A Case Study on the Use of Standardised Clients in Continuing Professional Legal Education – a means to teach, assess and improve client communication

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Declaration

I certify that this thesis which I now submit for examination for the award of MA (Higher Education, Professional Legal Education and Skills) is entirely my own work and has not been taken from the work of others, save as to the extent that such work is cited and acknowledged within the text of my work.

This thesis was prepared according to the regulations of the Dublin Institute of Technology and has not been submitted in whole or in part for another award in any other Institute.

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Acknowledgements

Abstract

Research indicates that up to 50% of the public have used a solicitor whom they did not like and the reasons most often cited were a lack of respect, a lack of interest in the client and poor communication (Cunningham, 2006). However, until comparatively recently little attempt has been made to critically evaluate communication skills within the legal profession. Furthermore, it would appear that experience alone is not a sufficient means of developing client interviewing and counselling skills, with studies indicating that there is little or no correlation between the number of years' qualified and solicitors' communications skills (Sherr, 2000).

This research project was to test the reliability and validity of using standardised clients as a means of teaching and assessing solicitor-client communication skills in the context of continuing professional legal education courses for solicitors. The research was conducted by means of a case study whereby the communication skills of students attending the Law Society of Ireland's Employment Law Advocacy & Skills Certificate were assessed by two separate means, namely by law tutor assessment and by standardised client assessment. The results of both forms of assessment were then analysed to test for correlations between the standardised client scores and the law tutor scores. The research was conducted because the author was interested in contributing to the academic debate on how communication skills can best be taught and assessed in an affordable and reliable manner. The results of the study were inconclusive, indicating at best a moderate level of statistical significance between the law tutor and standardised client scores and that more research would be required to justify the use of the methodology in more high-stakes examinations. Nevertheless a number significant findings did emerge which will contribute to theory and practice. The research highlighted the importance of adequate training of standardised clients in order to achieve sufficient levels of inter-rater reliability and also that the training of such standardised clients must be reasonably approximate to the formal assessment. Furthermore, given that the case study was conducted with solicitors already in practice, whereas comparable studies were conducted prior to qualification, the study highlights that solicitors responded positively to the experience and are very open to exploring the development of such skills at postgraduate level.

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Chapter 1 - Introduction

1.1 Context and rationale for research

The most recent comprehensive review of the system of training solicitors in this jurisdiction, namely the Law Society of Ireland's Report of the Training Review Group, identified as a key recommendation that an increased amount of time be spent on "developing key legal skills" (2007, p. 13). One such skill is lawyer communication and interviewing skills. Barton, Cunningham, Jones, and Maharg (2006) highlight that in education it is a truism that "we value what we measure and we measure what we value" (p. 2). The question therefore arises: do we as legal educators adequately measure and, by extension value, lawyer communication and interviewing skills? This research is generally concerned with the teaching of such skills and more specifically with the use of standardised clients (see below) as a means of achieving reliability and validity when assessing solicitor-client communication skills.

Research in the UK has indicated that up to 50% of the public have used a solicitor whom they did not like and the reasons most often cited were a lack of respect, a lack of interest in the client and poor communication (Cunningham, 2006). The same author identifies that social science research indicates that client satisfaction with lawyer performance is more determined by the clients' *experience* of the process, as opposed to the final outcome. However, Curcio (2003) argues that those most likely to qualify as lawyers are those who perform best in written examinations, with little emphasis placed on related skills. While there is an increased emphasis on teaching lawyer skills, that focus is primarily on advocacy training (Cochran, DiPippa, & Peters, 2006). But the reality of practice indicates that lawyers are much more likely to be engaged in mediation and communication type roles on behalf of clients, as opposed to advocacy (Macaulay, 1979). Furthermore, clients judge lawyers primarily on their interpersonal and communication skills, as opposed to their advocacy skills or even the eventual outcome obtained (Feldman & Wilson, 1981). However, law students are likely to qualify with little or no exposure to one of the most important and frequently used lawyer skills, namely client interviewing and counselling

(Cochran et al., 2006). Notwithstanding its importance, until comparatively recently little attempt has been made to critically evaluate communication skills within the legal profession (Cunningham, 1999). The lack of research may be because lawyer-client privilege does not readily permit the type of outside observation required to conduct such research (Danet, Hoffman, & Kermish, 1980). Other reasons for the lack of research may be because it is difficult to devise reliable assessment criteria and expensive to implement systems of assessment when dealing with large numbers of trainee solicitors. Existing methods of assessing such skills often involve individual videotaped role-play sessions whereby actors pose as clients and are interviewed by students. Each recording is subsequently reviewed/assessed by a law teacher, a cumbersome process that is expensive when dealing with large numbers of students. The validity of the assessment process may also be questioned because of variation in how each actor presents the particular legal scenario to the students. In addition, when dealing with large numbers of students it is necessary to engage multiple law tutors for assessment purposes, again leading to the risk of variation in the assessment criteria applied by each individual law teacher.

The similarities in the communication skills required by doctors and lawyers are striking (Grosberg, 2001). For example, at the initial client/patient interview, both the lawyer and the doctor require an ability to obtain enough information to make a diagnosis in situations where the client/patient may be distressed. Both professionals must then apply their expertise to the facts provided and subsequently communicate their findings in clear and understandable language. Therefore, it is interesting to note that the medical profession has led the way in valuing professional communication skills and has made significant advances in assessing effective doctor-patient communications, leading to a radical overhaul in how such skills are taught in medical training. As such, the legal profession may have much to learn from the medical profession in respect of valuing and assessing client communication skills. The use of 'standardised patients' within the medical profession as a means of teaching and assessing medical trainees' interviewing and communication skills has replaced the traditional oral-examination previously used. Standardised patients are defined as "individuals who are trained to perform a previously-scripted role in an initial clinical examination – always responding in the same manner to the same questions, with the same physical complaints and body language throughout the interview" (Barton et al., 2006, p.3). In addition, standardised patients are trained to complete a written

evaluation of the students' performance following the simulated clinical examination. The traditional oral examination in medical training meant that trainee doctors examined patients under doctor observation following which the observing doctor queried the student on their examination. However, the process was perceived to be flawed in two respects, namely, because the variability in patient case and variability in the doctor assessing the interview. It has been found that with proper training and carefully designed assessment procedures, standardised patients can reliably assess important aspects of medical students' clinical skills.

Barton et al. (2006) conducted a project to test an analogous standardised client method of assessing student communication and interviewing skills in the context of professional legal education. Standardised clients are trained to "assume the same profile, to know the same facts, and to respond to students' questions and techniques so that the experience of each student is as close as possible to that of all other students" (Grosberg, 2004, p.10). In addition, as with standardised patients in the medical context, standardised clients are trained to complete a written assessment of the student following the simulated client interview. Barton et al.'s project tested whether or not the use of standardised clients could be as reliable and as cost effective a means of assessing student communication and interviewing skills as the method previously used to test such skills on the system of preparation for practice course on the Diploma in Legal Practice offered by the Glasgow Graduate School of Law. The previous method of assessment involved an initial student client interview, videotaped and subsequently assessed by a law teacher. The authors concluded that the use of standardised clients was at least as reliable as and more cost effective than the then system of assessment of such skills (i.e. law teacher assessment).

1.2 Research aims & objectives

The aim of this research is to replicate and extend in respect of the Irish case the standardised client methodology implemented by Barton et al. (2006) and to test the hypothesis that the use of standardised clients in continuing professional legal education in this jurisdiction is at least as valid and a more cost effective way of assessing lawyer interviewing and communication skills as the method currently used to assess such skills.

I refer in the opening paragraph to the observation that "we value what we measure and we measure what we value" (Barton et al., 2006, p. 2) and my subsequent query as to whether or not legal educators measure, and by extension value, lawyer communication and interviewing skills. In this jurisdiction, while an increasing emphasis is placed on the teaching of skills on the Professional Practice Course (Law Society of Ireland, 2007, p. 13), there is no formal assessment of students in respect of interviewing and advising clients. Rather, students are provided with an initial lecture followed by three simulated workshops where students take turns playing both the client and the interviewing lawyer. The final such interview session is recorded and each student is subsequently provided with formative feedback from tutors. Although the formative feedback is based on specific criteria (i.e. the students' appearance and manners, interview structured etc.) the feedback is not actually incorporated into the official marking. As such, if we are not measuring (i.e. including in official marking) the student performance, do we really value the skill? Therefore a key research objective is, by establishing that the use of standardised clients is a valid and a cost effective means of assessing student performance, to add to the debate on how such skills are assessed in this jurisdiction.

Chapter 2 - Literature Review

2.1 Introduction

The literature review aims to, firstly, establish the importance of teaching and assessing solicitor-client communications skills, secondly, to define the various methodological approaches available for client interviews and to assess which method of such training we should seek to replicate, thirdly, to trace the developments of the analogous standardised patient methodology within medical education and finally to analyse the application of that methodology in the context of legal education. However, to provide context to the specific debate regarding the teaching and assessing of client interviewing skills, at the outset the author describes the current themes arising in respect of professional legal education generally.

2.2 Current themes in professional legal education & regulation

Before considering in more depth specific issues with regards to the methodological approaches available for teaching legal skills, to provide context, I set out some brief comments with regards to issues currently impacting the debate on professional legal education in this jurisdiction. Maharg (2006) advises that "Professional legal education is permanently on the edge. It exists on a fault-line that is constantly shifting, between academia and the profession, between education and training, between university and external regulatory demand" (p. 3). Although undoubtedly there is a crisis of confidence within the profession regarding what the public expects of lawyers, it is worth noting at the outset that such concerns are nearly as old as the profession itself and that each generation of lawyers has had to address the issue. For example, Hogan (1986) highlights that the preamble to an Act in 1773, which was the first statute regulating the solicitors profession in this jurisdiction in a general way, states that the lack of a proper structure of education has resulted in solicitors "who are guilty of mean and improper practices to the dishonour of the profession" (p.16). Later in 1846, the Select Committee of the House of Commons on Legal Education concluded that the present state of legal education in Ireland (and England) "is extremely unsatisfactory and incomplete, and exhibits a striking contrast and inferiority to such education….at present in operation in more civilised states of

Europe and America" (as cited in Hogan, 1986, p. 108). Fast forward to the present day and the debate around professional legal education is no less fraught. Hamilton (2008) highlights that the public will seek to renegotiate the social contract that permits a profession to self-regulate towards a more standard market determined relationship of consumer/service provider when the following conditions occur, namely, (1) changes in market conditions; (2) failures of professionalism by the profession and (3) a lack of understanding by the public of the benefits of the social contract underpinning self regulation. Clearly, with an economy in turmoil, a number of high profile regulatory failures and a general distrust of lawyers, the exact conditions exist for reappraisal of regulation and professional legal education in this jurisdiction. Into this void has entered an interesting array of voices. For example, the 2006 *Competition Authority Report* on Professional Services: Solicitors & Barristers recommended that responsibility for the regulating legal education be taken from the Law Society and be given to an independent body. The EU/IMF Programme of Financial Support for Ireland provides that "Government will introduce legislative changes to remove restrictions to trade and competition in sheltered sectors including….the legal profession, establishing an independent regulator for the profession and implementing….the Competition Authority recommendations to reduce costs"(p. 14).

These pressures have ultimately culminated in the provisions of the Legal Services Regulation Bill, 2011 which has committed to a full-scale review of legal education by the to be formed Legal Services Regulatory Authority, the scope of which will encompass "the education and training (including on-going training) arrangements in the State for legal practitioners, including the manner in which such education and training is provided" (s.30). Therefore as legal educators, it has never been more important to identify our roles and objectives. As discussed, one such objective has been the teaching and assessing of the various lawyer skills. However, when we refer to lawyer skills, what precisely are we referring to and what methods ought we employ to teach such skills?

2.3 Identification of legal skills
The concept of legal skills is an illusive one and the identification of certain legal functions as definable skills is a recent occurrence, dating to the 1970s (Park, 1990).

