daymon and Holloway (2002) pointed out that "it is
not usual to choose more than four cases because the larger the number, the more the benefits of the case study approach will be diminished" (p. 108). Smith et al. (2009) stated that many studies by experienced interpretative phenomenological researchers have sample sizes in the range of three to six and that this size sample “should provide sufficient cases for the development of meaningful points of similarity and difference between participants, but not so many that one is in danger of being overwhelmed by the amount of data generated” (p. 51). Smith et al. also stated that the sample size chosen for a study is conditional and dependent on the “richness of the individual cases” (p. 51) as well as organizational constraints under which the researcher is operating.

While the population of dissatisfied consumers of the legal services can very well be of a heterogeneous nature due to non-uniformity in qualities such as, but not limited to, demographic characteristics, culture, lifestyles, and psychological factors, this does not focus on identifying differences in possible subgroups of that population. Instead, the research specifically looked at common themes and issues in the perceptions of the participants. As a result, according to Daymon and Holloway (2002), Creswell (1998), Patten (2009), and Smith et al. (2009), a small sample for the study was appropriate.

**Participant selection.** The four participants were selected through a social media site, an online advertisement, and through referrals from friends and neighbors. Smith et al. (2009) stated, “most frequently, potential participants are contacted via: referral, from various kinds of gatekeepers; opportunities, as a result of one’s own contacts; or snowballing, (which amounts to referral by participants)” (p. 49). One participant was secured through a social media site; two participants were secured through an online
advertisement, and the final participant was secured through the referral of an associate of the researcher.

An online social media site, online advertising, and referrals were used as recruitment tools because there is no formal or systematic way to identify and locate people who are dissatisfied consumers of legal services in Manhattan, NY. The DDC does keep those records but it guards zealously the privacy of the attorneys involved in a complaint as well as consumers who file a complaint. To locate the participants, information about the intent of the research and the search for participants was posted on the social media site which includes members from areas throughout the states of New York and New Jersey. Included on the site are groups of people who have set up group pages specifically to express their dissatisfaction with legal services. The research intent and researcher’s interest in attracting participants for the study were also communicated in the online advertisement and through word-of-mouth.

As the participants were secured through informal means, to ensure that the eligibility requirements for the study were initially met, participants were required to contact the researcher by telephone for an initial discussion and to provide the researcher with proof of the lawyer-consumer relationship. The proof was accepted in the form of a retainer agreement between the participant and a legal service provider, proof of cashed checks for legal services with the name of attorney or law firm, a response letter from the Disciplinary Committee First Department acknowledging receipt of an official complaint about an attorney, or court documents showing the representation of a specific legal service provider. Participants were notified that the information provided in these documents would be used for the sole purpose of determining eligibility for participation.
in the study. Questions of eligibility and possession of documentation were asked during initial contact via telephone call with researcher, and participants were required to provide proof of eligibility on arrival at the interview. All participants were notified that they would remain anonymous, and pseudonyms would be used in any reports of the research. Participants were given confidentiality agreements and informed consent forms to sign when they agreed to be interviewed. The forms were e-mailed, faxed, or given in person, after the telephone introduction.

Because the participants voluntarily devoted their time to contribute to this research, each was given a $50 gift card as an incentive and expression of appreciation for participating. Peterson (2000) noted that “researchers sometimes forget that participation in a research project, whether it is the result of a telephone call interrupting dinner, a request for a favor in a shopping mall, or a missive received in the mail, is typically the result of an individual’s goodwill and inclination to be helpful” (p. 3). The gift card was a token of appreciation; however, the amount of the gift card was low enough not to be considered coercive.

The processes used to recruit participants, as well as all other aspects of the research, were approved by the St. John Fisher Institutional Review Board (IRB).

**Instruments Used in Data Collection**

As a qualitative study using an interpretative phenomenological approach, the study relied on interviews to collect data. As stated by Smith et al. (2009), each interview served as a “conversation with a purpose” (p. 57). The goal of the interview was to “facilitate an interaction which permits participants to tell their own stories, in their words” (p. 57).
IPA is best suited to a data collection method that will ensure each participant is provided the opportunity to give “a rich, detailed, first-person account of their experiences” (Smith et al., p. 56). The authors state that “in-depth interviews and diaries may be the best means of accessing such accounts” (p. 56). IPA also requires that participants be able “to tell their stories, to speak freely and reflectively, and to develop their ideas and express their concerns at some length” (p. 56).

Also, according to Smith et al. (2009), IPA researchers usually use an interview schedule, which is a set of interview questions that will frame and guide the interview, ensure an environment that facilitates the discussion of relevant topics, and allows the research questions to be addressed through analysis. The interview schedule is not required for IPA, but is suggested for inexperienced IPA researchers (Smith et al., 2009). The authors state “a good interview is essential to IPA analysis” (p. 58). They believe developing an interview schedule is important because it ensures that researcher is prepared for the interview (Smith et al., 2009). In the interview schedule, the researcher sets out the questions and the order in which they would be asked in advance (Smith et al., 2009). An advantage of developing the interview schedule is that is prompts comprehensive thinking about what the interview should cover (Smith et al., 2009). A schedule “enables us to plan for any difficulties that might be encountered” (p. 58).

In this study the interview was guided by a series of 10 questions. IPA research seeks to interpret the participants’ worlds as they experience them and requires “listening attentively and probing spontaneously” (p. 59) at certain points throughout the interviews. Smith et al. state that it is important to establish rapport with the participants, and to take the time to ensure full and rich information. They also advise that researchers
put aside any interactional habits, such as, but not limited to: sharing researcher’s own
experience, nurturing participants, making clinical judgments, or steering the participants
towards particular ways of thinking. The researcher should facilitate the interview
without bias, and without judging or directing participants.

Although an interview schedule does provide some organization, in order to
optimally implement IPA, unstructured interviews are key (Smith et al., 2009). This may
seem contradictory, but IPA is based on a beginning structure provided by the interview
schedule that is in practice unstructured because what the person being interviewed says
determines to a great extent what is asked next. The idea is to provide the forum for
open-ended dialogue and rich information gathering, as well as the structure and
guidance necessary for novice researchers to focus on their research questions (Smith et
al., 2009). The interviews for this study were semi-structured as they were free and open-
ended enough to capture information, yet structured enough through the interview
schedule to capture relevant discussion in order to answer the research questions (Smith
et al., 2009).

Interviews were scheduled for one hour each and consisted of 10 open-
ended guiding questions (Appendix A). The length of the interview was based on
the suggestion of Smith et al. (2009) that depending on the topic, an interview
schedule with “adult, articulate participants” (p. 60) with between six and ten
open ended questions with considerations for prompts or probing questions will
usually “occupy between 45 and 90 minutes” (p. 60).

**Interview questions.** Questions for the interviews were designed to draw
out the necessary information from the participants required to address the
research questions. Due to the nature of the study, the participants may have had preconceived expectations as to their role. To address this, the researcher used a “degree of directness” (Peterson, 2000, p. 5) with the participants at the start of the interview and disclosed the research intent, the learning expectations of the researcher, and the nature and expectations with the questions. All questions were kept brief, simple, and clear to avoid misunderstandings or miscommunications (Kvale, 2009, p. 132).

Kvale (2009) suggested that researchers construct questions “thematically” and “dynamically” (p. 131). Questions created in a thematic tone served to extract the theoretic concepts addressed by this study and the dynamic questions drew out the emotional aspects (Kvale, 2009). Both thematic and dynamic approaches to questioning were suitable in interpreting how the participants understood their experience, as required by IPA.

In this study, all participants were asked identical questions. The questions were worded so that responses could be expressive and personal (Kvale, 2009 & Smith et al., 2009). As recommended by Creswell (2007) and Kvale (2009), the researcher was prepared with follow up questions or prompts in order to ensure that optimal responses and clarity were obtained from participants. To further maximize the interview experience and obtain a full and comprehensive understanding of the participants’ experiences and perspectives, the researcher used introductory, follow-up, probing, specifying, direct, indirect, structuring, and interpreting questions (Kvale, 2009, pp. 135-136).
Two audio recorders and one notebook computer were used to capture the audio recording of the interviews and for note taking. The second audio recorder was a backup. The notebook was for annotations to be made during the interviews, as the note taking allowed the researcher to immediately highlight significant responses and changes in emotions and body language throughout the interviews. Kvale (2009) pointed out that while tone of voice and body language would be available during the interview, they would be difficult to communicate in the textual transcription (p. 178). As such the note taking was important. This is especially the case when body language and verbal communication are incongruent (Kvale, p. 178). In this study the researcher took brief notes during the interview to improve the retention of knowledge about emotional responses and changes in body language. As noted by Kvale, taking extensive notes during an interview may distract the researcher or participant and interrupt “the free flow of conversation” (p. 179).

Data Analysis

IPA involves a deep understanding of the participants’ perceptions, and provides the researcher with the feeling he or she has lived the phenomenon just as the participant has (Smith et al., 2009). Through these aims, according to Smith et al. (2009), IPA requires the researcher to participate actively in the interpretation of the participants’ accounts of their experience. Smith et al. (2009) state, “… the analysis is a joint product of the participant and the analyst” (p. 80) and required active participation by the researcher in the interpretation of the data.
Smith et al. (2009) outline six steps that characterize the IPA analysis process: (a) Reading and re-reading (p. 82), (b) initial noting (p. 83), (c) developing emergent themes (p. 91), (d) searching for connections across emergent themes” (p. 92), (e) moving to the next case” (p. 100), and (f) looking for patterns across cases (p. 101).

For transcription, IPA requires a verbatim record of the data. IPA “does not require a record of the exact length of pauses, or of all non-verbal utterance as favoured by conversation analysis” (Smith et al., 2009, p. 74). IPA also requires “a semantic record of the interview, that means a transcript showing all the words that are spoken by everyone who is present” (p. 74). The transcriptions were a verbatim record of the interviews, transcribed by the researcher.

Smith et al. (2009) maintain that the first step in analyzing the data using the IPA approach was reading and re-reading the interview transcripts while listening to the audio recording and simultaneously reflecting on the interview and imagining the participant speaking. This process helped the researcher become immersed in the information. This process also allowed the researcher to engage with the data and construct the themes.

Next the researcher used note taking. Although the interviews were being recorded, the researcher made brief notes during the interview and made annotations for significant things that would be important to include in the transcribed data analysis. The researcher referred to the notes while listening to the audio recordings and also while reading the transcripts to recollect difficulties and changes in attitude, body language, expressions, or voice pitch. Smith et al. (2009) state, “this step examines semantic content and language use on a very exploratory level” (p. 83). The process ensured that the researcher was familiar with the data and identified ways the participant talked about,
understood, and thought about issues (p. 3). The notes together with the transcripts gave further insight regarding the differences in emotions and reactions by the participants at different points in the interview. According to Smith et al. (2009), this process was to describe the things that matter to the participants and the meanings of those things, events, relationships, and values. The notes were helpful when the researcher conducted a formal analysis to identify patterns and emergent themes.

The IPA approach to analyzing the data was “interpretative noting” reviewing the language that participants used, assessing the context of the participants’ concerns and “identifying more abstract concepts” (Smith et al., 2009, p. 83). For example, it was crucial to note when a participant began using sounds like “um,” “well,” “you know,” as these could be indicators of difficulty.

The next step in data analysis involved “exploratory commenting” (Smith et al., 2009, p. 84) which consisted of descriptive and linguistic commenting which focused on the specific use of language, such as how information was presented, pauses, hesitations, tone, repetition, and conceptual commenting, which was more interpretive and focused on the overall concepts (p. 84).

Emergent patterns and themes from the transcribed data were identified. In a departure from the guidelines for data analysis provided by Smith et al. (2009), the researcher went through the interview transcriptions sentence by sentence to assign each sentence with a code label. Codes were developed as the transcripts were read and included items such as: discussions about money, time, and expression of emotions. The themes were reflective of the participants’ statements as well as the researcher’s
interpretation, and represented a “synergistic process of description and interpretation” (Smith et al., p. 92).

A “process of abstraction” (p. 96) was used to organize these very specific and text-dependent emergent themes into broader and more conceptual “super-ordinate” themes (p. 96). Each super-ordinate theme was given a name. For example, the emergent themes of frustration, depression, and despair were grouped into psychological consequences of dissatisfaction with legal services.

Themes were contextualized, which means they were analyzed in their particular context, based on what was occurring in the participants life at the time of the feeling or event. Themes were identified according to the number of times the theme occurred and then the function of themes in the analysis was considered (Smith et al., 2009).

This process was repeated through each case. Each was considered on its own terms and for its individuality (Smith et al., 2009). In keeping with the idiographic commitment of IPA, the information from each analysis was bracketed in order to conduct an analysis on the next case in order to assure that the findings from one case did not influence the analysis and findings in the next case. The idiographic findings from individual cases were analyzed for patterns across cases. From this collective analysis of themes and super-ordinate themes, a set of the most potent or important super-ordinate themes was developed.

Summary of Methodology

The research began with an application to the St. John Fisher College Institutional Review Board (IRB) for approval. Once the researcher obtained IRB approval, the official participant selection process began. Once potential participants were identified
and secured, rapport and eligibility was ensured. Interviews were then scheduled and consent forms were signed by participants. All participants were scheduled and interviewed within a period of one week after IRB approval. Recordings were transcribed by the researcher to ensure familiarity with participant information. Once the interviews were transcribed, the process of analyzing and coding began immediately.

This chapter provided a description of, and rationale for, the research design, questions, context, participants, participant selection process, data collection method, and data analysis.

Chapter 4 contains an analysis of the data collected and research findings, and Chapter 5 includes a discussion of the research findings and implications for practice and future research.
Chapter 4: Findings

This chapter presents the results of the data analysis and is organized into sections. In the first section, basic information about each participant is presented. The second section of the chapter contains the interpretive phenomenological analysis including the super-ordinate themes that emerged from analysis of the data.

Research Questions

The study had one core question and four sub-questions.

**Primary research question.** What were the participants’ perceptions of the conditions, reasons, and solutions related to consumer dissatisfaction with legal services in Manhattan, NY?

**Subquestion 1.** What was the current perception of the legal profession as a whole among participants?

**Subquestion 2.** How did the participants describe the conditions in which the unsatisfactory legal services were provided?

