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BUT WHAT IS THEIR STORY?[†]

*Clark D. Cunningham**

I'm going to use much of my time to show you excerpts from a movie. So I invite my fellow panelists to take a front row seat so they can enjoy the movie with everybody else.

Much of the material that I am going to talk about today is on the website of the Effective Lawyer-Client Communication Project.¹ At the end of the materials on that website is a list of the different scenes from the movie *Amistad* that I am going to show you today, with time codes to help you locate the scenes if you view the movie yourself.

How many have seen the movie *Amistad*? The director was Stephen Spielberg. The movie received one academy award nomination: best supporting actor for Anthony Hopkins who played the role of John Quincy Adams. Very briefly, here's the background of this 1997 movie. It's the story of Sengbe, a West African who was captured by Spanish slave traders in 1839 and brought to Cuba where he was sold into a life of plantation labor. On the way to this plantation in Cuba, however, Cinque, as the Spanish called him, broke free of his shackles and with 52 other Africans took over the slave ship, which was named *Amistad*. They spared only two Spaniards whom they ordered to sail for Africa, but the Spaniards instead steered along the American coastline until a U.S. Navy vessel intercepted them off Long Island Sound about two months later.

Cinque and the others were imprisoned at New Haven, Connecticut after the ship was brought in. Abolitionists took up their cause and began a long legal battle to win their freedom. They were claimed as property by those who had purchased them and charged with murder by the government of Spain. Cinque insisted he was a free person who had fought to reclaim his rights. His

[†] This transcribed presentation for this Symposium was based on research contained in an unpublished manuscript by Clark D. Cunningham, *What Is Their Story?*, available at <http://law.gsu.edu/Communication/AmistadEssay.htm> (last visited 6/11/03).

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¹ <http://law.gsu.edu/Communication/> [hereinafter ELCC Website].

case finally came to the United States Supreme Court in 1841, where former President John Quincy Adams represented him successfully, overcoming pressures from both the White House and southern politicians to win a victory that marked a turning point in the struggle to end slavery. Vindicated by this decision, Cinque and his companions sailed home to Africa.

In the first scene listed on the website (but not shown today), one character is a white gentleman named Lewis Tappan, an actual historical figure who was a leader of the abolitionist movement. His companion is played by Morgan Freeman and is a character created by the movie makers called Theodore Jodson. A compilation of various historical figures, he's an ex-slave who is active in the abolitionist movement and was actually the one who brought Tappan's attention to the Amistad case. The third character is a rather scruffy looking young lawyer, Roger S. Baldwin, the person that they somewhat reluctantly retained to help them in their efforts to free the Amistad prisoners.

Now by 1839, the United States, Spain, and England had all agreed by treaty to end the African slave trade, which is why it is critical for the Spaniards who survived and were trying to reclaim Cinque and his companions to claim that their cargo were people who were born into slavery in Cuba—because if they were born into slavery in the New World, the Spaniards had not violated the treaty. But if they had, as it turned out to be the case, been captured in West Africa and brought across the ocean, the Spaniards had violated the treaties.

Now, I'm going to jump into a scene where Baldwin accompanied by Tappan and Jodson go to the Naval prison facility where Cinque and his companions are being held. Baldwin suspects that they were not in fact born in Cuba but were captured illegally in West Africa. And so he meets with his clients for the first time.

Begin the show. [Subtitled dialogue mixed with English. Baldwin is accompanied by a professor of linguistics who is as clueless as Baldwin about what Cinque is saying, but the linguist pretends to be translating. Here are some of the subtitled responses by Cinque and his companions: "What do you want? . . . Is he here to help us? I don't know. . . . What does he want? . . . He's an idiot. He just likes to hear himself speak."]

When I first saw this movie, I was probably the only person in the theater who thought, "This is a movie about lawyer-client relationships!" But you can obviously see why as someone who's interested in lawyer-client

communication I was captured by this and the following scenes. The fact that they speak different languages to me is a metaphor for what actually happens between lawyers and clients all the time. Even though they appear to be speaking the same language, there's often a real lack of understanding and it's not just because lawyers sometimes tend to use legal terms that are not familiar to the lay person.