Initially, as the concept of legal education broadened, the focus was primarily on the completion of 'legal tasks', usually taught from the perspective of continued professional education. However, from the 1970's onwards a greater emphasis was placed on how to help students transition from an academic study of law in an undergraduate setting to practice. It was recognised that the traditional apprenticeship was lacking and that more formal training to facilitate such a transition would be required. At the same time, law schools were experimenting with clinical education programmes and Irish law schools (along with those in other jurisdictions such as Australia, Scotland, Canada, Malaysia, Singapore and New Zealand) focused on a system of 'learning by doing' (Park, 1990). For example, learning by doing implied that in order to learn how to act as an advocate, students were required to 'do' advocacy in a simulated setting. Gold (1981), working with experienced practitioners, identified a seemingly exhaustive list of hundreds of sub-skills required by lawyers. He then synthesised these skills into the following subsets: *master skills*, including basic skills, such as an ability by the lawyer listen and read; *interpersonal skills* such as an ability to explain and question effectively; *legal decision makin*g, that is being able to design and implement a plan of action; through to *professional behaviou*r which focuses on delivery. However, the skill sets identified by Gold would appear to be so general as to apply to any profession, whereas Hogan (1983) and also Nash (1983) listed the relevant skills required by lawyers in more concrete terms such as an ability to conduct practical legal analysis and practical legal research, sufficient judgement to interpret which facts presented by the client are relevant, an ability to communicate effectively with clients and work management. Nash in particular, while recognising the need for knowledge of the law, emphasised the skills or 'know-how' required to *apply* the law. The emphasis on practical application of the law is highlighted by Bennett, Dunne, and Carré (1999) who describe the difference between '*knowing that*' (i.e. information knowledge) and '*know how*' (i.e. competent knowledge). Of definitive importance was the American Bar Association 1992 report entitled "*Report of the Task Force on Law School and Professionalism: Narrowing the Gap*", which identified ten key skills necessary for lawyers to competently represent clients, namely, problem solving, factual investigation, negotiation, professional ethics, legal analysis, communication, litigation and alternative dispute resolution, legal research, client counselling and practice management (Thompson, 2009).

2.4 Methods for teaching legal skills

In addition to the identification of *which* skills legal education ought to be concerned with, the legal establishment also had to consider the appropriate teaching and instruction design methods to deliver such skills instruction on practical training courses. Joyce and Weil (1986) identified twenty such models for teaching and learning and grouped them together in 'families' along the following lines, information-processing; personal; social; and behavioural systems. In contrast, Brady (1985) placed the various teaching models on a continuum starting with a 'teacher centred' model through to 'student centred' model and described the following methods for teaching skills: *Exposition Model* which is teacher centred and relies on status and skill of the teacher to dominate the process and command the respect of the students. The *Behavioural Model* again places the teacher at the centre of the process but this time the learning is broken-down into smaller steps, with the learner being rewarded for mastering each step in the process. A *Cognitive Model* encourages a sense of problem solving amongst learners and in doing so emphasises the age and experience of the learner. An *Interaction Model* is highly student centred and focuses on the interactions with other learners and the environment. Finally, the *Transaction Model* relates to self-directed self-paced learning whereby learners are encouraged to interact with each other and their environment to identify their learning needs and that of the group.

Because of the central importance that two of the teaching and learning models identified by Brady have played in professional legal education in this jurisdiction, namely the *Behavioural Model* and the *Interaction Model,* I wish to link those models to the teaching of legal skills and to the theories of education which appear to underpin them. With respect to the behavioural model, a focus on observable behaviours seems to have much in common with neo-behaviourists, such as Bloom, whereby different types of behaviours are taken to reflect the level of internal knowledge acquired (Jordan, Carlile, & Stack, 2008). I will argue below that, in respect of the Irish case, although legal education is predominantly informed by constructivist theories and in particular notions of a 'communities of practice', because of pressures on resources the teaching of skills is in-fact predominantly, although not exclusively, informed by a behavioural model. An *interaction model* for

teaching skills would appear to be closely aligned with theories of constructivism, which focus on the learners' ability to 'construct' new meaning by actively applying or synthesising existing knowledge with new information (Jordan et al., 2008). Theories of constructivism, and in particular social constructivism, have played a fundamental role in informing and shaping our understanding professional legal education. Social constructivism emphasises the role that society and culture play in our construction of knowledge and, for example, Bandura, Ross, and Ross (1961) highlight the role that modelling plays in our learning process, whereby the imitation of others can be an effective means of learning. With regards to professional legal education, such influences are clearly visible in the legal traineeship which has at its core a period of in-office training, whereby trainees absorb the language, behaviour and norms of their profession, reflective of the '*community of practice*' apprenticeship as espoused by Lave and Wenger (1991). For example, Kronman (2000) emphasises the importance of "acquiring the habits of a culture" during the period of in-office training and Rogoff (1990) describes an '*apprenticeships in thinking*' which the trainee solicitor acquires from watching and imitating more experience practitioners.

2.5 Teaching legal skills – the Irish case

I have described how, since the 1970's onwards, certain key skills have been identified as intrinsic to professional legal education and I have also summarised some of the methodological approaches available for the teaching of those skills. I will now consider those issues from the perspective of the Irish case. Under the Solicitors Acts, 1954 (as amended) the Law Society of Ireland is vested with the exclusive jurisdiction in relation to the "provision of courses and the holding of examinations for the education or training (or both) of….persons seeking to be admitted as solicitors" (s. 32). The move towards clinical programmes of education was reflected in this jurisdiction with the establishment by the Law Society of Ireland in 1978 of the present Law School. Since that period the broad structure of legal education in Ireland has remained the same. There is an initial entrance examination (the FE1) followed by a twenty four month training contract. The traineeship is split between time spent in the office and two staggered structured academic and skills based training programmes in the Law School, the Professional Practice Course I and Professional Practice Course II. Perhaps the most comprehensive review of

professional legal education in this jurisdiction, the Law Society of Ireland's 1998 Education Policy Review Group Report, identified that the "principal objective of professional legal education should be to prepare Apprentices for working in private practice" (p. 8). In order to achieve that objective the Review Group identified that newly qualified solicitors would be equipped not only with a knowledge of the law but also an ability to "apply their knowledge in a practical way" and to "communicate clearly with clients" (p. 12), that is moving from a 'know-that' understanding towards a 'know-how' as espoused by Bennett et al. (1999). To highlight this point, a key recommendation of the 1998 Report was that an emphasis should be placed on the "teaching of relevant skills, and in particular, letter writing, the drafting of legal documents and legal opinions, and advocacy" (p. 13). The 1998 Report was very much in-line with international developments, such as in the UK, where the National Committee of Inquiry into Higher Education's 1997 report on *Higher Education in the Learning Society* (known as the Dearing Report) propounded on the need to develop 'key skills' and for higher education institutions to foster partnerships with industry. Since then skills teaching in this jurisdiction has focused on drafting, interviewing, negotiation and advocacy, which are taught by 'practical' tutors (i.e. legally trained), without any requirement for those tutors to have a knowledge of related disciplines such as education and psychology. Furthermore until relatively recently instruction on skills has tended to be provided in isolation, with for example the skill of negotiation be taught separately to interviewing, with little or no attempt to investigate the interconnectivity of such skills. Almost ten years after the 1998 Report, we see the same concerns reflected in the Law Society's September 2007 Report from the Training Review Group, a key recommendation of which was that an increased amount of time be spent on "developing key legal skills" (p.13). This has led to substantive changes to the Professional Practice Course with an increased amount of time and focus on the delivery of skills modules, including client interviewing and communication, legal drafting and advocacy.

I have described previously how legal education is primarily informed by theories of constructivism and more specifically the '*community of practice model*', underpinned as it is by the apprenticeship system. However, I would argue that in respect of skills training, pressure on resources has lead to a highly structured programme of training, meaning that the learning methodology is primarily behavioural. From the Australian perspective, Park (1990) describes the 'tyranny of numbers', in that ever increasing

class sizes have lead to a particular model of teaching skills whereby visiting instructors are recruited from the ranks of the profession to deliver highly structured training. Such 'tyranny of numbers' is also reflected in the Irish experience. When the Law School opened in 1978 an annual intake of 150 students was envisaged (Law Society of Ireland, 1998), whereas by 2010 the average intake had exceeded 650. Our current model of skills teaching provides an opportunity for introductory lectures, simulations by tutors (as opposed to students) and finally full scale simulations by students in smaller group settings. Perhaps because of such pressures on resources, the Law School has also primarily used external visiting 'Associate Faculty', drawn from the ranks of the profession, to deliver the majority of skills training. However, when considering teaching client interviewing and negotiation, Tamsitt (1983) argues that, rather than external tutors, permanent law school staff working with psychologists are best placed to provide such instruction as they have an understanding of the theoretical concepts underpinning the skills. The overall result of this model of teaching is that our skills training has been broken-down into manageable steps with external tutors requested to focus on observable student behaviours, in essence a behavioural method of teaching. This behavioural approach to teaching skills can be contrasted with constructivist methodologies, such as the *'communities of practice'* model, which more generally informs professional legal education. A more efficient and cost effective method of skills training that can be demonstrated to be both valid and reliable, such as the use of standardised clients, might offer an opportunity to move away from our behavioural approach so as to align the practice of skills training with our overall constructivist approach to professional legal education.

Tamsitt also recommends the following structure for legal skills teaching programmes (1) an introduction followed by an assessment of students entry performance; (2) a brief demonstration of the skills; (3) a short simulation carried out by students; (4) feedback and discussion of student performance; (5) repetition of points (3) & (4); (6) progression to more complex tasks; (7) full-scale simulation exercises. This is an interesting structure and provides us with a basic means of critiquing our current method of teaching such skills. This structure would appear to have much in common with the 'see one, do one, teach one approach' so valued in medical education, whereby trainee doctors first see someone perform a procedure, then they themselves perform the procedure and then demonstrate the procedure to a colleague, a method which Coughlin, McElroy, and Sandy (2010) advocate for in respect of legal

education. Referring back to the Irish case, what seems to be most lacking in our current model are opportunities for feedback, discussion and repetition of basic skills (i.e. points (4) & (5) above). Again, a more cost effective model, such as the use of standardised clients, would provide a greater opportunity to build-in appropriate student-simulation feedback loop to our current system of skills training.

2.6 The case for teaching client interviewing skills on continuing professional education courses

As we have discussed, the system of professional legal education involves a significant amount of in-office training whereby the trainee solicitor is under the guidance of a more established practitioner. Therefore, it might be assumed that skills such as interviewing and advising clients would be acquired during such placements. However, it would appear that experience alone is not a sufficient means of developing client interviewing and counselling skills. In a study of 143 initial client interviews which were videotaped and subsequently analysed on a predetermined objective criteria, it was found that, apart from a limited number of discrete areas of performance, there was no correlation between the number of years' qualified and how the solicitor scored (Sherr, 2000). Therefore, if experience alone does not improve client interviewing skills, this then emphasises the importance of a proper system of training in such skills for both trainee solicitors in continued professional development education. In particular, Sherr's study identified that the highest rates of failure for solicitors in respect of client interviewing related to solicitors' listening skills, including facilitating the client to talk, picking-up on non-verbal cues and on empathising with the client. Listening to clients' stories and translating those stories into legal terms is one of the most fundamental aspects of a lawyer's role (Cochran et al., 2006). However until recently, comparatively little research has been done on the effectiveness of lawyers' 'translating' abilities and the research that does exist suggests that when conducting client interviews lawyers routinely risk silencing and subordinating their clients (Cunningham, 1992) and fail to present a true representation of the clients' story (Cunningham, 1999). Sameer (2008) argues that, without proper skills, lawyers particularly run the risk of failing to address the needs of the socially marginalised. Therefore a robust system of teaching and assessing such skills would appear to be an educational imperative for the legal profession.

From the very start of their legal education, legal educators communicate to students in many different ways what it means to be a good lawyer. By not formally assessing communication skills, law teachers are implicitly conveying to students the perceived value (or lack thereof) of those skills. However, any form of such assessment must be both 'valid' and 'reliable'. The validity of the test means that the method of testing actually measures that which it purports to measure, a criteria that is met by qualified evaluators observing the performance of the skills being tested (Grosberg, 2004). Reliability refers to the consistency of the assessment from one test taker to another, a factor which is clearly complicated when multiple assessors are involved. The strengths identified by the medical profession in respect the standardised patient methodology, namely reliability, consistency (and efficiency), has lead to an interest in the legal profession in the development of an analogous system of assessment of solicitor interviewing and advising skills, namely the standardised client methodology (Maharg & Cunningham, 2005).