**Subquestion 3.** What did the participants perceive as central to their dissatisfaction with legal services they received?

**Subquestion 4.** What did participants perceive as the best ways to improve legal services and reduce the number of dissatisfied consumers?
Characteristics of participant experiences. This section describes the experiences with legal services within New York City of the four study participants

Participant 1: Dora. Dora is a 35-year-old Caucasian female who worked as a real estate agent in New York State. She became a participant in the study by responding to an online advertisement for research participants. During an informal conversation with the researcher prior to the interview, Dora mentioned that she prided herself on being independent and that she was currently working toward opening her own real estate agency. She also told proud tales of her close-knit family’s experiences and spoke enthusiastically of her relatives’ accomplishments. Dora was a self- proclaimed staunch advocate for animals and said she hoped to start a non-profit animal adoption agency.

She became a consumer of legal services as the result of a car accident four years prior to the interview. She stated she had no prior experience with legal services, but had formed a vicarious negative impression through her experience as a real estate agent, where she witnessed “horrible things.” Dora said she did not intend to enter into litigation after her car accident, but once her injuries worsened, and she began receiving telephone messages from insurance companies, she was forced to hire a lawyer out of fear. At the suggestion of her boyfriend, Dora hired a lawyer who was a member of the same tennis club as her boyfriend. Dora stated that she believed her lawyer would be a great lawyer, because he bragged about winning big settlements for other members at the tennis club.

Participant 2: Andy. Andy is a 40-year-old freelance photographer living in New York City. Andy became a study participant by responding to an online advertisement for research participants. On the day of the interview, Andy enthusiastically contacted
the researcher by phone to ensure that the interview was still being held, he arrived at the
interview on time and on his bicycle, in “typical” New York fashion. Andy was offered
and graciously declined refreshments as he and the researcher shared stories of life in
New York City. To characterize Andy, he was self-assured and paid close attention to
details. Like Dora, Andy paid particular attention to matters of time and finances. He
had high regard for his social network, needed to be meticulously informed about
relevant matters, was cognizant of laws and societal structures, and had a strong need for
reciprocal fairness.

Andy became a user of legal services because of sharing his apartment with a
roommate whom Andy characterized as “difficult to deal with.” He stated that he felt
forced into litigation after things with his roommate became unbearable. He was referred
to an attorney through a friend, but conducted his own due diligence before hiring.

Participant 3: Mary. Mary is a 37-year-old divorced woman with three
daughters. She was from the West Coast and resided in New York City with her children
for a year preceding the interview. Mary became a participant for the study by
responding to an online advertisement for research participants. Mary said that she did
not have family or friends in NYC and wanted to be far away from the West Coast after
her divorce. She exhibited a friendly yet shy demeanor and said she liked to spend all of
her time with her children. Mary arrived at the interview with her 13 year old daughter
who was her oldest child. Prior to the start of the interview, Mary and her daughter were
offered cupcakes and juice, and initially Mary bashfully and politely declined. After a
short time, Mary, her daughter, and the researcher all enjoyed the cupcakes and juice
while Mary and her daughter gave the researcher animated details about a scary movie
they watched together a few nights prior to the interview. They also told loving stories about Mary’s two younger daughters who were at camp during the interview, but later had to be picked up in a hurried effort after the interview because Mary did not want to be late.

Mary needed legal services after she was arrested in New York City because of a suspended license due to unknown traffic tickets. She stated that she had no prior experience with legal services and initially said that she had no preconceived beliefs about them.

**Participant 4: Sharon.** Sharon is a 51-year-old African American woman, married, with a daughter attending college. Sharon became a participant for the study by contacting the researcher and enthusiastically asking to participate. Sharon stated she had had prior experience with legal services when she purchased a condominium and her union had provided the legal services. She described that experience as being positive, but stated she held no particular initial impression of the legal profession in NYC.

Sharon used the services of an attorney as a result of involuntary litigation in which she was accused of subletting an apartment. For the litigation, Sharon said she used the Yellow Pages to locate a lawyer. She said she based her decision on cost, also stating that the stories the lawyer told her about his experience, travel convenience, and promises convinced her to go with him.

**Summary of participants’ experiences with legal services in NYC.** Dora and Andy said they had initiated the litigation that caused them to use legal services, and Mary and Sharon reported they had not initiated the litigation. Participants indicated the conditions that lead to the need for a lawyer included a car accident, a troublesome
roommate, an arrest for a suspended license, and the threat of eviction for an alleged illegal sublet.

Participants also told whether they had prior experiences with legal services, their strategies to find a lawyer, and their reasons for selecting the lawyer. Three of the four participants stated that they had not used a lawyer previously. Participants described using the Internet, Yellow Pages, and referrals from friends to locate a lawyer. Participants also described factors such as persuasive rhetoric, the lawyer’s response to their initial call, and use of their own due diligence to describe their selection of the lawyer. Table 4.1 contains a summary of the reasons each participant gave for initiating litigation and hiring a lawyer as well as how they went about selecting the lawyer.
### Table 4.1

*Reasons For Hiring a Lawyer, Prior Experience with Legal Services, and Strategy for Finding a Lawyer*

<table>
<thead>
<tr>
<th>Name</th>
<th>Initiated Litigation</th>
<th>Purpose For Hiring a Lawyer</th>
<th>Prior Experience</th>
<th>Strategy</th>
<th>Why Selected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dora.</td>
<td>Yes</td>
<td>Car Accident</td>
<td>No</td>
<td>Referral</td>
<td>Lawyer bragged about big settlements at tennis club</td>
</tr>
<tr>
<td>Andy</td>
<td>Yes</td>
<td>Roommate</td>
<td>No</td>
<td>Referral</td>
<td>Referral from a friend then used his own judgment after due diligence</td>
</tr>
<tr>
<td>Mary</td>
<td>No</td>
<td>Arrested for Suspended License</td>
<td>No</td>
<td>Online Search</td>
<td>First one to return call after online search</td>
</tr>
<tr>
<td>Sharon</td>
<td>No</td>
<td>Sublet Eviction Yes</td>
<td>Yes</td>
<td>Yellow Pages</td>
<td>Persuasive rhetoric by lawyer regarding abilities and outcome</td>
</tr>
</tbody>
</table>

Interpretative phenomenological analysis allowed the researcher to examine and interpret the lived experiences of the participants. The phenomena under study were the participants’ perceptions of the legal services they received in the Manhattan, New York area that were inadequate as perceived by the consumers. The results revealed five super-ordinate themes: (a) disconfirmation of expectations leads to alienation, (b) rationalization of the disconfirmation experience, (c) resistance to alienation by developing coping mechanisms, and (e) desire for measures that would lead to confirmation of positive expectations in future dealings with attorneys.

**Findings**
Findings

In this section each super-ordinate theme is discussed and explored. Those are followed by descriptions of the supporting subordinate themes.

The word communication is used in the analysis to denote the statements made, body language, tone, and context relayed throughout the data collection process. The letter “R” in the transcript excerpts indicates researcher questions and comments during the interviews. The excerpts are verbatim and are displayed exactly as they were communicated in the interview. The terms: “lawyer” and “attorney” are used interchangeably.

Super-ordinate themes. Five super-ordinate themes emerged from analysis of the interview data. Within each super-ordinate theme, there are subordinate themes that supply greater insight into the super-ordinate theme. This section explores those five super-ordinate themes in detail and within each section that describes the super-ordinate theme is a discussion of the supporting subordinate themes. When the researcher question or comment was necessary to contextualize the quote, the researcher question or comment is italicized.

Super-ordinate theme 1. Disconfirmation of expectations caused conditions of alienation. Most of the participants in the study stated they did not have prior experience with legal services. However, their prior knowledge and vicarious experiences contributed to the expectations they held. The statements the lawyers made during initial interviews were a primary contributor to the participants’ expectations. Throughout the interviews, participants communicated the experiences of having their expectations disconfirmed along with the reasons for those disconfirmed expectations. The themes
that emerged from the participants’ experiences were characteristic of the condition of alienation. Analysis of the interviews indicated the alienation experienced by the consumers was caused by the disconfirmation of expectations about the legal services provided.

Super-ordinate theme 1 encapsulated a number of subordinate themes that were present throughout the dissatisfaction experience with legal services: (a) perceptions of being exploited, (b) perceptions of being devalued, (c) perceptions of being excluded from decision-making led to perception of feeling powerless, (d) perceptions that having a lawyer exacerbated the hardships, (e) perceptions of being deceived, (f) broken expectations of a quick resolution, (g) broken expectations of professional standards and practices, (h) broken expectations of personal care, and (i) broken expectations of information being provided more often and more accurately. The subordinate themes denote how the characteristics of alienation were manifested in the participants’ experiences. The themes are a direct reflection of the participants’ expressions as quotes taken from the interview transcripts indicate. For clarity, quotes from participants are separated by a space. Indicators of nonverbal actions and the researcher’s perceptions of emotions are indicated by [brackets].

**Subordinate theme 1-A: “In The Beginning I Felt Like A Prized Cow”**: Perceptions of Being Exploited. One of the definitions of exploitation is to “use (a situation or person) in an unfair or selfish way (Oxford Dictionaries Online, 2013). Participants communicated perceptions of being exploited by their lawyers and the legal profession. They perceived their role as consumers of legal services as targets of
exploitation for the primary purpose of financial gains for the lawyer and in some cases, others.

For example, Dora’s communication of initially feeling like a “prized cow” suggested that she had an initial expectation of being valued when entering into an agreement for legal services. Her comments suggested that in her initial conversations with the attorney, saw herself as a valued “prized cow.” Her confident words, tone, posture, and pitch during the introductory with the researcher changed quickly as she recalled her experiences and she said she seemed to perceive herself as eventually having no value to the lawyer and of eventually being discarded.

Dora: In the beginning I felt like a prized cow, and then once I got into it I felt like part of the herd….I felt like he wanted to work with me, and that he was going to take good care of me, but... then I just felt a part of a herd that was going through the process of being slaughtered [laughter to overcome grief].

R: You felt like part of the herd, and because you felt like he wasn’t paying personal attention to you?

Dora: Right. He was off getting more cows.

Participants also expressed the belief that consumer exploitation is inevitable with legal services and that the exploitation is supported and promoted through the structure of the legal profession. They communicated the belief that people are lured in, sometimes involuntarily, to legal services for the sole purposes of being taken advantage of by the lawyer, and sometimes for the benefit of others. Dora stated that the legal profession is a “predatory business,” and she communicated her belief that even if lay people do not voluntarily engage as consumers of legal services, they are readily susceptible to being
preyed upon by them in their daily lives, and ultimately are targeted for exploitation by members of the legal profession. Dora’s comparison of the ‘predatory’ business to other business models highlighted her perception that exploitation is rooted in the legal profession’s structure. The following quotes show that Dora, Mary, and Sharon all communicated similar feelings about the exploitive nature of legal services.

Dora: From a business perspective and looking at business models all the time and everything, I think it’s a predatory business. I believe they specialize in getting as many clients as possible and not necessarily in servicing.

Mary: I mean I just don’t think he spent a lot of time on the case to be honest. “You just took my money!” [as if speaking to the lawyer]. It just seemed like it was for money.

Sharon: I was feeling vilified and now the sub-letter was being made to appear as though he was being victimized by me. Because I was the owner of the apartment. He [the lawyer] was in court to defend me and to be on my side, but he was on everybody else’s side but mine.

Subordinate theme 1-B: The unresponsiveness of the lawyer inspired perceptions of being devalued. Participants communicated perceptions of being devalued in the lawyer-client relationships. These perceptions were depicted through expressions of (a) personal neglect resulting from lack of personal attention, (b) feelings of being discarded and put off to lower personnel, and (c) feelings of being the “low man on the totem pole.” Participants indicated they believed the lawyers were not concerned about their interests and did not recognize them for their worth. Participants communicated beliefs that the lawyers treated them poorly because of the lawyers’ perception of them as having low
social status. They communicated the perception that changes in services and other poor business practices were a reflection of their low worth. The following quotes from Andy and Dora illustrate the participants’ perceptions of what caused difficulties.

Andy: I have no…I think because I was the smallest uh…low man on the totem pole for this lawyer. I think because I was the smallest client and then he, he didn’t want to return any funds you know and…I’m…he gets with other clients.

Dora: See in the beginning he told me I was gonna get….a lot of money. And then when he found out that there’s a limit on what I could get, that’s when he started acting like this….In the beginning he would always…he would either text me or call me back. And then as we started going along in the case, he would have a paralegal call me back and it would always be the same one….then as we got further out it became miscellaneous people. Whoever answered the phone would talk to me.

**Subordinate theme 1-C:** Being excluded from decision-making led to a perception of being powerless. Participants expressed beliefs of not being in control of their circumstances once they were involved with consuming legal services. They expressed perceptions of being excluded from decision making on their own behalf and being denied the opportunity to help determine the outcomes. The following comments by Dora and Sharon illustrate their sense of exclusion.

Dora: In the deposition that I have with this nice lawyer, the other side said that they wanted to settle.

R: And did you want to settle?

Dora: Yes! They [referring to the lawyer and partner] won’t let me!
Sharon: He appeared to go and make decisions for me that he didn't even discuss prior with me and… and kind of just shoving it at me like here sign this; here’s what you have to do. And I didn't want to sign it because I didn't agree with the outcome. And the outcome hadn’t even been verbalized to me prior to him giving me a stipulation….He appeared to be working against me.

Andy’s communication suggested that he initially engaged legal services with clear expectations of what his experience should be based on his own due diligence. This initial perception was supported by Andy’s use of the term “he warned me.” His confidence waned and a perception of deceit evolved from the incongruent statements made by his lawyer and from the behavior of his lawyer. Andy’s expectations were based on direct statements made to him, and his experience had no basis for him to form an understanding, leaving Andy to manufacture his own understanding of his experience by recalling past relatable events. The term “he warned me” in this context further suggested that Andy was not only taking ownership of his decision by proceeding, and trusting that he was given full disclosure and was in capable and honorable hands. Andy’s communication showed his disappointment when he realized he had been wronged. Furthermore, Andy seemed to blame himself. He seemed to become sad when answering the question of whether or not he had something in writing. For Andy, this seemed to mark when the realization of loss of control became clear.

R: So he committed to giving back your money (clarity).

Andy: Yes.

R: He said $785. Did he send you anything in writing?