You'll notice that Baldwin does a couple of things in this scene, which are very typical of lawyers, that have nothing to do with the fact that he doesn't speak their language and they don't speak his. He has, as very many lawyers do, already developed a theory of the case before he meets his clients for the first time. He's figured out that the way to win this case is to prove that they came from West Africa. (It turns out by the way to be a good theory.) But he hasn't talked to them before he develops this theory. His purpose for meeting with them is to gather facts from them to support his theory of the case which he has already developed. I think many of you would recognize this is a very common thing that lawyers do: They look at the client even in the very first meeting as sort of a source of raw material, facts needed to prove a case.

Baldwin never explains, through his ineffective translator, why he's asking these questions. He just asks the questions. He never gives them an opportunity to ask him any questions. In this way, I think, this little interaction is a nice metaphor or fable for what I think happens in lawyer-client communications all the time. It's also rather nice that he thinks he's communicating with them and he's not.

This website that I mentioned before, among other things, contains information about a pilot project that the Effective Lawyer Client Communication Project is working on now. This pilot project is an effort to try to develop a standard methodology for getting better information about how clients experience the initial interview than I think we currently have. Lawyers, by and large, don't systematically measure client satisfaction or client experience, even at the end of a representation. And they certainly don't do so at the beginning of a representation.

One part of several pieces of methodology in this project is to have this simple one page form² filled out by clients immediately after the initial meeting with the lawyer before they leave the office, when the experience is fresh in their mind and when you can obtain almost a hundred percent response rate.

² A copy of the client questionnaire is contained *infra* Appendix A.

This is not just a client satisfaction form. The last question, "If I come back to this office with a different need for legal help I would want the same lawyer to help me," is intended to be the closest thing to a general satisfaction measure. But we're looking at other things as well, for example:

- 2) the lawyer said things I didn't understand.
- 4) The lawyer did not understand what was most important to me.
- 8) The lawyer asked confusing questions.
- 11) I did not say everything I wanted to say.

If the client agrees with any of these items, the client is right. One of the things that happens with lawyers is that if clients are dissatisfied they tend to interpret that dissatisfaction as caused by unrealistic expectations, especially if they are dissatisfied at the end of the matter. But if a client tells you "the lawyer said things I didn't understand," then the lawyer *did* say things the client didn't understand. There's just no question about it. (By the way, you'll notice that there is a flip side to the form, where the client has a free response area, so that if they said "the lawyer said things I didn't understand" they can indicate *what* they didn't understand here.)

At the same time that the client is filling out this questionnaire, the attorney is filling out this form, which is a kind of mirror image of the client questionnaire.³ For example, if the lawyer "strongly agrees" with item eight, then the lawyer is saying, "Well, in my opinion *the client* thought I asked confusing questions." So one of the things these two forms do when read together is to give a pretty good measure of how accurate the lawyer was in his or her estimation of how the client experienced the initial interview.

Our hope with the project at this point is to develop a kind of standard instrument that could be used in many different settings, which would give us a way of really measuring how effective communication is at the initial interview. Then once we have a way of measuring, we can actually experiment with different ways of improving the interview. We also believe that simply by using these forms we focus attention on the initial communication between lawyer and client and how the client experiences it. The very process of having the client and the lawyer fill out the forms, and then looking at how the client experienced the interview will, we hope, create greater interest and attention on the part of lawyers as to this part of legal practice.

³ A copy of the lawyer's interview assessment form is contained *infra* Appendix B.

Now I am going to conclude by jumping back to the movie. Tappan and Morgan Freeman's character didn't originally want Roger S. Baldwin, they wanted John Quincy Adams as their lawyer. Adams had by this point had served one term in the White House and then had done something no one else had ever done: after a term in the White House he went back home to Massachusetts, ran for the House of Representatives, was elected and had a very distinguished term of service. At this point in history, he is seventy-two years old. He declined to work on the case at the trial court level. After they prevailed at the trial court level and the case was appealed to the U.S. Supreme Court, Adams agreed to represent Cinque before the Supreme Court. But this scene takes place when the case is still at the trial court level. Jodson (the Morgan Freeman character) goes to John Quincy Adams for advice.

[Showing scene. The key dialogue is as follows:

Adams: In the courtroom, whoever tells the best story, wins. What is their story, by the way?

Jodson: Sir?

Adams: What is their story?

Jodson: They're from West Africa.

Adams: No, what is their *story*?

(Jodson remains silent, looking puzzled.)

Adams: Mr. Jodson, you're from where, originally?

Jodson: Georgia.