2.7 Approaches to client interviewing

We are presented with a number of models of how to conduct client interviewing. An authoritarian model presumes that lawyers are capable of identifying the problem and providing the solution with little or no assistance from the client beyond establishing the broad outline of the legal problem (Rosenthal, 1974). However, such a model is inconsistent with ideas of client dignity, overlooks the fact the each client will have their own individual preferred legal outcome and dismisses the fact that clients are actually more focused on process and relationships as opposed to outcomes (Feldman & Wilson, 1981). Furthermore, such lack of client control is inconsistent with solicitor guidelines on professional conduct. An attendant risk with an authoritarian approach is that the lawyer may simply adopt a course of action that they are familiar and conformable with, choosing an option even before the client has finished describing the case (Cochran et al., 2006). An alternative model of communication is the client centred approach (Binder & Price, 1977). This model encourages the lawyer to identify the problems from the clients' perspective, involving clients in exploring potential solutions and assessing the potential consequences of each such solution. Such a model clearly establishes the client at the centre of the process and offers a better chance of achieving a more positive lawyer-client relationship. However, the

model is not without its limitations. Firstly, the client may be encouraged to take decisions purely on the basis of self-interest, ignoring the impact of those decisions on third parties and broader concepts of legal justice. However, a more pertinent criticism of the model is that if the lawyer is overly concerned with detailing what the client believes to be the preferred options, they risk denying the client the benefit of perhaps their most valuable asset, namely practical advice and wisdom based on previous experience. Therefore a more satisfactory model for client interviewing and counselling is the collaborative decision making model (Kronman, 2000). Using a collaborative model the lawyer and client work together to identify the legal problems and the preferred solutions, but with the lawyer structuring the decision making process. This is the preferred model as it would appear to limit the more negative aspects of an authoritarian lawyer-client relationship, which denies client autonomy, while providing the lawyer with the scope to provide the client with the 'practical wisdom' gained from experience. I would argue that the use of standardised clients is entirely consistent with at the very least a client-centred and possibly with a collaborative model of client interviewing and that the current system of teaching and assessing client interviews is much more closely aligned to an authoritarian model. Under the current method of assessing client interviews, the interview is videotaped and reviewed by a law tutor and formative assessment provided. The one element missing from that model is the clients' view of the process. The law tutor is asked to step in as a substitute client providing feedback to student, in effect a highly authoritarian view that the lawyer 'knows best'. However, under the standardised client methodology direct client feedback can be incorporated into those elements of the assessment that the client is best placed to answer, for example did the client feel listened to? Did the client feel confident with the lawyer's capabilities etc.?

2.8 The use of standardised patients in medical education

Stern (2004) highlights that the medical profession has responded to the public demand for greater accountability by adapting medical educational programmes. Similar to developments in legal education, from the 1970s onwards medicine has adopted elements of 'problem-based' learning to include hybrids based on lectures, small group experiences and case studies. Stern stresses that the medical profession also recognised that communication skills are fundamental to the sound practice of

medicine and, as such, set about assessing such skills as part of medical training. This has lead to the widespread acceptance of the standardised patient methodology as a means of developing and assessing such skills (Adamo, 2003).   Medical educators working with standardised patients have accumulated a vast amount of data to validate the method, an experience which legal educators must emulate if the use of standardised clients is to achieve the same level of acceptance (Grosberg, 2004). Therefore, for illustrative purposes, I set out below a description of how the use of standardised patients has developed in medical education.

Since its inception in the early 1960s, the use of the standardised patients in medical education is no longer in question and, from its modest beginnings, the methodology has grown to become an integral part of the examination process leading to licence to practice medicine in many jurisdictions. Wallace (1997) describes how a group of motivated academics and pioneering practitioners championed the standardised patient methodology against a sometimes intransigent institutional scepticism from the medical educational establishment. The 'father' of the standardised patient methodology was Howard S. Barrows, a neurologist and medical educationalist working in University of California in the 1960s. Like their present day counterparts in law, Barrows realised that medical students were rarely critically evaluated on their patient examination skills. He developed a clinical case-study to form the basis of a simulated patient examination and also devised an accompanying detailed checklist of items/issues that the medical students ought to be aware to request from the patient. Barrows used actors as patients who were trained to present the case study and following each student examination to complete a checklist of requested items. The actors did not have to know anything about medicine; they simply had to be aware of the process. Therefore, Barrows had devised a rudimentary basis of assessment that did not require a trained doctor to attend each such student-patient examination. Grosberg (2004) demonstrates that the medical professional has generated an enormous amount of data to validate the standardised patient methodology, which has resulted in the incorporation of standardised patient evaluations into the medical licensing examination process in the United States and elsewhere. The standardised patient methodology means that, rather than being presented with an isolated symptom, the student is presented with the *"totality of the patient",* their story, symptoms, emotional responses and even their reactions to the medical profession (Wallace, 1997, p. 5). There is potential for other professions, including law, to

implement similar training innovations to ensure that the professional is fit for practice (Ker, Ramsay, Hogg, Dewar, & Ambrose, 2005).

2.9 Developing the standardised client methodology in legal education

Coughlin et al. (2004) argue that in furtherance of the aims of clinical education in general and in attempting to provide a more client-centred approach to the delivery of their services, the legal profession could well follow the example of the medical profession. The genesis of the standardised client methodology in legal education can be traced to the establishment of the *Effective Lawyer-Client Communication Project* (ELCC) in 1998 (initially the *Effective Lawyer-Client Communication Initiative).* The goal of the ELCC project is stated to be to "improve lawyer-client communication by combining what has been learned so far within legal education with empirical social science research" (ELCC, 2008). Professor Clark Cunningham of Georgia State University was one of the primary participants in that project. Cunningham was initially interested in the insights that sociolinguistics might bring to the practice of law and, in particular, how those insights might inform lawyer-client communication (Cunningham, 1989). Cunningham was drawn to the how empirical research might inform clinical legal education and in particular considered Avrom Sherr's previously mentioned research which had involved analysing 143 solicitor-client interviews. Their shared interests ultimately lead Cunningham and Sherr, together with others, to collaborate under auspices the ELCC on the first pilot project that attempted to implement empirical research methods to evaluate solicitor-client communication. The pilot project was initiated in 1998 and, although the findings of the project ultimately proved inconclusive, the process did inform future standardised client studies in a number of important ways. It was agreed that the research would focus on the initial client interview because the initial interview "(1) shapes client perception of the lawyer; (2) defines the service to be provided in terms of both problem and goal; and (3) is an important opportunity for client education, e.g. confidentiality" (ELCC, 2008). Other reasons for focusing on the initial interview are that it may be the most significant communication between the solicitor and the client prior to the ultimate event that determines the matter (i.e. settlement or hearing etc.) and by focusing on an event at the start of the process, it provides feedback to lawyers that can be used to improve service over the duration of the relationship (Barton et al., 2006).

The next significant event in the development of a standardised client methodology was undoubtedly the work of Professor Lawrence Grosberg of the New York Law School. As chairperson of the Admission to the Bar of the City of New York, Grosberg proposed a collaborative project to analyse the assessment process for admissions, a project which incorporated simulated lawyer-client encounters. In doing so, Grosberg drew heavily on the experience of the medical profession when implementing the standardised patient methodology. Some of the key difficulties in assessing lawyer related skills can be summarised in terms of the expense of the assessment process and the reliability of the assessment methods. The most obvious means of assessment would be to have the law-teacher either participate in or observe an actual client interview. However, this has significant budgetary implications and simply may not be feasible when dealing with large numbers of students. However, there may also be an issue of the reliability of the assessment given that the performance of the client being interviewed would presumably vary. As Grosberg (2004) states "it would be unfair to evaluate one applicant interviewing a mentally-disturbed litigant while a second clinical professor evaluates another applicant who is assisting an intelligent, calm litigant" (p. 850). It was precisely such issues of "variation, inconsistencies, and lack of uniformity" that prompted the medical profession to implement the standardised patient methodology which has been proved to be a "more reliable, consistent, and fair method" of assessment (Grosberg, 2004, p. 850). However, the concept that non-lawyers could be involved in the evaluation of students in high-stakes examinations remained a revolutionary concept for the legal establishment. To test the validity of the methodology, Grosberg videotaped the client interviews and compared the assessment scores given by the standardised client against those independently awarded by a law professor. In the event, Grosberg's findings, while suggestive, were inconclusive, which was possibly related to the modest size of the project, comprising 43 students and one standardised client (Grosberg, 2001). Later Grosberg conducted a much larger study, for example using 36 standardised clients with 437 students, but did not attempt to replicate the empirical research to validate the scores given by the standardised clients against law teacher scores that formed the basis of the earlier work (Barton et al., 2006).

The experience and research understandings gained during the ELCC's 1998 project and Grosberg's New York study were to ultimately inform the work of the much more comprehensive study involving a collaboration between ELCC and the Glasgow

Graduate School of Law (GGSL). Central to the project were Clark Cunningham, who had conducted the ELCC research, Karen Barton of the University of Strathclyde, Gregory Todd Jones of Georgia State University of Law and Paul Maharg, then working with the Glasgow Graduate School of Law.   The group conducted a comprehensive project, the aim of which was to test whether or not the use of standardised clients could be as reliable and as cost effective a means of assessing student communication and interviewing skills as the method previously used to test such skills on the system of preparation for practice course on the Diploma in Legal Practice offered by the GGSL. The group reported their findings in the 2006 edition of the *Clinical Law Review* in an article tilted "Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence". Given the importance of that research, I describe in some detail the background, process and findings of the group. The previous method of teaching and assessing client interviewing skills at GGSL involved a combination of formative feedback and summative assessment.   Initially, two students would play the role of the client and solicitor in simulations that were observed by two other students who provided formative feedback, following which the roles were reversed. Students could request that their performance be videotaped and viewed by a course tutor for further formative feedback.   This process culminated in a final summative assessment whereby the students conducted a mandatory interview which was videotaped and viewed by a course tutor. Students were judged as being of the standard of 'merit', 'competent', or 'not yet competent', in which case they would be required to conduct a second assessed interview.   Staff at GGSL identified that, while sufficient in moderate stakes exams, the system of assessment was somewhat flawed in a number of respects, (a view that ultimately lead to their interest in the joint project with ELCC). Firstly, the GGSL had not rigorously evaluated the validity of the tutors' assessment of the students' performance as "a measure of professional competence – particularly not compared to the level of rigour that is apparent in medical curricula" (Barton et al., 2006, p 17). Secondly, on a more practical level, the form of assessment was extremely costly, requiring as it did the videotaping of approximately 250 student interviews which were then separately viewed by legally trained course tutors. As a further incentive for the use of standardised clients, the authors' also identified an alignment between the use of a standardised client methodology and

constructivist learning approaches in pursuit of "transactional realism" in clinical legal education (Barton et al., 2006, p 17).

The first stage of the process involved a pilot project conducted in January 2005, the main purpose of which was to perfect the assessment forms to be used. Students, again playing both the client role and the solicitor role, conducted client interview simulations, each separately assessing the performance of the student playing the lawyer. One such interview was randomly selected and four course tutors were asked to independently assess the student's performance. In an attempt to improve inter-rater reliability, a think-aloud protocol was then conducted whereby the tutors were asked to discuss their reasons for providing particular marks. From these think-aloud sessions it became clear that the issue of advice-giving and listening skills had to be clearly de-coupled in the assessment criteria. Following this 'convergence' exercise, the four tutors then assessed the videotaped student simulations, meaning that there were now three sets of ratings of the same performance, the client view, the 'lawyer' (i.e. the student playing the lawyer) view and the course tutor view. An analysis of the data revealed that there was "essentially no correlation among the roles" (Barton et al. 2006, p.22), meaning that the scores awarded by the client of the lawyers' performance did not correspond to lawyers' assessment of their own performance, nor, for that matter, did the course tutors' assessment correspond with either the clients' or the lawyers' assessment. The results of the pilot project lead to concerns with having students playing the client role. As such, a small scale follow-up study using real clients (as opposed to students playing the client) from the GGLS clinic revealed statistically significant correlations between the clients' rating of the lawyers' performance and the lawyers' rating of that performance. The next phase of the project involved the training of standardised clients and the implementation of the methodology using a limited number of students (seven in total). The training of standardised clients entailed a detailed analysis of the scripts to be used in the performance and also an analysis of the assessment criteria. Interestingly, from a qualitative perspective, students strongly approved of the use of standardised clients, as opposed to the client role being played by a fellow student. Using the data generated from the pilot studies, the assessment sheet was further refined. Part A of the assessment sheet contained eight specific questions relating to the students' performance which was to be judged on the scale of 1 (poor) to 5 (outstanding). The assessment sheet was accompanied by assessment criteria, which were anchoring

statements based on plain language. Part B of the assessment sheet contained a case specific checklist of items that the student would be expected to ask for if they were conducting the interview correctly. Overall grades were compiled to form a composite score of Part A and Part B of the assessment sheet.

The main trial took place in January 2006. 265 GGSL students and nine standardised clients participated in the project. Each student-client interview lasted approximately 20 minutes and were assessed by two separate methods, namely, (1) by means of the standardised client methodology (2) by a law teacher, whereby videotaped recordings of the client interviews were independently assessed. All aspects of the assessment showed correlations between standardised client and law teacher responses "at high levels of statistical significance" (Barton et al., 2006, p. 42) The authors concluded that the use of standardised clients in the context of assessing student communication and interviewing skills was at least as reliable and more cost effective than the then system of assessment previously used in Scotland (i.e. law teacher assessment). As such, the GGSL no longer videotape student client interviewing sessions for law teacher evaluation, but rather rely on standardised clients' for the assessment of such skills.