Andy: (sulks/sucks on his teeth) No. No (despair).
R: He just told you on the phone that he would give you back $785 (clarity).

Andy: He told me verbally on the phone he would give it back to me
(dismayed/annoyed).

**Subordinate theme 1-D:** Having a lawyer exacerbated the hardships. Participants expressed the belief that their matters were worsened by virtue of litigation and legal services. Participants made statements about their lawyers adding to their injuries and increasing their hardships. Participants believed that if they had not used the services of a lawyer they would not have experienced the same level of dissatisfaction with their litigation. Participants communicated the belief that their suffering was intensified by legal services due to unprofessional business practices by the lawyers. The following comments by Sharon and Dora demonstrate the participants’ beliefs that hiring a lawyer made their situations worse.

Sharon: Probably if I didn't even use a lawyer, I may have been able to resolve the situation better than with the help of the lawyer because he totally messed it up. He messed everything up….the lawyer totally wrecked everything by trying to get a stipulation signed that went against everything that I was trying to do….So the tables are turned and I’m the villain and the sub-letter is the victim, and everyone is in favor now of the sub-letter somehow…I was feeling vilified and now the sub-letter was being made to appear as though he was being victimized by me....It seemed like he was conjuring more trouble for me when we went in the courtroom than was even being put forth in the documents in the court. It seemed like he was bringing more things to add on to the case for the opposing side against me.
Dora: So for me being hurt and trying to deal with this, and being intimidated and being put down and being yelled at and...you know...and having to deal with what I dealt with was very upsetting because I was trying to recuperate from a real problem. And so having him be the jerk that he was during the process was traumatizing. He was making...he was exacerbating the injuries...then I end up...and when I went home, I ended up with 3 days of sitting in my room with you know...3 days missing work again, 3 days with the blinds shut because I couldn’t function.

Dora: I was supposed to have a deposition and he had another attorney meet me to take me to the deposition, and I had to go from downtown to the Bronx, which took me 45 minutes on the subway. I meet the woman at the courthouse and our deposition was supposed to be about 4 blocks away, the woman was running late, she didn’t have...she didn’t...didn’t even know what my case was about...umm and she made me go and sit with her during one of her hearings, because she was up next or whatever, she was supposed to be called for a hearing, which triggered a migraine because there was a lot of noise, and the acoustics were really loud, and then we missed the deposition. The court reporter left....because she...I was sitting in a hearing with this woman that didn't even know what my case was about, and I’m sitting there with a head injury....you know going into a migraine, and the migraines make me cry when they get that bad and then I had to get on the train and go all the way back.

Andy: Oh it’s just like this is ridiculous it’s a never-ending battle. I got rid of the...insane roommate, who tried to cause me mental damage, and now I’m
dealing with a lawyer who doesn’t want to pay me back the money you said you
would pay me [seemed to be speaking to the lawyer] so you know what’s…you
know it’s just…dragging on and….

Subordinate theme 1-E: “Bait and Switch”: Perception of Being Deceived

The term “bait and switch” was used by one participant to communicate the
perception of being deceived. However, all participants believed they were being
intentionally deceived by their lawyers. Statements by participants showed that they had
initial clear perceptions of their expectations based on conversations with their lawyers
and perceived their experiences as not matching those expectations. Participant
statements suggested the participants’ expectations of legal services were based not only
on the statements of their lawyers but on their a priori knowledge of the legal profession.
Participants saw the difficulties imposed on them as being intentional and deliberate
through unethical practices by the lawyers. The following statements by Sharon and
Andy demonstrate the participants’ perceptions that the lawyers’ actions were unethical
and deliberate.

Sharon: He turned out to be like a bait and switch. Like a…it was like a bait and
switch game being played right in front of my eyes. Like “hey you’re my lawyer
and you’re adding stuff that’s not even a part of the case!” [speaking as if to the
lawyer].

Sharon: I remember going outside from court that day and crying because I had
let go of the apartment; they did a bait and switch where things that weren't on the
initial court documents were bought into play. He didn't seem to be able to help
the situation I saw...I saw in my mind him purposely not helping and intentionally
dragging it out. I saw in my mind, him not helping....I think he was very
deceptive. I don’t think he was unskilled....he tried...he acted to me as though he
wanted me to think he was unskilled, but I don’t think he was unskilled. But he
tried to act unskilled and it threw me off and it made me...not wanna deal with
him any further.

Andy: I’d love to use your legal services but I have no further use of it. What are
we going to about this remaining money....And I sent him an email saying look,
these are the receipts that you gave me, and $785 is due to me....And I would call
at different times...uh...one time I got him on the phone and he pretended it
wasn't him cause I called early in the morning and said [referring to lawyer] “hold
please!” and passed me off to the voice mail [animated].

Subordinate theme 1-F: “When we spoke on the phone you [the attorney] said
you could resolve this one- two- three”: Perceptions of disconfirmed expectations of a
quick resolution. Participants communicated the expectation of having a quick resolution
with their matters but not realizing quick resolutions. They communicated beliefs the
lawyers were dishonest in their initial statements of their abilities and the outcomes,
which participants believed were intended to secure them as consumers. The following
comment by Sharon demonstrates the expectation of a quick resolution and the lawyer’s
failure to meet that expectation.

Sharon: I’m like well when we spoke on the phone you said you could resolve
this one- two- three, and I’m saying now you're talking with the other lawyers and
the sub-letter who...you...really shouldn't be talking to because you’re my lawyer.
I expected him to be able to resolve the situation...uh...from based on from what
he told me. I expected him to be able to go into the courtroom and resolve it and...be done with the case….He sounded as if he was able to resolve the issue quickly. Clearly he kept saying, “I can handle it one- two- three.

**Subordinate theme 1-G:** Perceptions of disconfirmed expectations of professional standards and practice. According to the NYC Courts Statement of Client Rights an individual is “entitled to have your attorney handle your legal matter competently and diligently, in accordance with the highest standards of the profession” (NYC Courts, 2013, para. 4). However, participants communicated the belief that at times the lawyers did not seem adept at legal services and that the lawyers engaged in practices counter to their interests. Participants also perceived the time involved with their cases was excessive, and that the delays were unnecessary and caused by unprofessional practices. Participants expressed the perception that the legal services were unprofessional and disrespectful. The following comments by Sharon, Mary, and Andy show how the participants perceived the lawyers as not meeting professional standards.

Sharon: He didn't know what he was doing. He didn't appear to like…he appeared as though…he was like…baffled by a sublet tenant situation. And on the phone he said, I handle this everyday… first we went to court, and it appeared that he wasn't prepared to even handle the case. He hadn't had the paperwork even though I delivered the paperwork… to someone at his office but… [remembering] he hadn't read it, he hadn't looked through it over so... he just came to court that day and wasn't really familiar with all of the aspects of the case.
Mary: My thing was the time just dragging it out and he wasn't knowledgeable and... he should have done more... just investigated the whole case and... I mean I just don’t think he spent a lot of time on the case to be honest you just took my money [as if she was talking to the lawyer... I mean I was there myself... [enthusiastic because she did the work herself] and... how I can I say... there was just not enough evidence for what they were accusing me of and it was just dismissed.

Andy: How am I gonna get this money back from you? [as if talking to the lawyer]... it took a while going back and forth via email, I had to call him several different times... I think if he’s engaged he’ll fight for you but if something went in reverse where he has to give you money back its gonna drag.... it’s not... professional. It’s not respectful, totally disrespectful.

**Subordinate theme 1-H: Perceptions of disconfirmed expectations of personal care.** Participants expressed expectations of receiving personal care and attention from the lawyers. They communicated the belief that the lawyer would be personally invested in their matter and address their sufferings. Participants communicated dismay at the perceived realization that the lawyer did not care about them personally. The following statements by Dora and Mary demonstrate the participants’ perceptions of not being cared for personally.

Dora: I felt like he wanted to work with me, and that he was going to take good care of me, but... then I just felt a part of a herd that was going through the process of being slaughtered [laughter to overcome grief].
Mary: …that he would be more personable about my situation and not just...for
the money per say…um…and it just seemed like it was for money.

**Subordinate theme 1-I:** Perceptions of disconfirmed expectation of being
properly informed. The NYC Courts Statement of Client Rights stated, “You are entitled
to have your questions and concerns addressed promptly and to receive a prompt reply to
your letters, telephone calls, emails, faxes, and other communications” (NYC Courts,
2013, para. 7). Furthermore, “you are entitled to be kept reasonably informed as to the
status of your matter and are entitled to have your attorney promptly comply with your
reasonable requests for information, including your requests for copies of papers relevant
to the matter” (NYC Courts, 2013, para. 8).

Participants communicated feelings of being refused proper information and
difficulties with trying to become properly informed. The following comment from Dora
shows how the participants perceived they were not informed adequately.

Dora: I wanted to know everything about where the money was going cause I
knew…I...I heard stories about people getting stuck with bills. I didn’t want to get
stuck with the bills. I know I’m not a stupid person, so I felt like I was asking
intelligent questions and he made...I felt like his temper flared because he made
mistakes, and when I called him out on his mistakes, he thinks he…he felt that he
was much smarter than me and that I shouldn’t be pointing out mistakes, I should
just keep my mouth shut and listen to him...and he would evade my questions
every time.

**Super-ordinate theme 2:** Rationalizing disconfirmation of expectations
experience. Another super-ordinate theme was the search for reasons why their positive
expectations were unfulfilled. Participants gave many reasons why their expectations were not realized. They communicated beliefs that the behavior of lawyers is rooted in the structure and culture of the legal profession. They expressed further beliefs that the difficulties experienced were the result of the negligence of the legal profession to address complaints, the established poor practice of lawyers, and retaliation for the participant becoming empowered and trying to become informed and participate in their own matters. The following statements by Mary, Sharon, and Dora in response to the question, “Did you take any more steps to make any complaints” demonstrate how the participants rationalized why their expectations were not met.

Mary: Nothing’s gonna happen, you know this happens to a lot of people….This is in New York you know….um…you’re just another number pretty much. [despair]…People make it hard to file the complaint….[thinking] and…yeah, I think I was just another number, like.

Sharon: Him not being interested in the case or being interested in my well-being. Him just being interested in getting a $1200 and just doing what he does normally... taking people’s money.

Sharon: He thought I felt that maybe I wasn't smart enough or I was naive to not know better to just go along with the program.

Dora: ...because I was raising questions instead of…instead of being a “laydown” I was just…I was asking questions. He didn’t want to answer my questions.

Participants further rationalized experiencing dissatisfaction and intellectualized the possible reasons for being singled out for dissatisfaction.
Dora: The big cases he’s [lawyer] won the clients are dead [laughter]. He
won...he, he …he’s had some high profile cases….What he had going for him was
that he specialized in some foreign cases because he speaks several languages. So
they probably didn't have a bad experience because they weren’t American….So
they were only getting this…whatever he told them, they didn't know how the
system works. I think that both times they were tourists.

Super-ordinate theme 2 had one subordinate theme, the perception that the culture
of the legal profession breeds the need for consumer protection. This super-ordinate
theme contained a specific theme related to the vulnerability of consumers because of the
standard operating procedures of the legal profession.

**Subordinate theme 2-A:** Perception that the culture of the legal profession breeds
the need for consumer protection. Participants expressed beliefs that the difficulties
experienced were the result of the autonomy of the lawyers without oversight. They
communicated the belief that consumers do not have necessary protections against the
poor business practices of lawyers, and that other legal professionals do not get involved,
even when it becomes clear that poor business practices are being employed. As shown
in the quotes from Sharon and Dora, participants communicated the belief that the
language and “legalese” of the legal profession is designed to shield and protect the poor
business practices of legal professionals and to harm consumers.

Sharon: For the ability of the lawyers to just change in midstream and add stuff on
and not address what we’re here for and to try and make a kind of stipulation on
your behalf when you don’t want one, there’s nobody to say, “Wait! You can’t
do that right now!” “You can’t do that right now!” There’s nobody to say “stop
let’s…or nobody’s even saying… “Are you comfortable with what’s going on now?” And I guess it’s because I have a lawyer. And I guess that’s because the lawyer was there, he was supposed to maybe be doing that on my behalf, but he did the total opposite.

Dora: I didn't see anything that really protected what I was signing. Do you know what I mean? … that protected me and what I was signing. Because they, the papers are so daunting that you sign at the time and you’re so vulnerable because whatever you're are going through at the time whether it is an accident or something else, a divorce even let’s say, you're so vulnerable at the time that you just sign whatever it is they put in front of you because you trust the lawyer….I think that the legalese to lay people is a form of intimidation that lawyers often use and...to keep people from getting good customer service or consumer service.

**Super-ordinate theme 3: Reactions to resist alienation.** Resisting alienation involved a myriad of psychological coping practices used to overcome conditions of exploitation and normlessness. Participants described employing mechanisms such as sacrifice, mistrust, establishing impressions, taking control, and acknowledgement of the things that worked in order to resist the experience of alienation. Participants communicated experiences of having to relinquish financial and social enjoyments for the sake of avoiding further hardships imposed on them by the lawyers. The perception of sacrifice reduced the impact of dissatisfaction by psychologically removing its source. The development of mistrust and the establishment of impressions enabled participants to reject the feelings of disappointment by directing the responsibility for their experience onto the lawyers. Participants attempted to regain their sense of self-empowerment by
recognizing there were measures they could use to prevent future hardships and overcome unsatisfactory conditions. Furthermore, by acknowledging the things that worked, participants also attempted to regain their sense of self-empowerment.

Super-ordinate theme 3 had five subordinate themes: (a) being forced to sacrifice to avoid further hardships, (b) dissatisfaction leading to new impressions, (c) constructing measures to regain control, (d) developing distrust, and (e) receiving satisfaction by acknowledging things that worked.

**Subordinate theme 3-A: Being forced to sacrifice to avoid further hardships.**

Participants communicated perceptions of being forced into sacrifices in order to thwart the experience of dissatisfaction. The following comments from Sharon, Dora, and Andy demonstrate the participants’ perceptions of the sacrifices they had to make in order to avoid further hardships.

Sharon: I had let go of the apartment… It was gonna cost me more….Although I wanted to keep the apartment, I couldn’t deal with the headache of the lawyers and the sub-letter.

R: I am remembering that you said you were concerned about his relationship with your boyfriend and the social thing...