Adams: Is that who you are, a Georgian? Is that your story? *No*, you're an ex-slave who's devoted his life to the abolition of slavery and overcome great obstacles and hardships along the way, I should imagine. That's your story, isn't it?

(Jodson nods, slowly, with a slight smile.)

Adams: You have proven you know *what* they are. They're Africans. Congratulations. What you don't know—and as far as I can tell haven't bothered in the least to discover—is *who* they are.]⁴

The title of my talk, *But What Is Their Story?*, comes from this scene. I want to leave this thought with you. At the beginning of the scene, John Quincy Adams talks about things in a fairly traditional way: about how the

⁴ AMISTAD (Dreamworks SKG 1997).

person who tells the best story wins in the courtroom. This line resonates with the tendency to think about learning your client's story for strategic reasons, because the most effective thing is to tell the story well. But something interesting happens, I think, by the end of the scene. When he asks Jodson, "What is your story?," he really is asking, "Who are you?" Not *what* are you, but *who* are you? And then he says to Jodson, you know what the Amistad prisoners are but you don't know who they are.

I'd like to suggest as, what I hope is a recurring theme in this conference, that what clients want is more than just an outcome of a case, they want more than just winning certain things. They want to be people. And, if they want their stories heard by their lawyers and told by their lawyers, it's not just for achieving certain material outcomes. It's because by becoming involved in the legal system many people choose to maintain or develop an identity and a goal in life. And that in the way in which we communicate with clients, if we do not learn their stories, in many ways we do not do *at all* what they want us to do.

9. Was someone I could trust. -4 -3 -2 -1 0 +1 +2 +3 +4
10. Understood why I needed -4 -3 -2 -1 0 +1 +2 +3 +4
 legal help.

For questions 11-13, please indicate how much you disagree or agree with each statement.

11. I did not say everything -4 -3 -2 -1 0 +1 +2 +3 +4
 I wanted to say.
12. I know what I need to do next. -4 -3 -2 -1 0 +1 +2 +3 +4
13. If I came back to this office with -4 -3 -2 -1 0 +1 +2 +3 +4
 a different need for legal help, I
 would want the same lawyer to
 help me

____ Show my answers to the lawyer who interviewed me.

We ask about the following information to help us improve the client survey. Please skip any question if you do not want to provide the information.

Age__ Last school degree: __ Jr. High __ High School __ 2 yr. College__ 4 yr college
__ Graduate School

__ White __ Black __ American Indian __ Hispanic __ Asian Other: ____

__ Male __ Female Your first language: __ English __ Spanish Other: ____

NOW PLEASE TURN OVER THIS FORM FOR ADDITIONAL QUESTIONS.

APPENDIX B

ASSESSMENT OF CLIENT INTERVIEW (CI-Asmt8) Site Code ___ Case code ___

Lawyer code _____

(c) Effective Lawyer-Client Communication Project Website: <http://law.gsu.edu/Communication>

For questions 1-10, please respond by imagining how the client would respond if asked the question.

We realize this is a difficult task and may involve some guessing on your part. For each item, you may circle any number corresponding to the scale below.

-4 -3 -2 -1 0 +1 +2 +3 +4

The client..

- | | | | | | | | | | |
|---|----|----|----|----|---|----|----|----|----|
| 1. Felt comfortable. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 2. Did not understand some things I said. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 3. Felt treated with respect. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 4. Felt as if I did not understand what was most important to him or her. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 5. Felt like I listened well. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 6. Felt like I did not explain what I would do next for him or her. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 7. Felt like I was interested in him or her as a person. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 8. Thought I asked confusing questions. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 9. Trusted me. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 10. Thought I understood why he or she needed legal help. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

For questions 11-17, express your own opinion, indicating how much you disagree or agree with each statement.

The client....

- | | | | | | | | | | |
|---|----|----|----|----|---|----|----|----|----|
| 11. Did not say everything that he or she wanted to say. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 12. Knows what he or she needs to do next. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 13. Would want me to help him/her, if the client came back to this clinic with a different need for legal help. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 14. Seemed confused. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 15. Told me the whole story. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 16. Had unrealistic goals. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 17. Did not tell me the truth. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

We ask about the following information to help us improve the survey. Please skip any question if you do not want to provide the information.

Age ____ White ____ Black ____ American Indian ____ Hispanic ____ Asian Other: ____
 ____ Male ____ Female Your first language: ____ English ____ Spanish Other: ____