In 2009, graduates from the Franklin Pierce Law Centre became the first group of law students in the USA to take part in a high-stakes interviewing assessment using the standardised clients approach. In the UK in 2010, the Solicitors Regulation Authority adopted the standardised client methodology as part of its Qualifying Lawyers Transfer Scheme assessment process. However, in order for the standardised client methodology to attain further validity, repeated comprehensive empirical evaluations are required, similar to the studies undertaken by the medical profession when evaluating the standardised patient methodology (Grosberg, 2004). One simple and accessible way of testing the validity of the standardised client assessment is to videotape the client interview and have the law teacher independently evaluate the students' performance and to subsequently compare the law teachers' results with those of the standardised client, a method which informed Barton et al.'s 2006 study and which was replicated in respect of the current study.

Chapter 3 - Methodology

3.1 Research philosophy

There is no single way of drawing distinctions among the various approaches to be found in educational research (Hammersley, 2007). For many writers, quantitative and qualitative research differs with respect to their epistemological foundations (Bryman, 2008). The research question (see below) is concerned primarily with the reliability and validity of assessment methods and the author attempted to establish findings that could be generalised beyond the specific sample by means of replicating and extension of the early study by Barton et al. (2006). As such, the study involved quantitative research and the author may be said to adopt a positivist epistemological orientation (i.e. incorporating the practices and norms of the natural scientific model), embodying an objectivist ontological orientation (i.e. that views social reality as an external objective reality) (Bryman, 2008). That said, although 'positivism' and 'interpretivism' embody two contrasting epistemological perspectives (Grix, 2002), it is necessary to be careful not to overstate the divide between quantitative and qualitative research (Bryman, 2008) and by extension the epistemological foundations underpinning them. Some authors have attempted to frame the debate on the major methodological paradigms strictly around quantitative versus qualitative or positivist versus interpretative approaches; however there is no all-purpose way of drawing distinctions between the various approaches (Hammersley, 2007). Epistemological principles and research practices do not necessarily go hand in hand in a neat unambiguous manner (Bryman, 2008). As such, while the author's study had a broadly positivist epistemology, the author recognised the possibility of relying on constructivist findings, for example where appropriate drawing on the experience of both the students and the tutors. As such, the author may be described as employing a pragmatic approach, not committed to any one system of research or philosophy (Creswell, 2003), concerned instead with employing workable solutions to the research problems.

3.2 Quantitative research

As the author was primarily concerned with the reliability and validity of client interviewing assessment methods and sought to replicate and extend from the perspective of the Irish case the findings of Barton et al. (2006), the author employed quantitative research. In doing so, the author critically assessed the methods employed in that earlier programme. The project focused on a case study programme, namely the Law Society of Ireland's Employment Law Advocacy & Skills Certificate which was bounded by time, having commenced in September 2011 and concluded in January 2012 (Stake, 1995; Yin, 2003). Case study research programmes are a common means of exploring in-depth the use of the standardised client methodology in law (Barton et al., 2006; Grosberg, 2004). The case study was limited to the number of students attending the Certificate in Employment Law Advocacy and Skills and data was collected from 20 participants. However, the engagement required to collect the data in the case study was significant as the process required (i) the training of a team of the standardised clients over two days in order to achieve a consistency in performance & assessment between the standardised clients (ii) the drafting a specific scenario for use in both the training of the standardised clients and the case study, (iii) perfecting the score sheet based on the case study scenario and in particular perfecting Part B of the score sheet, namely the case specific checklist (iv) conducting 20 lawyer/client interviews using standardised client methodology (v) reviewing on two separate occasions 16 videotaped interviews (four recordings failed) each of approx 20 to 30 minutes in duration to ascertain the law tutor assessment of each student performance.

(Bryman, 2008) sets out a process for quantitative research, commencing with an hypothesis, moving through research design, measurement of concepts, selection of research site, selection of research subject, administration of research instruments/collection of data, processing of data, analysing data, identifying findings/conclusion through to the writing up of findings, the broad structure of which the author replicated and sets out below in further detail.

3.3 Research hypothesis

The research hypothesis is that the use of standardised client in professional legal education in this jurisdiction is at least as valid and a more cost effective way of

assessing lawyer interviewing and communication skills as the method currently used to assess such skills in this jurisdiction. In order to test the hypothesis, the author evaluated student interviewing and communication by two separate methods, namely (1) by means of the standardised client methodology (as outlined below) and (2) by means of law teacher assessment, whereby a law teacher independently assessed videotaped recordings of the interviews. The author then compared both sets of results which were analysed for correlations or variations between the separate forms of evaluation as a means of critically appraising whether or not the use of standardised client is at least as valid a method of assessing such skills.

3.4 The research site

The research site in respect of which the author implemented the standardised client methodology was be the Law Society of Ireland's Certificate in Employment Law Advocacy and Skills, offered in the Autumn of 2011 and the respondents were selected on the basis of attendance at that course. As such, it was a small scale project involving approximately 20 respondents. The data was collected on two separate occasions, namely (1) immediately after each client interview the standardised client was required to complete Assessment Sheet (as set in Appendix 1) and (2) the client interview was videotaped and a law tutor reviewed the recording and completed an assessment, again based on the Assessment Sheet. The author then processed the data, allocating each student two separate results, firstly based on standardised client assessment and secondly based on the law tutor assessment. The author analysed both sets of results, testing for possible correlations or variations. I describe below in more detail each aspect of the case study.

3.4.1 Training of standardised clients

One major issue that had to be addressed was the amount of training required to fully equip standardised clients to ensure both validity and consistency. The challenge was to "train each individual to assume the same profile, to know the same facts, and to respond appropriately to students' questions and techniques so that the experience of each student is as close as possible to that of all other students." (Grosberg, 2004, p859). Furthermore, the standardised clients had to be trained to evaluate the students' performance in a similar manner, the goal being to achieve a standardisation in both performance and assessment.

Training was conducted over a two day period in the Law Society on 1ˢᵗ and 2ⁿᵈ September 2011. Six individuals were indentified as suitable to play the role of the standardised clients. In previous studies there had been a preference for using actors to play the role of the standardised clients (Barton et al. 2006), for, among other things, reasons of affordability and availability. However, the author chose to use lay-persons with whom he had an existing professional relationship, primarily external examiners. Each standardised client was either known personally to the author or briefly interviewed to ensure that the author was reasonably confident that they could do the 'triple think' which the process required, that is *remember* details of the given narrative; *improvise* aspects of the scenario where necessary without undermining the central legal points involved and *assess* students' client-interviewing skills. In addition, it was important that the author ensured that the standardised clients had no special agendas that might undermine their independence and judgment, for example a bias against the legal profession or bias against a particular colour, race, religion, etc.

The author drafted a Script Scenario (see Appendix 3) for each standardised client which was distributed in advance for them to learn. The author also drafted two separate documents per scenario, one which consisted of points of law/fact that the standardised clients had to get correct or else the scenario would become invalid; and a second document which was effectively Part B on the Assessment Sheet (See Appendix 1), namely the a 'yes'/'no' checklist of questions that the standardised client would be expected answer. In advance of the training, the author and the course tutor also recorded two videos, one that was to be regarded as good or outstanding client interview and a second video that was to be an example of a poor client interview. The videos were used as part of the training to help the standardised clients get to see what the Law Society regarded as benchmark standards. (Copies of the videos are available from the author).

Together with the six standardised client volunteers, the author and two colleagues, who are also legal practitioners, attended the two day standardised client training. Professor Paul Maharg of Northumbria University facilitated the training. Given the importance of the training to the overall process, it is important to highlight certain key features.

Day 1 of the training focused on familiarising the standardised clients with their script scenarios so as to achieve a standardisation of performance, both individually and as a

group. To facilitate this, the standardised clients role-played the scenarios as a group, discussing the text and how a client might react to specific questions. A particular benefit of this process was that it provided an opportunity to clarify any ambiguities or misunderstandings regarding the narrative, a process which helped to 'layer' the script. The standardised clients and the author worked together to identify those issues that were central to the script and could not be changed as it would impact on the legal meaning of the scenario (for example the length of the employee's service) and those details that could be improvised, for example age of the employee, whether married or single etc. Of particular importance on Day 1 was achieving a standardisation of performance, which had two elements. Firstly, a standardisation of individual performance, meaning, for example, that if the standardised client intended to act in an emotional manner that the delivery would be consistent across the entire range of their own performances so that each student would be presented with the 'same' client each time. Therefore, it was stressed that the standardised clients should not 'over-act' because the level of intensity could possible diminish over multiple performances. Secondly, there had to be a standardisation of performance *between* the standardised clients. This meant that the standardised clients did not have to give the *same* performance as each other, but that, within a given level of intensity, the performance should be consistent for *that* standardised client. As such, standardised clients were advised on the importance of being congruent with their own feelings. For example, it might be entirely appropriate for one standardised client's demonstration of upset at being dismissed to be less intense than another person's demonstration of upset over the same event, the central issue being that each standardised client should perform the role with a level of intensity consistent with their own character.

Day 2 of the standardised client training involved moving from the standardisation of role-play to the standardisation of *assessment*, which in essence was the central element of the case study. To achieve this objective, the standardised clients were taken through a process to enable them to understand the Assessment Criteria (see Appendix 2) so as to build a consensus on assessment standards. Firstly, the standardised clients were asked to identify assessment prejudices, that is, issues which might affect the outcomes of their assessment, so that such issues could be aired and discussed. Secondly, a considerable amount of time was devoted to analysing the Assessment Criteria so that a common understanding could be emphasised. For example, certain questions on the Assessment Sheet could be categorised as

subjective, for example Question 6 "*I felt the comfortable with the lawyer*" etc. However, it was emphasised to the standardised clients that even when dealing with seemingly subjective question, such subjective criteria had to be based on specific observable behaviours as outlined in the Assessment Criteria. The training then proceeded to practicing assessment of performance according to the Assessment Criteria. To do this, videos of the exemplars of 'good' and 'poor' interviews which the author and course tutor had pre-recorded were viewed (as per the above, the videos are available from the author). The standardised clients individually marked the videos, following which their results were displayed to the entire group. Separately, the author and the course tutor agreed the 'Law Society' assessment result for each performance, which was to act as the 'gold standard' for the performance. The group then discussed any variance between standardised client and Law Society assessment results and the reasons for such differences. In particular, significant divergences in markings were analysed so that the standardised clients could understand the law tutors' perspective so that an agreed understanding of the marking structure could emerge. Following the assessment of the videotaped interviews, the standardised clients moved to marking 'live' performances. This afforded the standardised clients an opportunity to implement the above mentioned 'triple think', that is *observe*, *perform* and *assess* all at the same time. Each standardised client role-played a client interview with the course tutor who acted as the solicitor and the standardised client marked the course tutor's performance. The course tutor was given secret instructions on how to conduct each interview, for example inattentively or aggressively etc. After each performance, the standardised client revealed their assessment which again was compared against the Law Society's 'gold standard' and a brief discussion of marks was conducted to reach consensus.

At the end of the training session a degree of consensus did emerge between the Law Society assessments and the standardised client assessment of the lawyers' performance. However, the consensus was not consistent across all the performances reviewed and there were specific instances where there was a significant amount of divergence in the assessment scores. This was perhaps reflective of the fact that the training period had been significantly compressed from three to two days, with the trainer indicating that he would have liked to have had at least a half more day of training to focus on the convergence of assessment standards.

3.4.2 Drafting of script scenarios

Following the training of standardised clients and in advance of implementing the standardised methodology on the Certificate in Employment Law Advocacy & Skills, the author further refined the script scenarios, incorporating improvements and clarifications which had become apparent during the standardised client training sessions. Particular attention was paid to Part B of the Assessment Sheet, namely the case specific checklist. It became apparent that to be successful the checklist would have to refined down to more essential elements so that the above mentioned 'triple think' required of standardised clients did not become unduly cumbersome. Therefore, the checklist was edited from an initial ten items to a more specific five item list. As with earlier studies, such as Grosberg's initial New York study, the initial client interview was chosen as the focus of the case study on the basis that it is a constant across all forms of legal services. Barton et al. (2006) highlight the importance of the initial interview in that it defines the service being provided, informs the clients' perception of the lawyer and is an important tool for client education (i.e. issues of confidentiality etc.). It is also an appropriate setting to test communication skills because the initial interview is primarily about 'storytelling' as opposed to substantive legal advice.