Dora: I don't care so much about all that anymore because to me, I mean, you know, when he handed me over to a nicer guy and did so...I am gonna see how it plays out...

Andy: Finally [emphasis] I think this was…I think late April, he sent me a check for $700 and...a receipt saying...you know… paid this…I think this was his accountants or whoever does his books, uh...I received that money...then I
followed up with him I said thank you for the sending the $700 but there’s still a question of $85, and I sent him a PDF basically saying here’s the original receipt, here’s the one that’s paid, there’s a discrepancy of $85.

3-B: Dissatisfaction led to establishing new impressions. Participants described how they formed new impressions based on their experiences. They also articulated their developing distinctions between their impressions of the lawyer’s poor practices and the perceived role of the legal profession. Participants communicated the beliefs that the legal profession does not protect consumers from the unethical practices of lawyers, and that, in fact, it supports unethical practices. The following statements from Sharon and Mary capture the participants’ beliefs that the legal professional does not protect consumers.

R: You believe that the legal profession itself is a scam?
Sharon: In New York City I think it is, cause I feel that’s my only experience with anything about court situation has been in New York City. I can’t say for anywhere else but I think in New York City it’s a scam.
Mary: I got discouraged because I heard a lot of stories....Nothing’s gonna happen, you know this happens to a lot of people….This is in New York you know um…you’re just another number pretty much [despair].

Subordinate theme 3-C: Constructing measures to regain control. Participants communicated the measures they had employed, or planned to employ, to regain control and recover from their experience of dissatisfaction. Participants appeared to take personal responsibility for the hardships, as they realized aspects they would need to focus on in the future. Participants communicated the need for transparency with
lawyers’ credentials, complaint history by consumers, and performance evaluation, as well as the need for consumers to be able to make informed decisions and consider options. The following statements by Mary and Dora demonstrate how the participants believed they would act differently in the future.

R: What would you do differently now?

Mary: Read their credentials. Um...see their background and...if there’s any complaints from...from consumers.

Dora: I would say I complained like maybe once or twice every three months...I was raising questions instead of...instead of being a “laydown” I was just...I was asking questions....I actually I, I ended up asking for a replacement lawyer.

R: If you had to do things over what would you do differently?

Dora: I probably would’ve interviewed a couple of lawyers. I would’ve probably talked to different lawyers about it and umm...did some more research....I would...probably ask around. I would probably still do referrals but again I would do research first...probably on the internet. Probably online. I’d probably look at... you know... how they performed....and if any you know...because I think it’s important to understand.

**Subordinate theme 3-D:** Developing distrust. Participants communicated feelings of mistrust for legal professionals and the legal profession. In order to cope, participants directed the responsibility for their experiences onto the lawyers. The following comments by Mary, Sharon, and Dora show their distrust of legal services.

Mary: All lawyers can’t be trusted.

R: You believe that based on an experience with one lawyer?
Mary: Right.

R: Do you trust,...could you trust another lawyer, if you should ever need another lawyer do you think you would be able to trust that process?

Sharon: No.

R: Do you trust Sam?

Dora: No.

R: So What is your perception of the new lawyer?”

Dora: He seems very nice…. And in a weird way there a little bit of a too niceness about him [laughter]

R: Would you say you’re distrusting now of lawyers?

Dora: Well I always have been….Because I worked in real estate and I know a lot of real estate lawyers. And I had to work with a lot of them and I know how real estate are.

R: So you witnessed bad behavior with real estate lawyers?

Dora: Horrible behavior [laughter].

R: What is your perception of the overall legal profession and legal services and the legal system?

Dora: I think It’s a predatory business….I believe they specialize in getting as many clients as possible and not necessarily in servicing.

Subordinate theme 3-E: Perception of satisfaction: Acknowledging things that worked. Participants communicated perceptions of the potential for satisfaction with legal services. They enjoyed the initial statements by the lawyers and the feelings of hope that followed. Participants communicated the perception of necessity with legal
services to have their matters resolved. In spite of dissatisfaction, participants believed that having legal services was beneficial for aspects of their matters. They enjoyed the support and protection promised to them by the lawyers and being informed by the lawyers. Participants further enjoyed the perception that something good resulted from their experience with legal services. The following quotes from Andy, Sharon, and Dora demonstrate the positive perceptions the participants had of their experiences.

Andy: He was a bulldog! He’s aggressive and that’s that’s one thing I liked about him…. but umm…and I thought he was gonna…you know he really sold me on the idea “Yeah I’m gonna sue her! We’ll get her out, we’ll get her out. I felt… I felt good; so far I felt okay this is gonna be a little expensive but if it will help in resolving my issue, great... He warned me; he said if she countersues or in the court proceedings delays and other court dates have to appear, or if he has to appear then it could be a bit more expensive.

Sharon: I mean when I’m on the phone with him and he’s saying how it’s an open and closed case and that he would have it resolved the first time we go into court...yeah I liked that I like the fact that I felt confident enough to think that he was the man for the job….I mean that’s the only thing that’s attractive about the lawyer…that he sounded as if he knew what he was doing. He sounded as if he was an experienced landlord-tenant lawyer.

Dora: Well the, the best thing is that I got treated. I, I don't know that I would have had, I think at the time, I'm trying to think if had good insurance. Cause the health, you know, I didn't...I don't know what kind of health insurance I had. But, I don't know that they would have. Probably wouldn't have gotten treated the
way...cause I...everything was paid for through my insurance company actually. So um...you know that was their best part...was that they helped me get my bills paid for. The...for the head injury...but, um...yeah, I mean had I not, had I not hired a lawyer... I may not have gotten treated for my head injury, I may have just...been in pain for a long time [small chuckles, laugh or smile].

**Super-ordinate theme 4:** Developing fear and anxiety as psychological reactions.

Participants communicated that they experienced various feelings and emotions throughout the interaction with the lawyer. To describe what they felt throughout their experiences, participants used words such as: “scared,” (Mary) “anxious,” (Mary) “brushed off” (Mary) “disappointed” (Mary) “traumatized,” (Dora), “pissed off” “mad,” (Dora) “angry,” (Dora) “sad,” (Sharon) “a scam” (Sharon) “horrible,” “anxious,” “scared,” (Mary) “scam” (Sharon), and “hurtful” (Sharon). Participants experienced these feelings due to their perceptions of disregard, lack of personal care, and perceptions of being let down and abused. Participants also expressed being traumatized by the quality of legal services. The following excerpts by Dora and Sharon show the context within which the words were used.

Dora: Pissed off….I was mad, I was angry….I have to say from an emotional standpoint it was traumatizing....having him be the jerk that he was during the process was traumatizing.

Sharon: Here’s somebody that I thought would actually help me preserve what I through I would be able to preserve and I wasn't able to do it…and he didn't care. That’s the part that was more hurting or just as…or equally hurtful that he didn't
even care. Like well you know this is how it goes sometimes oh well [recounting the lawyers attitude].

Within super-ordinate theme 4, there was one subordinate theme of feelings of fear and anxiety.

**Subordinate theme 4-A:** Feelings of fear and anxiety. According to Rachman (2004), “anxiety is the tense, unsettling anticipation of a threatening but vague event; a feeling of uneasy suspense. It is a negative affect so closely related to fear that in many circumstances the two are interchangeable” (p. 3). Additionally, the Oxford Dictionaries Online (2013) defined anxiety as “a feeling of worry, nervousness, or unease, typically about an imminent event or something with an uncertain outcome” (para. 1).

Participants communicated episodes of fear and anxiety as they described the details of the legal services. Changes in the services caused participants to experience high levels of fear and to adopt notions that they were facing great harm. Participants communicated the perception of abandonment as a result of service changes by the lawyers. Dora’s perception of abandonment quickly turned into fear that the lawyer was consciously allowing her to be in harm’s way, as is apparent in her use of the words “being slaughtered.” Dora’s statement that “he was going to take good care of me” indicated her initial belief that the lawyer had a personal interest in her and would save her from suffering, but when interviewed Dora believed that compensation was the lawyer’s primary concern and not her personal interests. Dora felt let down and fearful, and saw herself as facing the fate of a slaughtered cow.
Dora: I felt like he wanted to work with me and that he was going to take good care of me, but... then I just felt a part of a herd that was going through the process of being slaughtered [laughter to overcome grief].

Participants also expressed fear of financial and social losses, and perceptions of being trapped in the attorney-client relationship. Participants communicated the belief there was no way out and nowhere to turn once engaged in legal services. They communicated beliefs that the lawyer had power to retaliate and cause financial hardship or to socially ostracize them if they angered the lawyer. The following comment from Dora demonstrates how she perceived the lawyer’s power to damage her life.

R: A minute ago you said that he (Sam) had a temper. So what did you think could occur because of his temper? Were you physically afraid?

Dora: No I wasn’t physically…. I’m afraid that if I leave him…then he’ll come after me…. Whatever settlement I do get…my orthopedic guy stopped treating me because he said he worked with Sam so much and had seen where people when they get a settlement they end with no money because of all the bills that they have with Sam…. I was afraid that he would… screw up my case….I was afraid that he would um…add extra charges so that I would end up with no money. I… I felt very intimidated when his temper displayed….Once you’re in the contract then you’re at what their…once you have a contract with them you’re at their mercy. Because you have that…you’re obligated…and even if you wanted to get rid of them….If he hadn’t been a referral I probably would have fired him. But I was…but because of my boyfriend at the time…there’s also like
that social thing too…if I fire Sam then…he’s playing tennis with him and all the
guys are with him…you know what I mean?

Participants described how they had relied on the statements of the lawyer in
planning the navigation of their experiences. They communicated feelings such as
“disappointed” when talking about the disconnect between the statements made by the
lawyer and actual experience. Participants expressed beliefs of being falsely led to
believe that matters would be handled if requested retainers were paid. Participants
became fearful that they were worse off due to paying the retainer money and were
forced to navigate the litigation themselves with no resources.

Mary: He did make… promised that this whole thing would be over but it was
not. So I’m still fighting a portion of this case so you know I have to do that on
my own. So you know I was told the retainer was used up so I’m you
know…disappointed.

**Super-ordinate theme 5: Desire for measures that would confirm expectations.**

Participants suggested several measures they believed would have contributed to an
increased likelihood the experience would be satisfactory. Their suggestions generally
reflected an appreciation of the stated rights of consumers as defined by the New York
State Courts as well as the participants’ experiences of dissatisfaction. They expressed
the need for the legal professional and any representatives to be knowledgeable and to
use that knowledge when providing legal services. Also, participants felt a focus on
quick resolution of the case as well as effective communication was crucial. Participants
communicated the need for the lawyers to be sensitive to the concerns of the consumer
and to be cognizant of the hardships sometimes being imposed on the consumer by the
lawyer’s actions. Participants additionally communicated the need for consumer protection against business practices in the legal profession that run counter to stated standards and practices as well as consumer expectations. Moreover, oversight for lawyer accountability was a common concern.

Super-ordinate theme 5 included five subordinate themes: (a) desire for evidence of lawyer’s professional knowledge, (b) desire to be duly informed about time and fees, (c) desire for lawyer sensitivity, (d) desire for consumer protection, and (e) desire for lawyer accountability.

**Subordinate theme 5-A:** Desire for evidence of lawyer’s professional knowledge. Participants in the study believed lawyers should be knowledgeable of their cases and show evidence of that knowledge. They further believed that any staff members who assisted with the case should be knowledgeable and capable. Dora’s comment illustrates that was not always the case in the eyes of the consumer:

Dora: They should know their case at all times and should know inside and out. And should be there to answer their questions, even if it’s a paralegal. And I understand that staff members come and go…. none of the attorneys…even that one attorney that went to court and didn't read my files before court.

Participants further expressed the belief that their matters were unimportant to the lawyers. This belief was based on their perceptions that the lawyers were not knowledgeable of the participants’ legal matters. The participants communicated the belief that the lawyers’ failures to be knowledgeable of the participants’ legal matters were a reflection of the lawyers’ lack of interest in the participants as consumers.

Furthermore, the failure to be knowledgeable of the participants’ legal situation also was
perceived as lack of respect by the participants. The following comments by Mary and Dora show how the participants’ felt disregarded by their lawyers.

Mary: He wasn't knowledgeable and.....He seemed very busy and tried to brush me off….It wasn't important to him.

Dora: He got mad at me and basically talked down to me and made me feel like I was being...like I was being stupid by calling him.

**Subordinate theme 5-B**: Desire to be duly informed about time and fees.

Participants communicated the need to be duly informed about the fee charges and time factors relative to their legal issues. Participants communicated that the lack of information contributed to anxiety and hardships. Participants believed effective communication and focus by the lawyer would ameliorate the perceived difficulties and experiences.

R: Do you have any ideas as to what he [lawyer] could have done differently to make you a satisfied consumer?

Mary: Been on the case…. You know…straight on the case. Less postponements, umm…communication…and…as explanation of your fees [deceived].

Dora: I feel that it’s a very personal thing that you’re going through and that the person…should be responding to you and telling you what’s going on.

**Subordinate theme 5-C**: Desire for lawyer sensitivity. Participants described how actions of the part of the lawyer led to additional hardships that participants believed the lawyers should be sensitive to. Participants believed their lawyers should be understanding and appreciate the hardships being imposed on consumers by the practices of lawyers. Participants believed that if the lawyers were sensitive to the impact of their
actions, different practices would be employed. The following statement by Mary demonstrated her perception of how the legal profession could lessen the hardships imposed on consumers.

R: What do you think could be implemented into the legal profession to ameliorate, which means lessen, these difficulties, so that these things won’t happen to other people?

Mary: That some kind of way lawyers are aware of…I mean…lawyers are aware of consequences that are happening…um…for angry consumers. It feels like it’s just ignored.

Subordinate theme 5-D: Desire For consumer protection. As shown in the statements from Dora and Sharon, participants communicated the need for consumer protections against poor business practices in providing legal services.

Dora: I didn't see anything that really protected what I was signing. Do you know what I mean? …that protected me and what I was signing. Because they, the papers are so daunting that you sign at the time and they’re so vulnerable because whatever you are going through at the time whether it is an accident or something else, a divorce even let’s say you're so vulnerable at the time that you just sign whatever it is they put in front of you because you trust the lawyer.