3.4.3 Implementation of the standardised client methodology

The standardised client assessment system was implemented on Module 4 of the Law Society of Ireland's Certificate in Employment Law Advocacy & Skills. The aim of the course was more broad-based than client communication and was stated as being to analyse and implement key skills required when acting for and representing clients in employment related disputes. As such the student role-play sessions of initial client interviews constituted a comparatively small aspect of the course, the evaluation of which was to count for 10% of the students' final results. Therefore, the case-study could be said to be in conducted in comparatively 'low stakes' examination. Furthermore, as this was the first time that this methodology was implemented in this jurisdiction, it was emphasised to students that while the standardised clients would be assessing student performance for research purposes, the interview would be independently assessed by a legally qualified course tutor whose results would be used for grading purposes. There were 20 students on the course. A significant difference from earlier studies was the fact that the course was offered in the context

of continuing professional education for solicitors, meaning that the students were solicitors already in practice with varying degrees of experience. So for example, 32% of students had over 10 years' experience in practice, with a further 32% having between 5 and 10 years' experience.

Grosberg (2004) highlights that lawyers cannot adequately communicate with clients without first understanding the broad context within which the legal analysis takes place. The case scenario used was based on an employment & equality law scenario, the legal content of which would have been covered by all participants as part of their basic training. However, the author was aware that the experience of the various participants varied across the group so therefore a 'recap' lecture highlighting key employment & equality law concepts central to the role-play was provided. That said, while key legal concepts were covered in the lecture and materials provided, students were not advised as to the actual content of the script scenario to be used in the role-play.

The author separately conducted a workshop with the standardised clients to recap on central elements of the standardised client training, including revision of the role-play script, emphasising those facts which were 'core', alteration of which would change the legal meaning of the scenario, and those aspects which could be improvised. Particular attention was devoted to revising the Assessment Sheet with the standardised clients, again emphasising that assessment was not subjective but was based on the anchoring statements contained in the Assessment Criteria.

The next stage was the implementation of the role-play and assessment of the students' performance. Tutorial rooms were formatted in an office style structure, so as to be as realistic as possible. Video-recoding equipment was set-up in each room. Students were then brought into the tutorial rooms and asked to wait for their client. Again in an attempt to replicate practice, students were merely told that they were meeting a client for an initial interview and that the matter the client wished to discuss was an employment law issue, with possible equality law implications. Beyond that the students had no knowledge of the scenario. The standardised clients then entered the room and the interview proceeded for between 20 and 30 minutes. Immediately following each interview the standardised client completed an individual Assessment Sheet (see Appendix 1) for each student, the results of which the author collected and collated. Separately, the interview had been videotaped and the recording transferred to USB keys. In all, 20 interviews were conducted. However, the recording failed in

one of the rooms, meaning that while standardised client scores were available, independent law tutor assessment scores could not be generated for the four interviews conducted in that room. As the study was primarily concerned with inter-rater reliability, the four unrecorded interviews were therefore worthless for research purposes. Following the role-play sessions, the author forwarded the client interview recordings to the course tutor for independent assessment. The course tutor assessment was based on the same criteria as that used by the standardised clients. For completeness, the author also separately assessed the videotaped interviews (again using the same criteria). This was a cumbersome process requiring the viewing of 16 half hour interviews which then had to be analysed by both the course tutor and the author. However, this resulted in three separate assessments of the each student performance, which would form the basis of the data analysis of inter-rater reliability. 'Raw scores' of the results are set-out in Appendix 6, with Rater 1 denoting the scores attributed to the students' performance by the standardised client, Rater 2 denoting the scores given by the law tutor and (for completeness) Rater 3 the scores of the author. However, before describing the results of the data analysis, it is necessary to provide a fuller account of the assessment criteria used to measure the concepts under review.

3.4.4 Assessment criteria

With regards to the measurement of concepts, the Standardised Client Assessment Marking Sheet (see Appendix 1) details the primary assessment criteria employed in the evaluation of the students' performance the standardised clients, the law tutor and the author. Part A of the Assessment Sheet contains eight specific question that require the assessors to rate specific lawyer behaviours. As discussed, the standardised clients were given comprehensive training to identify the specific lawyer behaviours being assessed. The Assessment Criteria (see Appendix 2) sets out explanations and examples on which the standardised clients based their annotated scoring. Four of the eight questions contained in Part A of the Assessment Sheet can be classified as objective type queries, requiring the standardised clients to evaluate lawyer behaviours (i.e. Question 1 – greeting; Question 3 – questioning; Question 4 – summarising; and Question 5 – listening). The remaining questions in Part A relate to more subjective criteria, as the standardised client was asked to evaluate whether or not they felt they were listened to (Question 2); were comfortable with the lawyer (Question 6); were confident with the lawyer (Question 7); and would return to the

lawyer with a new legal problem (Question 8). The use of subjective criteria is justified on the basis that an inherent aspect of the initial client interview is the building of trust. However, even when requiring a subjective analysis, the standardised client is required to evaluate the students' on the basis of specific behaviours as set out in the Assessment Criteria. As such, Barton et al. (2006) emphasise that what is being assessed is not merely subjective client satisfaction with the client interview, but rather the methodology is also designed to assess critical lawyer behaviours. The responses to each item in Part A were graded on a standard grading scale from 1 to 5, from poor to outstanding, therefore giving a complete score for Part A of 40.

Part B of the Assessment Sheet relates the students' ability to apply legal knowledge to the facts presented by the standardised client. As discussed, the author developed a case study scenario and devised an accompanying check-list of additional information that the students ought to have been aware of to request from the client when applying legal knowledge to facts presented in order to analyse the case further. The standardised client was trained to confirm whether or not such specific additional pieces of information had in fact been requested. The standardised client did not have to know the legal significance of the information, but the process does permit the standardised client to evaluate important issues of legal knowledge. Four such items were incorporated into the check-list, with four marks allocated to each item requested. The raw scores for Part A and Part B were doubled giving a complete score of 100. The following grading system was then be followed: Commendation 80 – 100; Merit 70 – 79; Pass 50 – 69 (i.e. competent); 0- 49 (i.e. not yet competent).

3.5 Delimitations & limitations

Delimitations narrow the scope of a study (Creswell, 2003). The proposed research is delimited to the specific participants of the case study (i.e. the Law Society of Ireland's Certificate in Employment Law Skills & Advocacy). In addition, there are inherent limitations with respect to quantitative research. For example, in quantitative research the meaning of events to individuals may be ignored and we do not necessarily know how findings based on quantitative research connect to everyday experience (Bryman, 2008). With respect to the proposed research, the quantitative analysis is limited in two such respects, firstly, in providing an understanding of how

the participants experience being assessed by non-lawyers, a process that has been described as "*revolutionary*" (Grosberg, 2004, p.850), and secondly, in providing an understanding of how closely the participants perceive the simulated client interview reflect real client interviews in practice.

3.6 Ethical considerations

The author fully addressed ethical issues arising during each stage of the project, including:

- formulating the research question so as to ensure that the inquiry did not dis-empower participants, in this instance making clear that the standardised client assessment was for research only and would not count towards the students' final result.

- describing clearly the research questions to participants and confirming that the research was not intended for any other purpose. In this respect an Information Sheet (describing the purpose of the research; the procedures to be employed; and that respondents had the right to ask questions and obtain a copy of the results) was distributed to each student at the commencement of the standardised client assessment process. (see Appendix 4 for a copy of the Information Sheet).

- collecting signed informed consent forms from each participant, specifying that participation is voluntary and consent could be withdrawn at anytime; (see Appendix 5 for a sample Consent Form).

- ensuring that any harmful information disclosed by participants, for example in respect of the assessment, was and is kept fully confidential

- protecting the anonymity of participants, particularly not disclosing individual standardised client assessment results during the data analysis and interpretation phase.

- using unbiased language and not suppressing any findings to meet the author's needs during the writing and dissemination phase.

In furtherance of the author's research aims to replicate and extend the findings of Barton et al. (2006), the author wrote to Paul Maharg and received full permission to use the methods and procedures employed in that earlier study. In addition the author

obtained consent to conduct the research from the Director of Education of the Law Society.

Chapter 4 - Findings & Discussion

4.1 Introduction & Inter-rater reliability

Bivariate analysis considers two variables at a time to uncover whether or not the two variables are related (Bryman, 2008). Analysing relationships between variables means searching for evidence that the variation in one variable coincides with the variation in another variable. As discussed, the author was primarily concerned with the level of inter-rater reliability of the assessment of the students' performance between the standardised clients and the law tutor. Inter-rater reliability refers to the consistency with which two raters, evaluate the same data using the same scoring criteria (Bailey, 1998; Stemler, 2004). Trochim (2006) set out that there are two main ways to estimate inter-rater reliability, that is, either by means of a comparison of the grades awarded or, alternatively, by means of more sophisticated inter-rater correlation tests. Both such methods are described in more detail below with reference to the specific case.

4.2 Levels of grade agreement

If the measurement consists of categories and the raters are checking off which category each observation falls into you can calculate the percent of agreement between the raters (Trochim, 2006). This is a relatively crude measure of inter-rater reliability, but it does give an idea of how much agreement exists. In the present case, both standardised client and the law tutor assessment scores were translated into overall grades (i.e. Commendation 80 – 100; Merit 70 – 79; Pass 50 – 69; Fail 0- 49), which permitted an analysis of the percentage of category agreement. Of the sixteen student performances evaluated (and taking into account standard adjustment whereby students within one or two percent of a particular grade are generally awarded that grade) the standardised client and the law tutor awarded the same grade in nine of the performances, representing an agreement rate of 56%. Such levels of agreement represent a moderate level of inter-rater consistency. By extension, therefore, of the 16 student performances assessed, seven were awarded different overall grades by the standardised client and the law tutor (i.e. students 5, 6, 7, 11, 13, 14 – see Appendix 6). We can further sub-divide these as Type 1 errors, whereby the grade awarded by

the standardised client is the 'adjacent grade' to that awarded by the Law Tutor (for example in respect of Student 1 where the standardised client awarded a Merit and Law Tutor a Commendation) and Type 2 errors representing a more pronounced disagreement whereby the grades awarded by the raters were not adjacent. Of the seven non–matching grades, 6 can be classified as Type 1 errors while only one was a Type 2 error (i.e. Student 16 - the standardised client awarded the student an Commendation while the Law Tutor awarded a Pass grade). Although the grading structures employed in the case study were not particularly 'high stakes', as the role-play assessment accounted for only 10% of the final result, such issues would be particularly relevant if the methodology was to be adopted in more high-stakes examination such as a test with regards to fitness to practice. Of particular concern would be instances whereby the standardised client either deemed the student 'not yet competent' or conversely 'competent' in circumstances which the law tutor disagreed with, neither of which scenarios presented in the present study.

4.3 Inter-rater correlation tests

The other major way to estimate inter-rater reliability is appropriate when the measure is a continuous one. In such instances it is possible to calculate the correlation between the ratings of the two observers. Correlation between ratings gives a more significant estimate of the reliability or consistency between the raters than calculating the above described level of grade agreement between raters (Trochim, 2006). In the present case, the data generated permits the testing for correlation between the raters in a number of respects.

The author firstly analysed whether or not the overall totals awarded by the standardised clients and the law tutors revealed appreciable levels of inter-rater reliability using *Persaon's r*. In summary, *Pearson's r* correlation describes the magnitude and direction of association between two variables that are on an interval or ratio scale (Creswell, 2003). Thus, *Persaon's r* is a useful test to analyse inter-rater reliable with respect to overall percentage results which constitute an interval or ratio scale. Bryman (2008) identifies that the key features of *Pearson's r* method are that the coefficient will be located between 0 and 1, with 1 being indicative of a 'perfect' relationship and, conversely, the closer to zero the weaker the relationship. The table below is a *Persaon's r* data analysis, generated using SPSS, of the overall assessment

totals awarded by the standardised clients against overall totals awarded by the law tutor:

Descriptive Statistics

	Mean	Std. Deviation	N
Overall Total Rater1	76.2500	10.08960	16
Overall Total Rater2	70.8750	13.18522	16

Correlations

		OTR1	OTR2
Overall Total Rater1	Pearson Correlation	1	.361
	Sig. (2-tailed)		.169
	N	16	16
Overall Total Rater2	Pearson Correlation	.361	1
	Sig. (2-tailed)	.169	
	N	16	16

Table 1: Correlation between overall totals awarded by standardised clients against law tutor scores using *Pearson's r*

From the data we see that when overall totals for Rater 1 (i.e. the standardised client scores) are compared with those of the Rater 2 (i.e. the law tutor scores) a *Pearson's r* correlation of .361 is achieved, indicating a moderate level of inter-rater reliability. Therefore, we can conclude, that while there is some degree of inter-rater reliability between the overall grades awarded by the standardised client and the law tutor, such inter-reliability is not sufficient to conclude a significant correlation.

The author was also interested in ascertaining whether two lawyers assessing the same performance would achieve any greater levels of inter-rater correlation. As discussed previously, for completeness student performances were also viewed and assessed independently by the author to confirm if, in the absence of significant levels of inter-rater reliability between the scores awarded by the standardised client and the law tutor, a greater level of correlation would be achieved between lawyers when assessing the students' performance. Again, the results using *Pearson's r* are summarised below:

Descriptive Statistics

	Mean	Std. Deviation	N
Overall Total Rater2	70.8750	13.18522	16
Overall Total Rater3	71.7500	14.08309	16

Correlations

		OTR2	OTR3
Overall Total Rater2	Pearson Correlation	1	.626[**]
	Sig. (2-tailed)		.009
	N	16	16
Overall Total Rater2	Pearson Correlation	.626[**]	1
	Sig. (2-tailed)	.009	
	N	16	16

**. Correlation is significant at the 0.01 level (2-tailed).

Table 2: Correlation between overall totals awarded by the law tutor against scores awarded by the author using *Pearson's r*

From the data we see that when overall totals for Rater 2 (i.e. the law tutor scores) are compared with those of the Rater 3 (i.e. the author) a *Pearson's r* correlation of .626 is achieved, indicating a reasonably high level of inter-rater reliability. Therefore, we can conclude that the degree of inter-rate reliability between the overall grades of student performance awarded by the law tutor and the author reveal a significant level of correlation over and above that achieved between the standardised clients and the law tutor.

4.4 Testing inter-rater reliability for specific questions on the Assessment Sheet
Having analysed overall totals, the author was then interested in ascertaining if greater levels of inter-rater reliability were present for specific aspects of the assessment. The questions contained in Part A of the Assessment Sheet are examples of interval/ratio variables, that is where the distance between categories are identical across the range (Creswell, 2003). The questions contained in Part B of the Assessment Sheet are examples of dichotomous variables, that is variables containing data that have only two categories (in this instance yes/no variables). The different types of variables

contained within the questions mean that different tests apply when analysing inter-rater reliability.

With reference to the questions contained in Part A of the Assessment Sheet (i.e. Global Ratings), given that the questions are based on an interval or ratio scale with raters asked to rank performance on a scale of 1 to 5, again *Persaon's r* is an appropriate method for analysing levels of inter-rater reliability. As we have seen, certain question in Part (A) of the Assessment Sheet (see Appendix 1) are identified as being more objective (i.e. Question 1 relating to greeting, Question 3 relating to student questioning of the clients, Question 4 relating to summarising and Question 5 relating to communicating) whereas other questions were more subjective, relating to how the standardised client *felt* about the process. Therefore, the author was interested to ascertain if, as might be expected, those questions which could be described as being more objective would reveal a greater degree of inter-rater reliability as against the more subjective questions. Once again using SPSS to analyse the data for correlations between the standardised client and the law tutor assessment scores by means of *Pearson's r* but this time with respect to specific questions on Part (A) of the Assessment Sheet, only Question 1 (Greetings) indicated a significant level of correlation between the results awarded by the standardised client and the law tutor, with a *Pearson r* correlation of .544. Otherwise the inter-rater reliability for Part (A) of the Assessment Sheet would appear to have been weak.

The questions contained in Part B of the Assessment Sheet are examples of dichotomous variables, that is variables containing data that have only two categories (in this instance yes/no variables). As such, it was necessary to analyse the levels of inter-rater reliability according to a different test. For such data *Cohen's Kappa* offers a reasonable statistical measure of inter-rater reliability (Trochim, 2006). *Cohen's Kappa* ranges generally from 0 to 1.0, with large numbers indicative of better reliability and values near or less than zero suggestive that agreement is attributable to chance alone. Landis and Koch (1977) summarise that results from *Cohen's Kappa* can be categorised as follows: < 0 = poor agreement; 0.0– 0.20 = slight agreement; 0.21 – 0.40 = fair agreement; 0.41 – 0.60 = moderate agreement; 0.61 – 0.80 = substantial agreement; 0.81 – 1.00 = almost perfect agreement.

An inter-rater reliability analysis using the *Kappa* statistic was performed to determine consistency among standardised client ratings and law tutor ratings for each

of the questions contained in Part B of the Assessment Sheet, namely the case specific checklist. The results of this analysis revealed greater levels of inter-rater reliability than those identified for Part A of the Assessment Sheet. The following table is an example of the data analysis using SPSS conducted in respect of the assessment results for Question 9 of the Assessment Criteria:

Question 9 Rater 1 * Question 9 Rater 2
Crosstabulation

Count

| | | Question 9 Rater 2 | | Total |
		Yes	No	
Question 9 Rater 1	Yes	10	1	11
	No	0	5	5
Total		10	6	16

Symmetric Measures

	Value	Asymp. Std. Error[a]	Approx. T[b]	Approx. Sig.
Measure of Agreement Kappa	.862	.132	3.482	.000
N of Valid Cases	16			

a. Not assuming the null hypothesis.
b. Using the asymptotic standard error assuming the null hypothesis.

Table 3: Inter-rater reliability between scores awarded by the standardised clients and the law tutor using Cohen's Kappa with respect to Question 9 of the Assessment Sheet

From that data we see that in respect of Question 9, the inter-rater reliability for the raters (i.e. the standardised client and the law tutor) was found to be Kappa = 0.862, indicative of a high level correlation between the raters. For Question 11 the inter-rater reliability was 'almost perfect' with Kappa = .818, for Question 12 there was 'substantial agreement' with Kappa = .636; and for Question 13 there was a 'moderate level of agreement' with Kappa = .429. Only with respect to Question 10 was there a significant lack of correlation, with 'poor agreement', that is Kappa = .158. Therefore, we can conclude that in respect of the Part B of the Assessment Criteria there was significant consistency between the ratings of the law tutors and the standardised client. This is interesting because as we have seen Part B of the

Assessment Sheet was designed to measure students' legal knowledge as opposed to communication skills. As discussed, the standardised client were trained to ascertain whether or not the students had asked for a specific piece of information (length of employment etc.), a process which in turn permitted the standardised clients to evaluate important issues of legal knowledge. The standardised clients did not have to know the significance of the information, merely to identify whether or not it was requested.   Therefore, the findings would imply that, with correctly designed assessment 'checklists', the use of standardised clients might be a reliable method of assessing legal knowledge in clinical legal simulation settings.

Chapter 5 - Conclusions

Teaching and learning exists in a continual state of flux, always the subject of competing interests. In the context of professional legal education in this jurisdiction, the Law Society is the place where such competing interests find expression, with the needs of the public, the profession, students and legal educators often representing conflicting priorities. Such pressures are clearly reflected in terms of the previously mentioned Legal Services Bill, 2011 which has committed to a full scale review of legal education in this jurisdiction. As such, and in response to such policy initiatives, it has never been more important for us as legal educators to clearly identify our roles and objectives and to be in a position to explain those objectives to the public. It is only through research projects like the present one that we can consider the place of professional practice and the skills and values required to underpin that practice, placing the client at the centre of our teaching strategy. In particular, such research can assist in identifying the outcomes and standards that need to be achieved throughout the entire training period and beyond, encompassing continuing professional education courses for solicitors. Furthermore, if, as is possible under the Legal Services Bill, legal education is deregulated and we move to the UK model whereby professional practice courses are provided by universities and other institutions, with the Law Society acting as an accrediting body, then issues of variability across programmes of study will become increasingly relevant. Research such as the present case study can assist in analysing potential variability in the standards and methods of skills teaching and assessment between the various potential providers.

The aim of this research was to test the hypothesis that the use of standardised clients in professional legal education in this jurisdiction is at least as valid and a more cost effective way of assessing lawyer interviewing and communication skills as the method currently used to assess such skills. The results for the Irish case are inconclusive, with at best a moderate level of inter-rater agreement between the assessment results of the standardised clients and the law tutor. As such, more research is required to justify the use of standardised clients in more 'high stakes' examinations. However, it is to be emphasised that this was a small scale pilot project

and, in any event, it would have been difficult to generalise outside the specific case. For example, I noted that in the present case study the law tutor and the standardised client awarded the same grade in 56% of student performances. Based on a similar analysis, Barton et al. (2006) achieved an inter-rater grade agreement of approximately 64%. Therefore, the level of grade agreement between both studies was not that significantly different. It is concluded that the much more conclusive finding of inter-rater agreement achieved by Barton et al. can be to some extent attributed to the much greater number of students participating in that study, resulting in a much richer data set. The author intends to repeat the study in the context of his forthcoming Diploma in Employment Law, which will present an opportunity to test the methodology in respect of a much greater number of participants.

Another important issue affecting inter-rater reliability was the level of training provided to the standardised clients. As discussed, the initial training of standardised clients had to be truncated from three to two days, with the trainer indicating at that time that he would have preferred additional time to achieve higher levels of rater convergence. Trochim (2006) highlights that training, education and monitoring skills can enhance inter-rater reliability. This was the first attempt to use standardised clients in this jurisdiction and it would be hoped that with greater training and experience an enhanced level of inter-rater convergence will be achieved. There is also the related issue of the timing of the standardised client training. There was a six week interval between the training and the actual implementation of the methodology on the Certificate in Employment Law Advocacy & Skills. It is contended that, particularly as it was a new process for all involved, that the training and the implementation should have been more approximate.

The author commenced this work with a question, asking if we as legal educators we adequately measure and, by extension value, lawyer communication and interviewing skills and concluded that until comparatively recently little attempt has been made to critically evaluate communication skills within the profession. Although this case study was undoubtedly a small scale project with respect to the number of standardised clients used and the number of students assessed and the results inconclusive, in conducting the research we are at least attempting to formally assess student performance, as opposed to providing formative feedback. By so doing, the author believes that we have an opportunity to demonstrate to students the importance

which the profession places on lawyer communication skills, thus positively influencing what is valued in practice.

One of the reasons given for the lack of research in this area is the difficulty in devising reliable assessment criteria. The case study attempted to deal with issues of validity and reliability, that is, validity from the perspective of the instrument used to assess the students' performance and reliability from the perspective of achieving a standardised client assessment procedure. A larger scale study to further analyse issues arising in all of those categories (i.e. validity and reliability) will help clarify some of the issues arising. For example, one issue not considered was whether the level of inter-rater reliability for particular standardised clients was less or pronounced than for others (for example was the divergence in the scores awarded by one of the standardised clients against the law tutor scores particularly pronounced, thus affecting the entire data set?). As each standardised client assessed only three to four students, such conclusions could not be made but will require a larger scale offering.

Tamsitt (1983) recommends a particular structure for skills teaching programmes (see above) and I have argued that our current model lacks an opportunity to implement key aspects of that structure, namely repetition of basic skills and feedback and discussion. This in large part is related to the resource intensive and cumbersome nature of our current system of teaching and assessing client interviewing skills, entailing as it does the recording of each interview and having a law tutor separately view each recording to provide formative feedback. A more cost effective method such as using standardised clients would mean that there would be a greater opportunity to practice the repetition of basic skills. Furthermore, the comparatively instantaneous opportunity to provide a feedback loop presented by the use of standardised clients means that, with fewer resources, there is a greater opportunity for more discussion. I have also argued that although legal education is more generally informed by theories of constructivism and more particularly concepts of communities of practice, because of the pressures on resources, skills training is in fact more informed by a behavioural model of teaching and learning. Increasing the focus on practising basic skills and providing a greater opportunity for discussion and feedback would move the teaching of legal skills away from a behavioural model towards one more focused on problem solving and the individual needs of each learner, in essence aligning the teaching of skills more closely with a constructivist approach to learning.

As we have seen, medical educators originally started using standardised patients in low stakes examinations and more recently have progressed to incorporating the methodology as an integral component in final examinations (Grosberg, 2004). The bridge that allowed medical educators to move from using standardised patients in low stakes examinations to high stakes final examinations has been research, that is generating an enormous amount of empirical evidence to validate the methodology. This has not yet happened in legal education in this jurisdiction with respect to the use of standardised clients and, in fact, it is a criticism of legal education that it has not generally engaged in empirical research. There is no particular reason as to why medical educators should be more adept in using quantitative data to justify the use of standardised patients. However, one obvious reason might be that, as Stern (2004) highlights, medicine like science is based on the experimental method. Therefore, those involved in medical education have closely followed the scientific method of research. For example, the great reformer of medical education of the early twentieth century, Abraham Flexener, was careful to use the language of science, rather than using the language of ethics and philosophy when arguing for reform. In conducting this research, two options presented. The author might have attempted to assess student satisfaction with the process, a method which has been previously used by Wilkinson, Newble, and Frampton (2001). However, given that the current debate within the legal profession revolves around the "reliability, validity and efficiency of the performance of the standardized clients" (Grosberg, 2004, p 870), as we have seen, the author adopted an empirical study to test the hypothesis. However, as stated previously, the author also embraced a pragmatic approach, not committed to any one system of research or philosophy, willing to rely of qualitative data were appropriate. Therefore, given that the case study was conducted in the context of a continuing professional development course for solicitors, the author concludes with some qualitative observations.