Sharon: I think that they should have people who are there to protect people who are going into situations with lawyers...[enthusiastic] that can’t just be taken advantage of.
**Subordinate theme 5-E**: Desire for lawyer accountability. Participants communicated that consumers are vulnerable to dissatisfaction and hardships because there is no regular oversight or accountability for lawyers. Without proper written commitments by the lawyers, and accountability to oversight entities, participants believed that lawyers who engage in poor business practices are not held responsible for the improper treatment of consumers. The following comments by Dora and Sharon demonstrate this belief.

Dora: They should have a disclosure form that goes on top of the papers, the stack of papers that you sign. And then they should be forced to mail you a copy of that so that they are being held responsible and accountable for how they treat you.

Sharon: something should be known or understood that they are actually gonna go into court and fight for your behalf on your concerns and not just take the money and just like...do whatever it would be to just cost you even more money and more distress.

**Summary**

This chapter presented the results of the data analysis. Participant responses were discussed and analyzed, and the core or super-ordinate themes that emerged from the analysis of the interviews were presented with support in the form of direct quotes from the participants. Super-ordinate themes related to the type of problems experienced were presented and each super-ordinate theme was followed by subordinate themes related to ways of reducing the occurrence of problems. Table 4.3 highlights the super-ordinate themes, themes and sub-themes that emerged from the analysis. Chapter 5 explores the
implications of the findings and provides recommendations for practice as well as future research.
Table 4.2

*Super-ordinate Themes and Corresponding Subordinate Themes*

<table>
<thead>
<tr>
<th>Super-ordinate Themes</th>
<th>Corresponding Subordinate Themes</th>
</tr>
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| 1: Disconfirmation of Expectations Caused Conditions of Alienation | A: Perceptions of being exploited.  
B: Unresponsiveness of lawyer inspired perceptions of being devalued  
C: Being excluded from decision-making led to perception of being powerless  
D: Having a lawyer exacerbated hardships  
E: ‘Bait and Switch’: Perceptions of deception  
F: Disconfirmed expectations of a quick resolution  
G: Disconfirmed expectations of professional standards and practices  
H: Disconfirmed expectations of personal care  
I: Disconfirmed expectations of being properly informed |
| 2: Rationalizing Disconfirmation of Expectations Experience   | A: Perception that the culture of the legal profession breeds the need for consumer protection. |
| 3: Resisting Alienation by Developing Coping Mechanisms       | A: Being forced to sacrifice to avoid further hardships  
B: Dissatisfaction led to establishing impressions  
C: Constructing measures to regain control  
D: Developing Distrust  
E: Perception of satisfaction: Acknowledging things that worked |
| 4: Developing Fear and Anxiety as Psychological Reactions    | A: Fear and anxiety                                                                               |
| 5: Desire For Measures that Would Confirm Expectations        | A: Desire for evidence of lawyer’s professional knowledge  
B: Desire to be duly informed about time and fees  
C: Desire for lawyer sensitivity  
D: Desire for consumer protection  
E: Desire for lawyer accountability |
Chapter 5: Discussion

Introduction

Chapter 5 begins with a review of the research questions that guided the study. The chapter includes a discussion of implications of the findings, limitations to the study, and recommendations for practice and future research. The chapter concludes with a summary of the overall research.

The study used an Interpretative Phenomenological Analysis (IPA) (Smith, Flowers, & Larkin, 2009) to answer the following core research question and subquestions:

Research questions. What were the participants’ perceptions of the conditions, reasons, and solutions related to consumer dissatisfaction with legal services in Manhattan, NY?

Subquestion 1. What was the current perception of the legal profession as a whole among participants?

Subquestion 2. How did the participants describe the conditions in which the unsatisfactory legal services were provided?

Subquestion 3. What did the participants perceive as central to their dissatisfaction with legal services they received?

Subquestion 4. What did participants perceive as the best ways to improve legal services and reduce the number of dissatisfied consumers?
Implications of Findings

Relationship of the results to the existing literature. This study focused on the dissatisfaction experiences of four participants who endured difficulty with legal services. One of the results of the qualitative analysis was the development of five superordinate themes: (a) disconfirmation of expectations leads to alienation, (b) rationalizing disconfirmation experience, (c) resisting alienation by developing coping mechanisms, and (d) psychological reactions, and (e) desire for measures that would confirm expectations. Each super-ordinate theme encapsulated subordinate themes, which spoke to a particular aspect of the consumers’ experiences and highlighted the losses and difficulties felt throughout these experiences.

The first super-ordinate theme was disconfirmation of expectations caused conditions of alienation. All participants in this study recalled perceptions of being exploited, devalued, feeling powerless, and being deceived. They further recounted experiencing exacerbated hardships, and disconfirmed expectations. Findings of this study indicated the violations of these psychosocial needs caused individual feelings of alienation and distrust of the legal profession. This has also been documented in past research by Bradley, McColl-Kennedy, Sparks, Jimmieson, and Zapf (2010), as they noted that when expectations with regard to psychosocial needs are not met, one of the results is negative emotions and cognitive affective responses. Table 2.2 in Chapter 2 provides a breakdown of the emotions and cognitive affective responses that occur from each violated psychosocial need.

Participants recalled transitioning from being a valued part of the American dream and structure through their willingness to engage with the judicial system, to
feeling alienated, powerless, and exploited by the American judicial system. One participant described the acknowledgement of inevitably being an exploited victim just by virtue of engaging legal services. This notion was indicative of the vicarious trauma with legal services that may have constructed the participants’ image of the legal process and drove expectations of legal services. Exploitation of consumers in dependent relationships is recognized in literature by the American Bar Association (2013) when it was noted: “according to the best available estimates, between 1 and 2 million Americans age 65 or older have been injured, exploited, or otherwise mistreated by someone on whom they depended for protection. (American Bar Association, 2013, para. 72).

Related research by Bradley et al. (2010) noted that feelings of alienation are a cognitive-affective response to violations of pleasing relations between the consumer and service provider through service encounters.

Participants recalled personally feeling as though the legal system was a predatory enterprise which was not amenable to the interests of the consumers, and was shaped and supported by the cultural paradigm in the legal profession. This consensus is further delineated in previous studies where it was found that Americans believe that “the central place of lawyers in society enables them not only to play the system, but also to shape that very system” (Clifford, 2002, para. 4). Participants felt disconnected to justice and felt they were unprotected pawns and targets for the enrichment of others.

Participants felt marginalized by the lawyers and legal process and recounted loss of personal control, social status, significant relationships, and property. Participants recalled feeling that their matters were exacerbated once they became consumers of legal services and felt forced to relinquish the things and people that were significant to them.
prior to legal services. Examples of exacerbated hardships on consumers are depicted in the literature on “bad apples” which shows in small part the extent of loss and hardship that may occur merely by virtue of being a consumer of legal services (Gavin, 2013; Keshner, 2013; Ross & Jacobs, 2013; Shilling, 2013; & Timesledger, 2013). This finding is reinforced by a 2002 study by Clifford who noted that some consumers believe that lawyers can do more harm than good.

Clifford (2002) also noted that consumers believe lawyers drag out and overstaff cases unnecessarily. As in this study, Clifford (2002) found that disconfirmed expectations affected participants’ psychosocial wellbeing and caused feelings of emotional abuse.

Participants also conceptualized the notion that ongoing skills training and a structure of professional evaluations would be needed to ensure that legal professionals are providing and maintaining the evolutionary standard of skill and care required for changing environments and needs. Such findings suggest a need for a modified approach to ensuring that legal professionals are in fact skilled with matters that they take on. This is documented in past research on legal malpractice where Wade (2010) noted the competition for new business is leading many firms to go after clients not typically within their legal specialty area. Wade (2010) notes that the bad economy makes lawyers take cases they would not typically take in good economic times, which leads to mistakes and it often also can lead to “putting that client on the back burner when a real case that is in their expertise comes along” (para. 6). Clifford (2002) noted that in a previous study, consumers reported the perceptions that lawyers take cases that they are not equipped to handle and they noted experiences with lawyers who “fail to competently represent them”
The past study agreed with the findings of this study in that consumers believe that lawyers “promise what they cannot deliver” (p. 16).

Super-ordinate theme number two is rationalizing disconfirmation of expectations. Participants used cognitive measures to make sense of their negative experiences, and as a result, conceptualized the need for consumer protection with legal services. Participants faced realizations that in the current state of the legal profession and state, they as consumers of legal services were inevitable victims. This is supported in the literature by Clifford where “participants viewed Bar Associations as clubs to protect lawyers and not as protectors of the public or the public’s interest” (p. 4). Participants conceptualized the need for an oversight agency that acted in the interest of consumers with legal services, as the realization that there was no one to call set in. Participants attributed the lack of oversight to the suffering of consumers and the legal profession and believed that complaints against lawyers are not addressed by legal professionals. Participants viewed themselves as caught in an enterprise that culturally breeds misdeeds, and feel that in order for the legal professionals to thrive and remain collegial, they must comport to the unethical behaviors of the environment. Rose (2013) found that “regulation of the legal services profession is not working as well as it might do to promote trust” (para. 12), because of a perception that lawyers are a law unto themselves, low awareness/visibility of regulatory and complaints bodies, and cynicism about the chances of making a successful complaint. “Public belief that consumer rights will be protected when buying services from lawyers or that a lawyer can be trusted to handle a complaint were both down by 7% compared with findings in 2011, to 46% and 44% respectively” (Bindman, 2013, para. 2). A comparable report in the literature on
industries that lack oversight for consumer protection, notes that many lenders in the financial industry “took advantage of the gaps in the consumer protection system by selling mortgages and other products that were overly complicated” (Consumer Financial Protection Bureau, 2013, para. 2), leaving many Americans with loans that they did not fully understand and could not afford. While some borrowers “knowingly took on too much debt, millions of responsible Americans were lured into unaffordable loans” (Consumer Financial Protection Bureau, 2013, para. 3) by misrepresentations in the loan contracts. Unfortunately, the “honest lenders that resisted the pressure to sell complicated products had to compete with their less responsible competitors” (Consumer Financial Protection Bureau, 2013, para. 3).

**Super-ordinate theme number three: is coping reactions to resist alienation.**

As noted earlier, participants discussed feeling forced to relinquish property and personal relationships in order to resist the alienation that accompanied them. Surrendering possessions and social relationships that were connected to the suffering gave participants the perception of freedom from further hardships and of regaining control over their lives. Surrender also reduced the impact of dissatisfaction by psychologically removing its source. “Crossley (2000) maintains that when a person’s central understanding of identity, relationships, life course and sense of self-worth are disrupted, a person may ‘rewrite’ their life narrative to re-establish these lost entities in light of their new circumstance (as cited in Davies, 2012, p. 27). Pearlin and Schooler (1978) state that “people attach differential importance to different aspects of their lives and when strain is placed in any one area, individuals may avoid stress if they are able to keep the most painful experiences within the least valued domain” (as cited in Davies, 2012, p. 27).
Participants found themselves transitioning from victims to advocates in order to overcome emotional setbacks, take control over future events, and to restore their sense of self and meanings. They positioned themselves as catalysts for change as they reorganized their social and financial priorities and identified specific areas in need of change to prevent hardships on others. This interpretation is an expression of “Taylor's (1983) theory of cognitive adaptation conceptualizes individuals as active agents in restoring psychological equilibrium in the aftermath of a traumatic life event” (Updegraff & Taylor, 2000, p. 6). According to this theory, traumatic life events challenge people's sense of meaning, their sense of mastery, and their self-esteem. As a result, people are driven to restore their self-esteem and sense of meaning by the production of self-enhancing cognitions (Taylor & Brown, 1988 as cited in Updegraff & Taylor, 2000). A sense of meaning can be regained through rationalizing the traumatic event and understanding why it occurred and what its role in a person’s life will be. Then, “a sense of meaning is typically produced by either a causal attributional search or a rethinking of attitudes and life priorities” (Updegraff & Taylor, 2000, p. 6).

**Super-ordinate theme 4: psychological reactions.** Psychological reactions were the consequences of the participants’ perceptions of lawyer abandonment, exploitation, and disregard in the dependent lawyer-consumer relationships. Fear and anxiety were primary feelings due to the uncertainty of the lawyer and litigation process which caused difficulty in achieving satisfaction in the relationships. This is documented by Clifford (2002) as he noted that “uncertainty generates feelings of vulnerability and anxiety in consumers and creates a real potential for tension in the lawyer-client relationship and for the avoidance of lawyers altogether” (p. 34). Clifford further noted that legal services are
among the most difficult services to buy, particularly because the prospect of doing so is fraught with uncertainty and potential risk. He stated that when it comes to hiring a lawyer, consumers feel uncertain about how to tell a good lawyer from a bad one, and consumers also say that it is often unclear exactly what the lawyer will do for them and how much the lawyer will charge. Rose (2013) noted that lawyers’ lack of transparency over cost, rather than the actual cost of their services, is a major barrier to consumers seeking legal advice and the primary cause of a breakdown in trust between them (para. 1).

As noted earlier, the participants in the current study conceptualized their experiences as being confined in an environment of dependency where there was no way out and nowhere to turn. Findings were consistent with the research on domestic emotional abuse as the participants accounts were suffused with inescapable negative psychological effects. The American Bar Association (2013) noted that dissatisfied consumers of legal services typically report experiences consistent with those in elder abuse and domestic abuse cases.

Super-ordinate theme five was the desire for measures that would confirm expectations. Participants described finding their inner strength to combat the distress felt from the negative experiences. They experienced personal transformations as they were able to identify needs to prevent future suffering for other consumers. They transitioned from being traumatized and powerless, to being empowered advocates for other consumers as they articulated factors that would need to be implemented in order for others to avoid their dissatisfaction experience. “Positive post-traumatic growth refers to positive psychological change as a consequence of the struggle with highly
negative life circumstances” (Tedeschi & Calhoun, 2004 as cited in Davies, 2012, p. 27). Further, “Thoits (2003) has found that individuals compensate by finding new sources of identity and gratification by investing in new, rewarding roles that provide positive feedback of self and life satisfaction” (as cited in Davies, 2012, p. 38).

Limitations

One possible limitation of this study was that there was no way to determine whether or not the problem of dissatisfaction with legal services was relegated to one demographic group.

The participants of this study were all dealing with issues of civil law, thus the study did not cover different aspects of lawyer-consumer relations, such as criminal law, which may have offered a different perspective. Further, the method of finding and selecting participants was not a process on selecting potential participants randomly from a defined population.