Grosberg (2004) reports that when second year law students were assessed on client communication skills, the students questioned why they were being tested on skills which they believed that they had already acquired! As such, given that the student cohort in the present case study were not only fully qualified solicitors, but in some instances had been in practice for in excess of ten years, the author was interested in how such students would respond to the process. As such, the author requested

students to conduct a final on-line self-completion questionnaire, of which eight out of the 20 students responded. The findings were the direct opposite of Grosberg's in that of the students provided very positive responses to the use of standardised clients and the teaching of communication skills. 75% of the students reported that the use of standardised clients contributed to their overall learning on the course. For example students reported the following:

"Yes it made one assess how one liaised with clients"

"It was useful to have client skills marked objectively"

Students also reported satisfaction with the lecture and video role-play sessions that preceded the standardised client role-play sessions, which may have helped clarify the overall importance of the client communication.

"I had never had that experience before and it was really interesting to see the role-play shown by DVD in advance. Learn by doing!

Grosberg (2004) also highlights that in his study students expressed regret that they did not receive specific grades for their client interviewing performance. The author's study differed in that although student performances were graded, the performance was a constituent element of the overall grade for the certificate. As such, similar criticism of not receiving a specific grade for the standardised client aspect of the course was also made, with students requesting access to the video recording and the score sheets. For example students reported the following:

"It would have been good to have the mark broken down to see where improvements could be made"

"I would like to have had access to my video with the mock client to see what areas I could improve on when dealing with clients generally"

I have described how experience alone is not a sufficient means of developing client interviewing skills (Sherr, 2000) and that formal training to improve such skills is an imperative. However, for solicitors in practice there would appear to be little or no opportunities to reflect on and improve such skills. Again, the legal profession could learn from the medical profession who have developed 'clinics' which qualified doctors can attend to reflect on and develop their patient interviewing skills, sometimes arising out of recommendations with regards to fitness to practice. Many of the complaints received against solicitors relate not to the advice given, but to the solicitors the manner in which the practitioner engages with the client, in effect their

communication skills. The positive response that the use of standardised clients elicited from participants on the Employment Law Advocacy and Skills Certificate is a hopeful sign and indicates that there is an appetite and willingness amongst the profession to develop such skills in the context of continuing professional education.

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Appendices

Appendix 1
Standardised Client Assessment Sheet

Interviewing Assessment Marking Sheet (Scenario A)
Name of assessor: _____
Name of lawyer: _____

PART A: Global Rating

1. The greeting and introduction by the lawyer was appropriate   1   2   3   4   5

     Comments

     _____

     _____

2. I felt the lawyer listened to me   1   2   3   4   5

     Comments

     _____

     _____

3. The lawyer approach to questioning was helpful   1   2   3   4   5

     Comments

     _____

     _____

4. The lawyer accurately summarised my situation   1   2   3   4   5

     Comments

     _____

     _____

5. I understood what the lawyer was saying   1   2   3   4   5

     Comments

     _____

     _____

6. I felt comfortable with the lawyer   1   2   3   4   5

      Comments

_____

_____

7. I would feel confident with the lawyer dealing with my situation   1   2   3   4   5

      Comments

_____

_____

8. If I had a new legal problem I would come back to this lawyer   1   2   3   4   5

      Comments

_____

_____

Total (out of 40) [ ]

Total Doubled (out of 80) [ ]

PART B: Case Specific Checklist

	YES	NO
Asked for your full name & address		
Asked for your employer's name & address		
Asked for copy of your employment contract		
Asked for details of your period of employment		
Asked for your previous employment record in other employment		

Total (out of 20): [ ]

TOTAL (out of 100): [ ]
(Part A Doubled + B)

Appendix 2

Standardised Client Assessment Criteria

The greeting and introduction by the lawyer was appropriate

This item is designed to assess the degree to which the lawyer can set you at ease in the first few minutes of the interview. There should be an appropriate attempt to make conversation with you, set you at ease, and then a smooth movement to the matter in hand.

1	2	3	4	5
No attempt to meet & greet you; plunges straight into matter. Inappropriate remarks made.	Offered time of day, then straight to matter. Does not seem really interested in you. Little or limited recognition of client situation.	Friendly greeting and recognition of client situation.	Included appropriate small talk in greeting; greeting was appropriate in tone and manner to client's situation. Good transition to client's narrative.	Fluent and confident greeting; very effective use of small talk in context; made you feel at home from the start. Very smooth transition to client narrative. Instant rapport established.

2.   I felt the lawyer listened to me.

This item is designed to assess the degree to which the lawyer can listen carefully to you. This criteria focuses especially on the early part of the meeting when the client should be encouraged to tell their story and concerns in their own words. This entails *active* listening – where it is necessary for the interview structure or the lawyer's understanding of your narrative. The lawyer will not interrupt, cut you off, talk over you or rush you in conversation. The lawyer reacts to your responses appropriately. The lawyer may take notes where appropriate, but if the lawyer does so, the lawyer should not lose much eye contact with you. To some extent in this item we are concerned with what the lawyer does *not* do that facilitates the interview.

1	2	3	4	5
Lawyer prevents you from talking by interrupting, cutting off, talking over, rushing you. Takes over the conversation prematurely as if the lawyer already knows all the answers.	Lawyer limits your opportunity to talk by interrupting, cutting you off, etc. You are allowed to answer specific questions but are not allowed to expand on topics.	Lawyer rarely interrupts or cuts off or rushes you. The lawyer reacts to your responses appropriately in order to allow you to tell your story. More interested in notes taken than in eye-contact with you.	The lawyer is clearly listening closely to you. If the lawyer interrupts, it is only to assist you in telling the story more effectively. Lawyer provides opportunities for you to lead the discussion where appropriate. Good eye contact and non-verbal clues.	The lawyer is an excellent listener and speaks only when it is clearly helpful to your telling your story. Lawyer uses silence and other non-verbal facilitators to give you an opportunity to expand. Excellent eye contact and non-verbal cues.

3.   The lawyer approach to questioning was helpful

This item is designed to assess the degree to which the lawyer can use both open and closed questions to elicit information from you. Effective questions often incorporate what the client has previously said and "frame" the question with a brief explanation of why the question is being asked. The use of such questions should vary according to topic, stage in the interview and many other interpersonal factors, and the lawyer should show awareness of when it is appropriate to use one approach rather than

another. This criteria is also designed to assess the degree to which the lawyer can identify which facts are germane to the legal scenario and your interests, and which you do not have. You may of course have these facts, but in the course of the interview the facts do not become apparent, either because you have forgotten to mention them, or because the lawyer did not pursue the matter sufficiently during the interview.

1	2	3	4	5
Lawyer ignores your cues or misses obvious facts that require questioning; lawyer uses closed questions where open would be better, or *vice versa*. No attempt by lawyer to identify relevant facts required; no attempt to pursue in questions; no statement to you about the need for further information	Lawyer uses questions rather aimlessly; does not seem to know what he or she is looking for. Does not preview sets of closed questions Overuses closed questions. Some attempt by lawyer to identify relevant facts; no attempt to pursue in questions; no statement to you about the need for further information	Lawyer cab question systematically. Effective follow up questions enable the lawyer to identify the basic relevant facts.	Lawyer identifies most of the relevant facts; pursues further facts required in questions; informs you about the need for further specific information. Lawyer can appreciate when to use open & closed questions; can question systematically and extensively; can pursue facts and legally relevant information. Good use of follow-up questions for clarification in logical sequence.	Excellent use of a wide variety of questions. Questions fluently embedded in the interview. Confident use of questioning to create a sense of a narrative building within the interview; gives you confidence in his/her ability to obtain and use information. All relevant facts required are identified by the lawyer; thorough questioning to determine extent of information required.

4.   The lawyer accurately summarised my situation

This item is designed to assess the degree to which the lawyer communicates with the client to confirm his or her understanding of the client's narrative. This can be demonstrated by mini-summaries in which the lawyer feeds back an understanding of parts of the client's narrative to the client. It can also take the shape of a larger summary towards the end of the interview. It should include acknowledgement of the concerns raised by the client, whatever form these concerns may take.

1	2	3	4	5
No confirmation of client narrative and issues. Lawyer insensitive to or dismissive of client concerns	Attempted summary of client narrative, but awkwardly presented (facts only) and incomplete. No or very little communication over client concerns.	Summary of client narrative captures most important elements of client's story and clearly identifies main concern(s).	Very good summary. Lawyer checks accuracy and completeness with client and supplements summary if need be. Lawyer shows clear sensitivity regarding client's concerns.	Excellent summary of client narrative. Links to future action. Lawyer takes account of client's emotions, concerns, wishes, etc in the narrative, and shows the client he or she is taking account of this in the summary.

5.   I understood what the lawyer was saying

This item is designed to assess the degree to which the lawyer is able to communicate in a clear and helpful way, including avoiding the use of legal jargon. The key criterion here of course is the level of your understanding as the client. What can be jargon to a client is perfectly acceptable use to another lawyer; and what is jargon to one client may be understandable to another client.

1	2	3	4	5
Lawyer uses jargon repeatedly, and takes no account of your level of understanding. When you ask for	Lawyer uses some jargon and has to explain to you what this means, generally not doing this well. When	Lawyer either only uses plain language that you understand or if uses terms that have special legal meaning, lawyer	Lawyer is very effective in explaining necessary legal concepts and terms to you in ways you can	Explanations are clear, simple, elegant. If the lawyer uses a special legal term, you understand why the

explanations, he or she makes no attempt to respond, or alter jargon used. Rambling, confusing explanations.	you ask for explanations he or she gives poor or disjointed or ambiguous explanations, and does not shift register in the rest of the interview.	explains that meaning to you.	understand and remember. The lawyer checks to make sure you understand.	lawyer is doing so and fully understand what the lawyer is saying. The lawyer makes sure you understand.

6.   I felt comfortable with the lawyer

This item is designed to assess the degree to which the lawyer can connect at many levels with you so that you feel comfortable telling the lawyer everything important, even on uncomfortable topics. The lawyer should seem interested in you as a person and not treat you as a routine task or problem to be solved. Of course you will give a 1 or 2 if the lawyer speaks to you in a disrespectful way. Key aspects to look for: attentive, polite, comfortable, pleasant, interested, connection

1	2	3	4	5
Lawyer was bored, uninterested, rude, unpleasant, cold, or obviously insincere. Used inappropriate remarks. No empathy.	Lawyer was mechanical, distracted, nervous, or lacking in empathy. Slightly distant and unsympathetic. Little empathy.	Lawyer was courteous to you and encouraged you to confide in him or her. You felt reasonably comfortable with the lawyer.	Lawyer was very attentive to and interested in you. You felt confident to confide in him/her. Good empathy between you.	Lawyer showed a genuine and sincere interest in you. There was a real sense of empathy and connection between you and the lawyer.

7.   I would feel confident with the lawyer dealing with my situation

This item is designed to assess the degree to which the lawyer can gain the client's confidence in his or her ability to handle the client's case. Signs include attempts to gain client confidence, structuring the legal matter, sensitivity to client issues, allowing the client space to talk and explain while maintaining a structure to the interview, and making the client feel as secure as possible in the world of legal matters.

1	2	3	4	5
No confidence that lawyer will help you. Lawyer is insensitive to client issues; or lawyer dominates interview and client; no apparent structure to meeting. A lack of certainty and direction from the lawyer.	Not sure that lawyer will help you. Lawyer is distant or domineering, but some attempt to be sensitive to client concerns. Or little attempt to structure the interview. Not sure where the lawyer is going with questions.	There is some structure to the interview. The lawyer understands what is most important to you and you feel fairly confident that the lawyer will be able to help you.	Feel very secure in the lawyer's ability to help you. Good structure, manner is helpful and lawyer is sensitive to client issues. Transitions clear and lawyer attempts to reassure client where necessary, and tries to structure the legal matter.	Feel totally secure in lawyer's ability to help you. Excellent manner, with good transitions, well structured interview. Lawyer actively provides focus and direction, but no domineering attitude; pleasant and confident.

8. If I had a new legal problem I would come back to this lawyer

It is possible that a lawyer could do quite well on most of the above items, but one or more critical problems would make you feel like you would not use this lawyer again. Likewise a lawyer might have lower scores on some of the above items, but overall does the kind of job that would make you want to use them again. This item is designed to capture this "hard to measure" but all important aspect of effective interviewing but it is not intended to be a cumulative "grade" for the interview.