On the positive side, one strength of the study is that it captured rich detailed information from the participants thus augmenting our understanding of consumers’ difficulties with legal services. The information that emerged from the study may lead to changes to policies and practices so as to reduce experiences of dissatisfaction with legal services. The following section contains recommendations based on the findings from the study.

Recommendations

Consumers are at a severe disadvantage when it comes to legal services, as consumers are not provided the same protections or remedies available in other markets through the state and federal government. As a result, consumers are susceptible to abuse
and victimization by any members of the legal profession who do not abide by the law and the ethical guidelines of the profession. It is with this understanding that the following recommendations are made.

The recommendations include (a) additional platforms for providing information of lawyers’ satisfaction/dissatisfaction record with consumers that are accessible and usable by consumers, (b) an ombuds program specifically created for consumers of legal services, and (c) a “Legal Services Seal” Program to promote lawyer honesty, competence, and proper and efficient business practices.

**Recommendation 1: transparency with lawyer satisfaction/dissatisfaction record.** Markoff (2004) states that “while there are no guarantees, taking the time to find the right attorney—someone who has expertise and experience in the area of law relevant to your needs, a good reputation among fellow colleagues as well as former and current clients, and a clean disciplinary record—will help you get off to a good start and may offer some insurance against fee disputes occurring later on (Markoff, 2004). One of the implications of this study is that consumers need more ways to check the performance of lawyers they are thinking of hiring. Broadly speaking, more transparency is needed. There are a number of existing web sites that attempt to help potential consumers of legal services. For example, the HALT (2012) website notes steps to take to minimize the likelihood of fighting with the lawyer over fees. HALT states:

First, find the right lawyer, someone who is competent, honest and trustworthy. Second, discuss fees in advance; be sure that you understand and are comfortable with your financial obligations. Third, get a signed fee agreement so both you and your lawyer are on the same page. Finally,
confront problem immediately, so they can be resolved before they become full-blown battles (p. 3).

The problem is, however, that there are not enough ways to check whether the claims and promises made on an attorney’s web site or in personal while communicating with a potential client. There is no way of knowing if the lawyer is going to practice what is stated in the policy and/or self-proclamation. More guides are needed to guide informed consumers of legal services. Web pages are needed by credible sources that have consumer views of attorney performance. For example, a commercial service named Angie’s List (AngiesList.com) distributes the ratings of many service providers, from plumbers to dentists. The ratings come from members who have used a particular service, and for a fee anyone can subscribe to the service and read those ratings. The service includes ratings on many types of medical specialists but it has made a policy decision not to rate lawyers. The need for attorney ratings was expressed by many consumers in a section of the Angie’s List web site listing answers to the question, “Why doesn’t Angie’s list attorneys”? One person wrote:

I second the original question (still unanswered). Speaking as someone who logged in today to try to find an attorney, I see this category as one that's exactly what I have my Angie's List membership for:

1. It's important that I find a good one
2. I'm not an expert enough to know myself who is a good one
3. The industry is full of advertisements and misinformation
4. I wish I knew what experiences other people have had

Another wrote:
I was truly confused as to why Angies List does not provide a category for legal professionals. I was thinking of signing up because I needed a good lawyer and when I noticed that they don’t provide such a category, I called them. They claim that they do not want to list attorneys because the services provided by attorneys cannot be effectively rated. I highly disagreed. People go to attorneys for specific help (i.e. file for bankruptcy, real estate closings, divorces, etc.) and the services that the attorney provides to the person (i.e. timeliness, cost, professionalism, promises, knowledge, etc.) can easily be rated. I am not going to pay a monthly fee for this service if it doesn’t include all areas that someone needs help with. What I mean is what’s the point for paying a monthly fee for this site if I could find a plumber but need to pay another site to find an attorney. It should be all in one site. Really, there reasons for not having attorneys make no sense, and they should be added.

There are, to be sure, a number of local, regional, and even national projects to rate attorneys and make those ratings available to consumers free of charge. However, to date, no system appears to have reached the level of acceptance that makes it a routine and well known source of information about lawyers.

**Recommendation 2: A legal services ombuds program.** Making consumer ratings of attorneys available to anyone would probably go a long way toward helping consumers avoid the worst offenders in the legal profession but it would probably not eliminate unethical, unprofessional, and illegal practices.

Thus, the second recommendation is that New York State institute an ombudsman service for consumers of legal services. Such a service would be independent of the legal
profession but have authority to investigate complaints and produce publicly available conclusions. A legal service ombudsman would be a neutral external entity that would provide a proper forum, outside of the legal profession, for consumers to submit complaints against lawyers. The ombudsman would provide oversight to ensure accountability of lawyers with regard to adherence to the legal profession’s standards and rules, laws, and consumer rights. Such an office might also provide consumer training relative to legal services and disputes, and offer conflict mediation for individuals in an unsatisfactory lawyer-consumer relationship. There are a number of examples of successful ombudsman projects that could inform the creation of a legal services ombudsman office in New York State as well as in any other state. Before exploring potential models for an ombudsman service, it should be noted that there have been numerous attempts to reform the American legal profession and bring both accountability and transparency to the provision of legal services.

For example, in response to the embarrassment and diminished public image that the legal profession faced after the Watergate scandal, the Kutak Commission was created (Moliterno, 2012). As noted in Chapter 2, the Kutak Commission was created to transform the legal ethics from internal fraternal norms to a public code of law (Moliterno, 2012). The commission was designed to address the diminishing faith in lawyers but it was ultimately unsuccessful (Moliterno, 2012).

Another effort with similar purposes, Help Abolish Legal Tyranny (HALT) (2012) noted that more than 30 years ago, retired Justice Tom Clark of the United States Supreme Court examined the system of lawyer discipline for the American Bar Association and reported a "scandalous situation" that required "the immediate attention
of the profession" (Help Abolish Legal Tyranny, 2012, para. 2). The Clark Committee pointed out that “a panel of lawyers, rather than judges or lay persons, were running the disciplinary system” (para. 2), and the Committee charged that this institutional bias rendered the system ineffective (Help Abolish Legal Tyranny, 2012).

Also, an American Bar Association commission chaired by academic Robert McKay found that the public held a "growing mistrust of secret, self-regulated systems of lawyer discipline" (Help Abolish Legal Tyranny, 2012, para. 3) and that “where elected bar officials controlled all or parts of a state disciplinary system, a conflict of interest was created” (para. 3). Ultimately, the Commission reported that the public viewed lawyer discipline as "too slow, too secret, too soft, and too self-regulated" (Help Abolish Legal Tyranny, 2012, para. 3). Despite decades of repeated calls for reform, the problem still exists. HALT’s 2006 Lawyer Discipline Report Card reveals a system of self-regulation that is still badly broken and in need of urgent reform.

Currently, HALT (2012) provides a citizens legal guide to assist consumers of legal services, particularly in the area known to be the cause of most lawyer-consumer conflict, legal bills. The New York Courts also have information available to consumers as to their rights as consumers, however, as noted earlier, even when consumers are aware of their rights, and the strategies to dispute improper legal services, the existing routes for complaint are both expensive and have a low likelihood of success. A legal service ombudsman would address those issues.

There are many examples of such a program for other professions and a few of them are described below.
Dodd-Frank Wall Street Reform and Consumer Protection Act. “In the 2000s, there were widespread failures in consumer protection and rapid growth in irresponsible mortgage lending practices” (Consumer Financial Protection Bureau, n.d., 2013, para. 2). “Many lenders took advantage of the gaps in the consumer protection system to sell mortgages and other products that were overly complicated” (para. 2), and “many Americans were left with loans they did not fully understand and could not afford” (para. 3). While some borrowers knowingly took on too much debt, millions of responsible Americans were lured into unaffordable loans by misrepresentations in the loan contracts (Consumer Financial Protection Bureau, 2013).

In order to address the failures of consumer protection regulation and heighten government accountability, the Obama administration proposed to establish a new financial agency which would focus on consumers rather than on bank safety and monetary policy (Consumer Financial Protection Bureau, 2013). The new agency, as proposed, would also have broad oversight and regulatory responsibilities consolidated into one place instead of being spread across several different governmental agencies (Consumer Financial Protection Bureau, 2013). Furthermore, the new agency would have responsibility for supervision and enforcement with respect to the laws over providers of consumer financial products and services that escape regular Federal oversight, and it would “protect families from unfair, deceptive, and abusive financial practices” (Consumer Financial Protection Bureau, 2013, para. 6). In July 2010, Congress passed, and the president signed, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Consumer Financial Protection Bureau, 2013, para. 5). This law now “gives the consumer agency the same accountability and independence that the
other banking agencies have and also provides for sufficient funding so it can operate effectively and ensure that powerful financial companies comply with consumer laws” (Consumer Financial Protection Bureau, 2013, para. 5).

The NYS Moreland Commission. A further approach to ending self-regulatory systems comes from New York Governor Andrew Cuomo. During a June, 2013 press conference, Governor Cuomo made it clear that he would not be interested in continuing the existing, state supported systems of self-policeing and self-regulation. He stated, “I don’t believe in the concept of self-policeing” (Short, 2013, para. 16). As an initial step toward public protection from the ailments of self-regulation, Governor Cuomo created The Moreland Commission, to ensure accountability of state elected officials regarding campaign financing. NYS Attorney General Eric Schneiderman, who helped form the new corruption-busting panel, said the commission “should be independent of outside influences” (Spector, 2013, para. 1) and be an “important vehicle for reform” (para. 3).

Ombuds program. “An ombudsman . . . is a person who acts as a trusted intermediary between an organization and some internal or external constituency while representing not only but mostly the broad scope of constituent interests” (International Corporation for Assigned Names and Numbers, 2013, para. 1). “An ombudsman is an official, usually appointed by the government or by parliament, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens” (International Corporation for Assigned Names and Numbers, 2013, para. 1).

Washington State Office of Education Ombuds. “The Office of the Education Ombuds (OEO) resolves complaints, disputes, and problems between families and
Washington State elementary and secondary public schools in all areas that affect student learning” (Office of the Education Ombuds, 2013, para. 1). The Office of the Education Ombuds is “a statewide agency that functions independently from the public school system” (Office of the Education Ombuds, 2013, para. 2). It “provides an alternative to costly lawsuits and administrative hearings, contributes to the improvement of the education system” (para. 3), and promotes family engagement in education (Office of the Education Ombuds, 2013, para. 3). “OEO is the only agency of its kind in the nation” (Office of the Education Ombuds, 2013, para. 3).

**FDIC Office of the Ombudsman.** The FDIC, too, has an Office of the Ombudsman. “The FDIC ombudsman is a confidential, neutral, and independent source of information and assistance to anyone affected by the FDIC in its regulatory, resolution, receivership, or asset disposition activities” (Federal Deposit Insurance Corporation, 2013, para. 1).

**Irish Legal Ombudsman.** In Ireland, in response to the palpable failure to command consumer confidence on the part of successive complaints organizations run by the Law Society, Parliament used the Legal Services Act to set up “the Legal Ombudsman, an independent, statutory complaints scheme” (Sampson, 2012, para. 4). The Legal Service Ombudsman office, which began in October 2010, is not made up of practicing attorneys or members of the Bar Council. Instead, it is an independent body acting on behalf of aggrieved consumers of legal services (Legal Services Ombudsman Act, 2009).
This could be considered an Angie’s list for the legal profession that is free and accessible. A legal services ombudsman office in each state would also be a serious effort to address the disciplinary problem.

Recommendation 3: A Seal of Approval Program for Attorneys.

**LSS: Legal Services Seal.** The results of this study point to a need for a system that consumers easily access and use that identifies attorneys are “approved” or vetted by an organization that would be independent of the legal profession. To meet that need a Legal Services Seal (LSS) program is proposed. This project would disseminate the information it develops via a web site and would rate attorneys in a range of categories. It would operate in a way similar to that of the “Good Housekeeping Seal” that has been a part of the Hearst Corporation’s Good *Housekeeping* magazine franchise for over 100 years. Legal offices could use the LSS in advertising and a LSS web site would describe a set of professional practice standards of practice and ethics that attorneys have agreed to adopt. Attorneys would also file an annual report that allows LSS staff to evaluate their adherence to the standards and staff would also use other methods to determine adherence.

LSS would be designed primarily for consumer protection, and would follow an approach pioneered by The International Society of Primerus Law Firms (Primerus), to “restore honor and dignity to the legal profession and to help rebuild the public’s trust in lawyers and the judicial system through high standards” (Primerus, 2010, p. 2). The society now has 200 law firm members in 40 countries.

**The International Society of Primerus Law Firms (Primerus).** John Buchanan created Primerus in 1992 to help consumers of legal services locate attorneys that met
specified standards of practice. However, because it is a private organization, it is funded by law firms through dues and fees for services such as continuing legal education programs. This leads to what are perhaps the most problematic aspects of Primerus. It is funded by attorneys and acts as a referral resource for consumers but does not accept applications for membership (and the Primerus “seal of approval”) for more than one law firm in each specialty area within a given region. No matter how great a second, third, or fourth firm might be, they are not eligible to belong to the society.

The LSS program proposed here does not have that issue. Participation in the program would be available to all firms that meet the criteria and standards of LSS. One issue that led Buchanan to act was the 1977 court decision in Bates v. State Bar of Arizona that allows lawyers to advertise their services in order to attract clients. Prior to that decision, advertising by lawyers in the USA was a breach of ethical practice, though many felt the prohibition was to protect established lawyers rather than consumers. “Buchanan feels this led to two very negative results: first, the types of advertisements run cheapened the profession; and second, the attorneys who pulled in work through advertising who really did not know what they were doing” (Price, 2010, para. 4).

Buchanan began distributing a brochure to potential clients of his firm on ‘How to Judge a Lawyer’ (Price, 2010, para. 7). Many other firms asked for permission to use the brochure and Buchanan decided to create Primerus in order to screen firms that wanted to use the brochure and also become a member of the society. He developed six principles that, if followed, made a law firm stand out. Those principles ultimately formed Primerus’ "Six Pillars," which are:
1. Integrity: “Research shows that integrity is the number-one quality clients want from their lawyers. We believe clients should be able to trust their attorney completely.”