1	2	3	4	5
No, you are not happy with this choice of lawyer and you will not be returning to this lawyer	You might return	You would seriously consider returning to this lawyer	You would return to this lawyer	You would definitely return to this lawyer.

Appendix 3

Employment Law Advocacy and Skills

Standardised Client Script

October 2011

1. **Client's main concerns**

You were dismissed from your job yesterday. You are very upset and stressed. You don't know what to do now and want your solicitor to help you. You recently disclosed to your employer that you have been diagnosis with epilepsy. You believe that this is the reason you were dismissed. Your wife/husband is not currently employed. You are concerned about paying rent/ household bills. A particular concern is the cost of the taking any action against your employer.

2. **General narrative**

You are [   ] years old. Nine months ago you got a job with A&P Foodstores as a cashier. Two weeks ago you were diagnosed with a minor case of epilepsy. Last week, you approached your boss, the owner of A&P Foodstores, Michael Brett, to discuss your diagnosis. One week after that, yesterday, he told you that he was not happy with your performance and that he had to let you go. He gave you your P45 with the termination of employment date of yesterday. You received payment of one week in-lieu of notice. You have a copy of the P45 and your employment contract but you did not bring these to the solicitor.

3. **Background details**
   Memorised

Your name is [   ]. You are [   ] years old. You are married. You left school at 14 and have been working in various jobs since then, mainly in different retail positions. You were delighted when you got the job with A&P Foodstores and you worked hard there, six days a week. The hours of work varied but you usually worked from 7am to 4pm Monday to Saturday. You are paid hourly at the rate of €9.00 per hour. You had been in this job for nine months when you were let go. Michael Brett had never raised any issue regarding your performance before yesterday when he terminated your employment. You have never had a significant issue in any pervious work (i.e. never 'sacked' before). You

had received a small performance related increase in your hourly rate of pay three months ago. The epileptic event happened outside of work about four weeks ago. You visited your GP who referred you to a consultant in St James' hospital. You attended two appointments at the hospital during working hours. You were not paid for the time taken to attend those appointments.   You were informed that it was a minor case of epilepsy that can be easily managed using medication. You informed Michael of your diagnosis partly to explain your absence from work to attend those medical appointments. You informed Michael that it was a minor case of epilepsy. There are four other employees in the shop, one who works at the delicatessen, and three other cashiers.

Improvised

Details as to name, age, where you live, how you learned how to be a cashier and how long you have been married can be improvised.

4. **Opening Statement**

I am so upset and worried. I have been let go from my job and I am scared about what is going to happen to me now. I am so angry about how I was treated. I don't know what to do.

5. **Facts in general questioning**
   - No previous issue with performance in this job
   - The epileptic event happened outside of work
   - You told Michael of your diagnosis partly as an explanation for your absence and you told him that you were diagnosed with a minor case of epilepsy that could be managed with medication
   - You were the only member of your family in employment and you have immediate financial concerns
   - You feel that you were let go because of your diagnosis

6. **Facts in specific questioning**
   - Employed for nine months

- You had a written employment contract

- You were not given and never saw a grievance and disciplinary procedure/ dignity at work policy

- Never been 'sacked' before.

- Your immediate financial concerns incline you towards an early resolution of the issue (i.e. mediation)

7.   Summary of script characters

[   ]: Client

Michael Brett: Employer, Owner/manager, A&P Foodstores.

Appendix 4

DIT: MA in Higher Education: Professional Legal Education & Skills

The Use of Standardised Clients in Continued Professional Legal Education as a means to Improve Client Communication

Project Information Sheet

- The Project is designed to test the validity of using of Standardised Clients (SC's) in the context Continued Professional Legal Education. The project will test the reliability and validity of client interviewing assessment methods using SC's.
- This methodology draws heavily on similar educational innovations in medical training.
- Many medical schools now teach and assess such skills using what are called 'standardised patients' (SPs). A SP is a lay person who is trained to present symptoms in a standardised way to student doctors in simulated consultations. SPs are also trained to assess student doctors' communication skills.
- In collaboration with Professor Paul Maharg of the University of Northumbria, we are adapting the medical approach to communication skills to legal education.
- Instead of using simulated patients, we shall use SCs in our assessment of lawyer interviewing skills. The objective is to foster a greater client centred 'lawyering' approach and to hone solicitors' client communication skills.
- The first task has been to train a cohort of volunteers to play the role of SCs. Such training was conducting in early September at Blackhall Place with Prof. Maharg.
- The SC's have been trained to present a particular legal scenario in a standardised format. They have also been trained to evaluate certain lawyer skills according to a pre determined criteria.
- Client interviews and communication will be assessed by two separate methods, (1) by means of the SC methodology (as outlined above) and (2) by means of law teacher assessment, whereby a law teacher will independently assess videotaped recordings of the interviews.
- The author will then compare both sets of results and analyse for correlations or variations between the separate forms of evaluation as a means of critically appraising whether or not the use of standardised client is at least as valid a method of assessing such skills.
- All data will be anonymised before analysis.
- The lawyer assessment of the client interview will be used for the purposes of this course and results of the SC assessment will be used purely for research.
- As the project develops, the Diploma Team looks forward to applying the methodology more generally across its broad range of diploma courses.

Dated: 13 October 2011

Appendix 5

DIT: MA in Higher Education: Professional Legal Education & Skills

Participant Consent Form

Title of Project: The Use of Standardised Clients in Continued Professional Legal Education as a means to Improve Client Communication

Name of Researcher: Rory O'Boyle

Participant Identification Number for this project:

1. I confirm that I have read and understand the information sheet dated 13 October for the above project and have had the opportunity to ask questions.

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason.

3. I understand that my data will be anonymised before analysis. I give permission for members of the research team to have access to my anonymised data.

4. I agree to take part in the above research project.

_____   _____   _____

Name of Participant   Date   Signature

_____   _____   _____

 Lead Researcher   Date   Signature

Appendix 6

Rater Score Sheet

	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Part A	Part A x 2	Q9	Q10	Q11	Q12	Q13	Part B	Total	Grade
Student 1																		
Rater 1	3	4	4	4	3	4	4	3	29	58	No	No	Yes	Yes	No	8	**66**	**Pass**
Rater 2	2	3	3	2	2	3	3	2	20	40	No	No	Yes	Yes	No	8	**48**	**Pass**
Rater 3	3	4	2	4	4	3	4	3	27	54	Yes	Yes	Yes	Yes	No	16	**70**	**Merit**
Student 2																		
Rater 1	3	3	4	3	3	4	3	3	26	52	Yes	Yes	No	Yes	No	12	**64**	**Pass**
Rater 2	3	4	3	4	4	4	4	4	30	60	Yes	No	No	Yes	No	8	**68**	**Pass**
Rater 3	4	4	3	3	2	3	2	3	24	48	Yes	Yes	Yes	Yes	No	16	**64**	**Pass**
Student 3																		
Rater 1	3	4	3	4	3	3	4	3	27	54	Yes	Yes	No	Yes	No	12	**66**	**Pass**
Rater 2	3	2	2	2	3	2	3	2	19	38	Yes	Yes	No	Yes	No	12	**50**	**Pass**
Rater 3	4	4	2	2	3	3	2	2	22	44	Yes	Yes	Yes	Yes	No	16	**60**	**Pass**
Student 4																		
Rater 1	5	4	4	4	4	4	4	4	33	66	Yes	Yes	Yes	Yes	No	16	**82**	**Commendation**
Rater 2	4	5	5	5	5	5	5	5	39	78	Yes	Yes	Yes	Yes	No	16	**94**	**Commendation**
Rater 3	5	5	5	4	4	4	5	5	37	74	Yes	Yes	Yes	Yes	No	16	**90**	**Commendation**
Student 5																		
Rater 1	3	4	3	4	4	4	2	2	26	52	Yes	Yes	Yes	Yes	No	16	**68**	**Merit**
Rater 2	4	4	4	4	4	4	4	4	32	64	Yes	Yes	Yes	Yes	No	16	**80**	**Commendation**
Rater 3	4	5	5	4	4	5	5	4	36	72	Yes	Yes	Yes	Yes	No	16	**88**	**Commendation**
Student 6																		
Rater 1	2	5	3	5	4	5	5	5	34	68	No	Yes	No	Yes	No	8	**76**	**Merit**
Rater 2	2	4	3	3	4	3	3	3	25	50	No	No	No	Yes	No	4	**54**	**Pass**
Rater 3	2	2	3	3	3	3	2	2	20	40	No	Yes	No	Yes	No	8	**48**	**Fail**
Student 7																		
Rater 1	4	5	3	5	5	5	4	5	36	72	Yes	Yes	No	Yes	No	12	**84**	**Commendation**

Rater 2	4	4	3	3	4	4	4	3	29	58	Yes	No	Yes	Yes	No	12	**70**	**Merit**
Rater 3	3	3	3	4	4	3	3	3	26	52	Yes	Yes	Yes	Yes	No	16	**68**	**Pass**
Student 8																		
Rater 1	4	5	3	5	5	4	4	3	33	66	No	Yes	Yes	Yes	No	12	**78**	**Commendation**
Rater 2	5	5	5	5	4	4	4	4	36	72	No	No	Yes	Yes	No	8	**80**	**Commendation**
Rater 3	3	4	4	3	4	3	2	2	25	50	No	Yes	Yes	No	No	8	**58**	**Pass**
Student 9																		
Rater 1	3	4	4	4	3	5	4	4	31	62	Yes	Yes	Yes	Yes	No	16	**78**	**Merit**
Rater 2	3	4	3	4	4	4	4	4	30	60	Yes	Yes	Yes	Yes	No	16	**76**	**Merit**
Rater 3	4	4	5	5	3	4	5	4	36	72	Yes	Yes	Yes	Yes	No	16	**88**	**Commendation**
Student 10																		
Rater 1	4	5	5	4	4	5	5	5	37	74	No	Yes	Yes	Yes	No	12	**86**	**Commendation**
Rater 2	3	4	3	4	4	4	3	3	28	56	No	Yes	Yes	No	No	8	**64**	**Pass**
Rater 3	3	3	2	3	3	2	2	3	21	42	Yes	Yes	Yes	Yes	No	16	**58**	**Pass**
Student 11																		
Rater 1	3	3	2	2	3	3	1	1	18	36	No	Yes	Yes	Yes	Yes	16	**52**	**Pass**
Rater 2	3	4	5	4	4	4	3	3	30	60	No	No	Yes	Yes	Yes	12	**72**	**Merit**
Rater 3	2	3	2	3	4	3	3	3	23	46	No	Yes	Yes	Yes	Yes	16	**62**	**Pass**
Student 12																		
Rater 1	3	3	4	4	4	3	3	3	31	62	Yes	Yes	Yes	Yes	Yes	20	**82**	**Commendation**
Rater 2	5	5	4	3	4	5	4	4	34	68	Yes	Yes	Yes	Yes	No	16	**84**	**Commendation**
Rater 3	4	4	4	4	4	4	5	4	33	66	Yes	Yes	Yes	Yes	No	16	**82**	**Commendation**
Student 13																		
Rater 1	4	4	4	5	4	4	4	4	33	66	Yes	Yes	Yes	Yes	No	16	**82**	**Commendation**
Rater 2	3	4	3	3	3	4	3	3	26	52	Yes	No	Yes	Yes	No	12	**64**	**Pass**
Rater 3	4	4	3	4	5	5	4	5	36	72	Yes	Yes	Yes	Yes	No	16	**88**	**Commendation**
Student 14																		
Rater 1	5	4	4	4	3	4	4	3	31	62	Yes	Yes	Yes	Yes	No	16	**78**	**Merit**
Rater 2	4	4	2	2	4	4	2	2	24	48	Yes	Yes	Yes	Yes	No	16	**64**	**Pass**
Rater 3	4	4	2	3	2	3	2	1	21	42	Yes	Yes	Yes	Yes	No	16	**58**	**Pass**
Student 15																		
Rater 1	4	5	4	5	4	5	5	5	37	74	Yes	Yes	Yes	Yes	No	16	**90**	**Commendation**

Rater 2	5	3	4	3	3	5	5	4	32	64	Yes	Yes	Yes	Yes	No	16	**80**	**Commendation**
Rater 3	5	3	4	4	4	4	3	4	31	62	Yes	Yes	Yes	Yes	No	16	**78**	**Merit**
Student 16																		
Rater 1	4	5	4	4	5	4	4	5	35	70	Yes	Yes	Yes	Yes	No	16	**86**	**Commendation**
Rater 2	5	5	5	4	4	4	4	4	35	70	No	Yes	Yes	Yes	Yes	16	**86**	**Commendation**
Rater 3	3	4	5	4	5	4	5	4	36	72	Yes	Yes	Yes	Yes	No	16	**88**	**Commendation**