2. Excellent Work Product: “Work product is more than winning or losing. It means that all of a lawyer’s work for clients is of consistent, high quality. It means that records, as well as communications with clients, are detailed and clear. It means phone calls are returned, deadlines met and promises kept.”

   “There are two ways Primerus ensures quality of members’ work product. One is through reputation and strict pre-screening, checking with clients, judges and other local attorneys. The other is by choosing members who specialize in certain areas of law such as business or family law” (para. 3).

3. Reasonable Fees: “Primerus member firms may work by the hour, on a contingency plan (pay if you win) or on other fee arrangements. But regardless of the structure, the fees must be reasonable, based on what is customary in their geographic area, and on the individual attorney’s knowledge and experience. We know clients are looking for value now more than ever, and Primerus members are here to deliver high-quality legal services for a good value” (para. 5).

4. Continuing Education: “For Primerus members, education doesn’t end with a law degree. Primerus attorneys are required to complete an average of 30 hours of CLE (Continuing Legal Education) per year. This is more than twice the typical state bar CLE requirement” (para. 6).

5. Civility: “Primerus members still hold the courtroom to be a place of honor. Accordingly, as officers of the court, all lawyers and judges deserve our respect, even
when in disagreement. Members may express themselves strongly, but never rudely. Primerus attorneys pledge professionalism, in accordance with the profession’s noblest traditions” (para. 7).

6. Community Service: “That law, in its purest sense, is community service. The law, fundamentally, exists to hold communities together. Primerus members pledge themselves to numerous community service endeavors including pro bono services for those who cannot afford legal counsel” (para. 8).

Today, The International Society of Primerus Law Firms does three things. It offers continuing legal education services to attorneys. It awards a “seal of approval” to firms that meet its standards and pay a yearly membership fee, and, third, it serves as a “match-making service’ between those approved law firms and potential clients” (Price, 2010, para. 14). The seal of approval process involves an initial and detailed application procedure as well as an annual report for renewal. All applicants must also exceed a specified minimum score (AV-rating) on the Martindale-Hubbell Peer Review Ratings, which is a rating made by other attorneys and members of the judiciary. Applicants must also give permission to their malpractice insurance carrier to provide a malpractice history to Primerus (Fogg, 2010, para. 3). The final decision on acceptance is made by an independent Accreditation Board. In their article on Primerus the *Wall Street Journal* compared Primerus to the “Good Housekeeping Seal of Approval” for law firms (Primerus, 2012, p 2).

*Other systems of accreditation.* While Primerus stands out as an effort to provide consumers with information they need to evaluate the suitability of a law firm, that program has some flaws which were discussed earlier. Most of the flaws relate to
Primerus’ being supported by the same attorneys who compete for the accolades, and serving as both an agency for evaluating law firms and as a marketing and referral agency for law firms.

There are other models for accreditation that should also be considered when establishing a service such as LSS. For example, colleges and universities are authorized to offer degrees in a particular state by an agency of that state. This process is usually not very rigorous and very few applicants fail. However, there is a set of six regional accrediting agencies that set much higher standards and conduct much more rigorous initial and recurring accreditation studies. Institutions in the mid-Atlantic region, including the State of New York, are reviewed by the Middle States Commission on Higher Education. Although submitting to an evaluation by a regional accrediting agency is voluntary, most institutions would find it difficult to attract students without being accredited. Another system of evaluation in higher education that should be considered when deciding how to create and structure a method of evaluating lawyers involves evaluation of particular disciplines. For example, the Council on Accreditation of Teacher Preparation handles schools, colleges, and departments of education while business programs have two accreditation agencies: the Accreditation Council for Business Schools and Programs (ACBSP) as well as the Association to Advance Collegiate Schools of Business (AACSB).

The design, function, and structure of the agencies noted above, as well as many others, should be considered when designing a lawyer evaluation system such as the Legal Services Seal (LSS) which will be discussed in the next section.
**Legal Services Seal (LSS).** In order to achieve a general reduction in the number of consumers dissatisfied with legal services, social norms that support high-quality and ethical service must be established within the legal profession. It does not appear that the systems of self-regulation currently in place have been successful. The situation calls for more than that. It calls for a system that is not controlled by the legal profession. A system like LSS would provide public indicators that highlight excellence relative to a set of standards that would motivate lawyers to support and adopt excellence in their practices and safeguard lawyer-consumer relationships. Through a multilateral reputation mechanism, such as LSS, such norms would generate trust among consumers and within members of the legal community.

A beginning point for designing and developing LCC could be the model of the International Society of Primerus Law Firms (Primerus), which is grounded in the following four pillars: (a) excellence through virtuous commission, (b) excellence through leadership by autonomous benevolence, (c) excellence through professionalism/responsiveness and compassion, and (d) excellence through transparency. The pillars and definitions are outlined in Figure 5.1.

How the pillars benefit lawyers and consumers of legal services are outlined in Figure 5.2 and 5.3. The work of Primerus would, of course, need to be studied thoroughly by any group attempting to develop a program like LSS. Such a group would also need to carefully study the operation of other evaluation, accrediting, and consumer reporting agencies and organizations.
Table 5.1

<table>
<thead>
<tr>
<th>Pillars</th>
<th>Definitions</th>
<th>Examples In Action</th>
<th>Potential Results</th>
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</thead>
<tbody>
<tr>
<td><strong>Excellence Through Virtuous Commission</strong></td>
<td>Legal services are approached through a leadership lens. Leadership is identified primarily through: honesty, a forward-looking stance, inspiring behavior, and competence (Kouzes &amp; Posner, 2007, p. 29). Fostering collaboration with consumers creates a climate of trust. “Without trust you cannot lead” (Kouzes &amp; Posner, 2007, p. 224). “The most effective leadership situations are those in which each member of the team trusts the others” (Kouzes &amp; Posner, 2007, p. 225).</td>
<td>Honesty with all aspects of legal services. Forward-Looking through intentional practices that safeguard the welfare of the legal profession. Display and evidence professional competence. Communication with consumers in plain English to avoid confusion and misunderstandings. Clear and detailed contracts for consumers. Addressing matters in ways that avoid delays. Practices of addressing individual consumer complaints. Making remedies available for aggrieved consumers. Promoting synergetic inclusive relationships with consumers by respecting consumer input. Engaging in extended Continuing Legal Education (CLE) to stay abreast of current legal issues and innovations.</td>
<td>• Increase in public trust of the legal profession. • Improvement in the image of the legal profession. • Alleviation of burdens on the courts through less legal malpractice claims. • Alleviation of burdens on the courts through the avoidance of delays. • Alleviation of burdens on the courts through less consumer complaints against lawyers. • Protection of self-regulation privilege in the legal profession. • Prevents consumer dissatisfaction with legal services.</td>
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<tr>
<td><strong>Excellence Through Autonomous Benevolence</strong></td>
<td>“Leadership is not an affair of the head. Leadership is an affair of the heart” (Kouzes &amp; Posner, 2007, p. 351)</td>
<td>Accountable Pro Bono Service Low cost legal services</td>
<td>• Increases access to legal services. • Ameliorates fee dispute complaints. • Ameliorates consumers’ financial hardships with legal services.</td>
</tr>
<tr>
<td><strong>Excellence Through Professionalism/Responsiveness and Compassion</strong></td>
<td>“People must believe that the leader is competent to guide them where they’re headed” (Kouzes &amp; Posner, p. 35).</td>
<td>Practice of timely responses to consumers. Practice of keeping consumers duly informed of matters. Institute a complaint handling mechanism for aggrieved consumers. Practices of treating consumers as humans not “cases”.</td>
<td>• Public trust of lawyers. • Improvement of the image of lawyers. • Lessen consumers’ psychological difficulties which result from litigation. • Increased rates of consumer satisfaction with legal services.</td>
</tr>
<tr>
<td><strong>Excellence Through Transparency</strong></td>
<td>Transparent Relationships Are Stronger (Viewabill, 2013, para. 3).</td>
<td>Make consumer reviews available to the public. Practice of transparency with legal fee billing. Submission to the release of information regarding grievances submitted to disciplinary agencies. Submission to the release of information regarding and malpractice insurance claims.</td>
<td>• Public Confidence and Trust • Consumer protection. • Allows consumers to make informed decisions before and during legal services.</td>
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### Table 5.2

**Potential Benefits to Lawyers for Participating in LSS.**

<table>
<thead>
<tr>
<th>Pillars</th>
<th>Definitions</th>
<th>Examples In Action</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Excellence Through Virtuous Commission</td>
<td>Legal services are approached through a leadership lens.</td>
<td>• Honesty with all aspects of legal services.</td>
<td>• Increase in public trust of legal professionals.</td>
</tr>
<tr>
<td></td>
<td>• Leadership is identified primarily through: honesty, a forward-looking stance, inspiring behavior, and competence (Kouzes &amp; Posner, 2007, p. 29).</td>
<td>• Forward-Looking through intentional practices that safeguard the welfare of the legal profession.</td>
<td>• Improved image of legal professionals.</td>
</tr>
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<td></td>
<td>• Fostering collaboration with consumers creates a climate of trust. “Without trust you cannot lead” (Kouzes &amp; Posner, 2007, p. 224).</td>
<td>• Display and evidence professional competence.</td>
<td>• Avoidance of legal malpractice claims.</td>
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<td>• “The most effective leadership situations are those in which each member of the team trusts the others” (Kouzes &amp; Posner, 2007, p. 225).</td>
<td>• Communication with consumers in plain English to avoid confusion and misunderstandings.</td>
<td>• Avoidance of increasing costs of legal malpractice insurance for legal professionals.</td>
</tr>
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<td></td>
<td>• Honesty with all aspects of legal services.</td>
<td>• Clear and detailed contracts for consumers.</td>
<td>• Prevention of consumer complaints against lawyers.</td>
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<tr>
<td></td>
<td>• Forward-Looking through intentional practices that safeguard the welfare of the legal profession.</td>
<td>• Addressing matters in ways that avoid delays.</td>
<td>• Prevents consumer dissatisfaction with legal services.</td>
</tr>
<tr>
<td></td>
<td>• Display and evidence professional competence.</td>
<td>• Practices of addressing individual consumer complaints.</td>
<td>• Improved lawyer-consumer relationships.</td>
</tr>
<tr>
<td></td>
<td>• Communication with consumers in plain English to avoid confusion and misunderstandings.</td>
<td>• Making remedies available for aggrieved consumers.</td>
<td>• Maintain independence with facilitating legal services.</td>
</tr>
<tr>
<td></td>
<td>• Clear and detailed contracts for consumers.</td>
<td>• Promoting synergetic inclusive relationships with consumers by respecting consumer input.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Addressing matters in ways that avoid delays.</td>
<td>• Engaging in extended Continuing Legal Education (CLE) to stay abreast of current legal issues and innovations.</td>
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<td></td>
<td>• Practices of addressing individual consumer complaints.</td>
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<td>• Making remedies available for aggrieved consumers.</td>
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<td>• Engaging in extended Continuing Legal Education (CLE) to stay abreast of current legal issues and innovations.</td>
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<td>Excellence Through Autonomous Benevolence</td>
<td>“Leadership is not an affair of the head. Leadership is an affair of the heart” (Kouzes &amp; Posner, 2007, p. 351)</td>
<td>Accountable Pro Bono Service Low cost legal services</td>
<td>More consumers as more people would be willing and able to engage in retained legal services.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Less fee dispute complaints against lawyers.</td>
</tr>
<tr>
<td>Excellence Through Professionalism / Responsiveness and Compassion</td>
<td>“People must believe that the leader is competent to guide them where they’re headed” (Kouzes &amp; Posner, p. 35).</td>
<td>• Practice of timely responses to consumers.</td>
<td>• Gain the confidence of the public.</td>
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<td>• Practice of keeping consumers duly informed of matters.</td>
<td>• Improvement of the image of lawyers.</td>
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<td>• Institute a complaint handling mechanism for aggrieved consumers.</td>
<td>• Fulfilling the expected standards of the legal profession.</td>
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<td>• Practices of treating consumers as humans not “cases”.</td>
<td>• Increased chances for consumer satisfaction.</td>
</tr>
<tr>
<td>Excellence Through Transparency</td>
<td>“Transparent Relationships Are Stronger (Viewahill, 2013, para. 3).”</td>
<td>Make consumer reviews available to the public.</td>
<td>Gain the public’s confidence and trust.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Practice of transparency with legal fee billing.</td>
<td>Gain the trust of colleagues in the legal profession.</td>
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<td>• Submission to the release of information regarding grievances submitted to disciplinary agencies.</td>
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<td>• Submission to the release of information regarding and malpractice insurance claims.</td>
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</tbody>
</table>
Table 5.3

Benefits to Consumers Using LSS

<table>
<thead>
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<th>Pillars</th>
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<td>Excellence Through Virtuous Commission</td>
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<td>• Honesty with all aspects of legal services.</td>
<td>• Confidence with engaging in retained legal services.</td>
</tr>
<tr>
<td></td>
<td>• Leadership is identified primarily through: honesty, a forward-looking stance, inspiring behavior, and competence (Kouzes &amp; Posner, 2007, p. 29).</td>
<td>• Forward-Looking through intentional practices that safeguard the welfare of the legal profession.</td>
<td>• Improved outlook on the legal profession.</td>
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<td></td>
<td>• Fostering collaboration with consumers creates a climate of trust. “Without trust you cannot lead” (Kouzes &amp; Posner, 2007, p. 224).</td>
<td>• Display and evidence professional competence.</td>
<td>• Alleviation of hardships through the avoidance of delays.</td>
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<td>• “The most effective leadership situations are those in which each member of the team trusts the others” (Kouzes &amp; Posner, 2007, p. 225).</td>
<td>• Communication with consumers in plain English to avoid confusion and misunderstandings.</td>
<td>• Avoidance of legal malpractice litigation.</td>
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<td>• Accounting for the legal profession.</td>
<td>• Clear and detailed contracts for consumers.</td>
<td>• Avoidance of the complaint process.</td>
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<td>• Practices of addressing individual consumer complaints.</td>
<td>• Addressing matters in ways that avoid delays.</td>
<td>• Alleviation of psychological effects throughout the legal process.</td>
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<td>• Making remedies available for aggrieved consumers.</td>
<td>• Practices of addressing individual consumer complaints.</td>
<td>• Alleviation of feelings of alienation from the legal system.</td>
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<td>• Promoting synergetic inclusive relationships with consumers by respecting consumer input.</td>
<td>• Making remedies available for aggrieved consumers.</td>
<td>• Increased potential for satisfaction with legal services.</td>
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<td></td>
<td>• Engaging in extended Continuing Legal Education (CLE) to stay abreast of current legal issues and innovations.</td>
<td>• Promoting synergetic inclusive relationships with consumers by respecting consumer input.</td>
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<tr>
<td>Excellence Through Autonomous Benevolence</td>
<td>• “Leadership is not an affair of the head. Leadership is an affair of the heart” (Kouzes &amp; Posner, 2007, p. 351)</td>
<td>• Low cost legal services</td>
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<td>Excellence Through Professionalism / Responsiveness and Compassion</td>
<td>• “People must believe that the leader is competent to guide them where they’re headed” (Kouzes &amp; Posner, p. 35).</td>
<td>• Practice of timely responses to consumers.</td>
<td>• Ability to trust the legal services.</td>
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<td>• Practice of keeping consumers duly informed of matters.</td>
<td>• Practice of keeping consumers duly informed of matters.</td>
<td>• Alleviation of psychological effects throughout the legal process.</td>
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<td></td>
<td>• Institute a complaint handling mechanism for aggrieved consumers.</td>
<td>• Institute a complaint handling mechanism for aggrieved consumers.</td>
<td>• Confirmation of expectations of legal services.</td>
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<td>• Practices of treating consumers as humans not “cases”.</td>
<td>• Practices of treating consumers as humans not “cases”.</td>
<td>• Increased potential for satisfaction.</td>
</tr>
<tr>
<td>Excellence Through Transparency</td>
<td>• Transparent Relationships Are Stronger (Viewabill, 2013, para. 3).</td>
<td>• Make consumer reviews available to the public.</td>
<td>• Confidence with entering a lawyer-consumer relationship.</td>
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<td>• Practice of transparency with legal fee billing.</td>
<td>• Consumer protection.</td>
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<td>• Submission to the release of information regarding grievances submitted to disciplinary agencies.</td>
<td>• Ability to make informed decisions before entering, and during, legal services.</td>
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<td>• Submission to the release of information regarding and malpractice insurance claims.</td>
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Summary

The study addressed one core research question and four sub-questions. A summary of the results as they related to the questions is provided here:

What were the participants’ perceptions of the conditions, reasons, and solutions related to consumer dissatisfaction with legal services in Manhattan, NY? Statements and communications throughout the analysis showed the nature of the incongruence between the participants’ “ideals” and lawyers’ “real” practices in legal services and highlighted the notion that the participants felt alienated from their right to a fair legal process. Furthermore, the dissatisfied participants indicated that consumers of legal services do not feel protected against bad business practices of lawyers. Dissatisfied consumers distrust lawyers and blame the lawyers’ behaviors on the structure and culture of the legal profession. The study further revealed the participants’ transitions from cautious optimism when entering legal services to overall mistrust of the legal profession. It should be kept in mind, however, that these conclusions are not a reflection of what a random sample of consumers of legal services believed. One criteria for participation in this study was that the person had received legal services he or she considered unsatisfactory.

What was the current perception of the legal profession as a whole among participants? Participants in the study described initially having limited knowledge and opinions about the legal profession and most had no prior experience. Participants’ sentiments of distrust did, however, match the literature that shows the public in general is distrusting of the legal profession (Clifford, 2002; Gallup, 2012’ & Harris Interactive, 2006).
Participants in the study felt forced into legal services through fear and overwhelming conditions. In one case that was related to a car accident, and in the other, a difficult roommate. In both circumstances, the participants felt they had no choice but to hire a lawyer. Another participant was forced to seek legal services due to an arrest for a suspended license. For the fourth, a threat of eviction due to an illegal sublet of an apartment was the cause. Participants reported they were initially worried about hiring a lawyer and were reserved and distrusting when considering hiring a lawyer. However, once they met with the lawyers they became cautiously optimistic and communicated the hope they would be taken care of by their lawyers. Participants then believed, cautiously, that they would be protected and safe with the services of a lawyer.

The perceptions of the participants changed, however, due to their experience with attorneys. In retrospect participants described how they now viewed the legal profession as being an exploitive and predatory business. One participant said she felt like “a prized cow” while being recruited as a client by the lawyer, and then once she was engaged in legal services, she “felt like part of the herd.”

How did the participants describe the conditions in which the unsatisfactory legal services were provided? All of the participants in the study described their experiences as being fraught with conditions of fear and anxiety. The overall conditions the participants described were consistent with the concepts of alienation, and psychological, emotional, and financial abuse. Feelings of being trapped in abusive dependent relationships suffused the experience.

Participants recounted fear of financial losses. They were fearful that the money paid to the lawyer would be lost with no proper services provided and that they would be
on their own to navigate the legal process with no legal assistance or resources. Participants also described being fearful of losing money and possessions, which were at stake in the litigation due to their perception of the lawyers’ disconcern and deception. They described being vulnerable to exploitation and victimization due to the realization that there was nowhere to turn for help with the improper practices of the lawyers. Participants described their feelings of being disoriented, abandoned, and betrayed because of the lawyers’ insensitivity and knowledge and ineptness, as well as their insufficient, untimely or non-responses to their concerns.

Participants described the difficulty of perceiving that having a lawyer exacerbate their hardships. They felt regretful about entering into legal services, realized that having a lawyer caused them to suffer additional hardships. Participants described feeling helpless and traumatized by the additional hardships and disconfirmed expectations with legal services.

What did the participants perceive as central to their dissatisfaction with legal services they received? Participants in this study communicated perceptions of being financially exploited, and abandoned by the lawyers, due to the lawyers’ passing of their cases to other lawyers and lower staff members. Participants stated they came to believe lawyers saw them, not as consumers of legal services, but as people who could be exploited for the financial gain of the attorney or someone else. Participants also communicated perceptions that they were abandoned by the lawyers once the lawyer changed the business dynamics and arrangement and would have other people respond to them. This change prompted participants to believe they did not have any value for the lawyer, and saw themselves as “low people on the totem pole.”
Time delays with litigation, improper information about the legal matters, perceptions that the lawyers often had an unprofessional demeanor, the failure of the lawyer to provide timely responses, the inability to access a feasible complaint venue, and the realization that there is nowhere to turn for help, were central factors in the participants’ experiences.

What did participants perceive as the best ways to improve legal services and reduce the number of dissatisfied consumers? Much of what participants said in response to this question focused on how lawyers “ought” to behave and practice law. Participants expressed the need for the legal professional and representatives to be knowledgeable and to show evidence that they are knowledgeable throughout legal services. Participants believed that attention and focus on their cases and effective communication would result in quick resolution. Participants communicated the need for the lawyers to be sensitive to the concerns of the consumer and to be cognizant of the hardships being imposed on the consumer by the lawyers’ actions. Participants additionally communicated the need for protection of consumers against poor business practices in the legal profession, which run counter to the stated standards and practices as well as consumer expectations. They expressed the need for information about lawyers’ reputations with other consumers to make informed decisions when choosing a lawyer. Oversight for lawyers so that they were held accountable for their actions was a common recommendation of the participants.

**A summary of the links between the results and the recommendations.**

Results of this study reveal that consumers have a dire need for protection when engaged with legal services. Consumers believe that the legal profession is not responsive to their
grievances and that it does not provide remedies or protection to them when faced with dissatisfaction or loss through improper legal services. Perceptions of proper and improper legal services and compliance with the legal profession’s standards, have incongruent understandings between consumers and legal professionals. The legal profession’s language, rituals, and culture, together with the consumers’ perception of improper practices of legal professionals, furthered by neglect of the legal profession with addressing consumer complaints, isolates consumers from reliable understanding of how to navigate the lawyer-consumer relationship and the legal process, therefore denying them their American right to due process and fairness in the judicial system. As such, a legal services ombudsman is being recommended. A legal service ombudsman will be able to provide immediate external support needed for consumers faced with difficulty with legal services.

Results showed that consumers need transparency about the lawyers’ records of consumer satisfaction and dissatisfaction with other consumers. Consumers assert that being informed about the lawyers’ reputation with other consumers will provide them with the proper information and independence with choosing a lawyer, and provide them with the ability to prevent a dissatisfaction experience from the onset. As such it is recommended that a policy which informs consumers of lawyer complaints as well as satisfactory practices is required.

Results further revealed that consumers have a need for timely resolution of legal matters to avoid the accompanying financial and psychological hardships; readily available evidence of lawyer competence and compassion; and the need for honesty and information about their legal matter. Consumers believe that the delays with their matters
are caused by the lawyers not evidencing that they are knowledgeable and skilled in the area of their matters, and also through dishonest and discompassionate practices. Consumers face psychological setbacks and difficulties due to what they perceive as deceptive and dishonesty by their lawyers, and they experience the sufferings characterized by domestic abuse. In response to these results, a seal of excellence program is being recommended. The seal will provide consumers with the confidence that the lawyers who hold the seal utilize practices that promote healthy lawyer-consumer relationships, practices that expedite legal matters, transparent fee structures that work in the interest of the individual consumer and lawyer, practices that keep consumers properly informed about their matters, and transparency with record of satisfaction and/or dissatisfaction with other consumers. As such, the seal will further promote an environment of trust within the legal profession.

**Conclusion**

The findings of this study complement and amplify those found in the literature. The participants described their experiences in detail during interviews and any analysis of the interview transcripts found a number of sub-ordinate themes across the interviews. Those were synthesized into a smaller number of super-ordinate themes that represented a higher level integration of the themes in the data. Participants were asked about potential ways of improving the delivery of legal services to consumers. Those suggestions as well as consideration of how other professions have dealt with the need to improve consumer-service provider relationships were used to develop a series of implications and recommendations which were explored in this chapter.
References


Timesledger. (2013, August, 19). Lawyer charged with stealing more than $50K from


Appendix A

Interview Schedule Questions

1. How did you locate an attorney?

2. What was the reason that you hired an attorney?

3. What were your expectations before you met the attorney that you retained?

4. What were your expectations after you met the attorney that you retained?

5. What is your perception of the legal services that you’ve received?

6. What were the difficulties that you experienced as a consumer of legal services in Manhattan, New York with attorneys?

7. What do you believe caused these difficulties?

8. What strategies did you as a consumer use to overcome these difficulties? (Complaints, Coping Mechanisms....)

9. What were the consequences of these strategies?

10. What mechanisms do you believe should be instituted to ameliorate the difficulties that consumers of legal services in Manhattan, New York County experience? (What could have prevented your experience? )
Appendix B

Informed Consent

St. John Fisher College
Institutional Review Board
Informed Consent Form

Thank you for agreeing to participate in this research. Please read the information provided below about the study and your participation in the study. If you agree to participate, please sign at the bottom of the form. Please keep in mind, however, that you may withdraw your agreement to participate at any time.

Title of study: An Analysis of the Perceptions of Dissatisfied Consumers of Legal Services in Manhattan, NY.

Name of researcher: Caprice A. Alves

Faculty Supervisor: Dr. Jerry Willis

Phone for further information: 914-654-5000

Purpose of study: The purpose of this study is to improve our understanding of the types of difficulties consumers have experienced with Manhattan, NY legal services, and the subsequent difficulties consumers experienced with trying to deal with those difficulties. If this study meets its goals, it should be helpful to practicing attorneys, legal agencies charged with creating the rules for ethical conduct and enforcing those rules, legislative groups considering new laws about the practice of law, and consumers.

Approval of study: This study has been reviewed and approved by the St. John Fisher College Institutional Review Board (IRB).

Where interviews will be held: 144 West 131st Street Manhattan, NY 10027.

Time required to participate: Approximately one (1) hour during one (1) day

Risks and benefits: Your participation in the study involves answering a set of questions about your experiences as a consumer of legal services. Except for the possibility of some discomfort when discussing a topic that is upsetting, there are minimal risks involved.
In terms of benefits, the study should be helpful to consumers, to the agencies charged with creating and enforcing the rules for ethical conduct among attorneys, legislative groups considering new laws about the practice of law, and practicing attorneys.

Method for protecting confidentiality/privacy: Your privacy is important and no identifying information will be made public. In addition, your interview will not be available to anyone except the researcher and any information reported in the research report will not include information that could be used to identify you as the source of that information.

Your rights:
As a research participant, you have the right to:
1. Have the purpose of the study, and the expected risks and benefits fully explained to you before you choose to participate.
2. Withdraw from participation at any time without penalty.
3. Refuse to answer a particular question without penalty.
4. Be informed of appropriate alternative procedures or courses of treatment, if any, that might be advantageous should you need support and help because you discussed this difficult event in your life.
5. Be informed of the results of the study.
I have read the above, received a copy of this form, and I agree to participate in the above-named study.

________________________________________________________________________
Print name (Participant) Signature Date
________________________________________________________________________
Print name (Investigator) Signature Date

If you have any further questions regarding this study or need assistance because of participation, please contact the researcher listed above for appropriate referrals.
Appendix C

Advertisement for Research Participants

new york manhattan gigs writing gigs
reply address will appear here Posted: 2013-07-21, 8:27PM EDT

RESEARCH STUDY $50 1 HOUR in 1 DAY (Harlem / Morningside)

Greetings:

My name is Caprice, and I am a doctoral candidate at a NYS college. I am conducting a study on the experience of dissatisfied consumers of legal services in Manhattan, NY, and I am currently looking for participants who have been dissatisfied consumers of retained (paid) legal services of a Manhattan, NY attorney within the past ten years (2002-present).

All participants will remain completely anonymous, and will receive a $50 gift card as a small token of appreciation for their time and consideration. The study consists of an interview that will last for just 45 mins to one hour, just for one day, and will take place July 31 at a small church on 131st Street (for safety and privacy). Accommodations can also be made for a time and location of a participant's choice.

For any questions or to express interest, please e-mail or call Caprice at 917 733-3582

Note: Must have proof of retained Manhattan, NY legal service within the past ten years for eligibility.

Thank you,

Caprice

• it's NOT ok to contact this poster with services or other commercial interests
• Compensation: $50 1 HOUR FOR 1 DAY

Posting ID: 3950890903 Posted: 2013-07-21, 8:27PM EDT Updated: 2013-08-21, 3:32AM EDT email to a friend