

VALUING WHAT CLIENTS THINK: STANDARDIZED CLIENTS AND THE ASSESSMENT OF COMMUNICATIVE COMPETENCE

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An international and interdisciplinary team from the Glasgow Graduate School of Law (GGSL) and the Dundee Medical School - in Scotland - and the Georgia State University College of Law (GSU) - in the United States - has undertaken an ambitious project to change the way lawyer-client communication skills are taught and assessed. Medical education in both America and Great Britain has been trans-

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formed by a new methodology for assessing competence in patient communication: the use of intensively-trained lay persons who present standardized patient scenarios to medical candidates and then assess the candidates' performance. GGSL is the site for a series of pilot projects testing whether a similar methodology using standardized clients (SCs) would be as valid, reliable and cost-effective as the current GGSL approach, which is widely used by many law schools, of having client roles played by students with assessment based on law teacher review of the interview videotape.

These projects culminated in January 2006 with a graded interviewing exercise that GGSL students must pass in order eventually to be eligible for a law license. Over 250 GGSL students conducted this exercise with SCs, and the SC assessments were analyzed and compared with law teachers' evaluations of the interview videotapes. The results strongly indicated that assessment by SCs was sufficiently valid and reliable to be used for a high-stakes examination in legal education. As a direct result of this project, the way lawyer skills are taught and assessed is undergoing fundamental change not only at GGSL but elsewhere in Great Britain.

INTRODUCTION

A truism in education theory is that “we value what we measure” and “we measure what we value.” (This principle underlies the infamous student question, “Is this going to be on the exam?”) To a significant degree medical education and the medical profession have come to value patient satisfaction and effective doctor-patient communication as a consequence of successful efforts to measure these things. American legal education increasingly says it values effective lawyer-client communication, but like the legal profession it produces, it has yet to seriously attempt to measure this critical professional competence. This skill is not tested in any part of the American bar examination process¹ nor does the required curriculum in American law schools mandate courses on client interviewing and counseling (in comparison, for example, to legal research and writing).²

Over the past 30 years, medical education has given increasing

¹ See Lawrence M. Grosberg, *Standardized Clients: A Possible Improvement for the Bar Exam*, 20 GA ST. U. L. REV. 841 (2004).

² The American Bar Association accreditation standards for law schools do include the following requirement in Standard 302 (Curriculum): “Standard 302 (a) A law school shall require that each student receive substantial instruction in: . . . (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession”. ABA Interpretation 302-2 lists a number of professional skills, including counseling and interviewing, as “among the areas of instruction in professional skills that fulfill Standard 302 (a)(4)” but apparently allows schools to pick and choose among items on the list. ABA Section of Legal Education and Admissions to the Bar web site: <http://www.abanet.org/legaled/standards/chapter3.html>.

emphasis to the use of “standardized patients” both for teaching and licensure.³ This methodology was developed in response to two concerns about its predecessor, the “oral examination,” in which a student would interview and examine a patient in the presence of a faculty physician, and the faculty would then query the student about the reasons for asking the patient certain questions, the findings on examination, and the nature of the disease diagnosed in the case. This testing method was seen to have two major shortcomings: variability in the patient case, and variability in the examiner. Standardized patients (SPs) are individuals trained to perform a previously-scripted role in an initial clinical examination – always responding in the same manner to the same question, with the same physical complaints, and body language throughout the interview. They are also trained to fill out a written evaluation form after completion of the simulated examination.

The medical profession has concluded that this methodology has made the assessment of clinical skills much more reliable as well as providing an excellent opportunity for students to practice communication and examination skills in a controlled setting prior to examining real patients with real conditions. In the United States most medical schools have some standardized patient experiences for students, either as an educational or as an assessment program, and effective in 2004 all medical students must pass a multiple-station examination using standardized patients to qualify for a medical license.⁴ Our project has designed and tested a comparable Standardized Client (SC) method for assessing candidates for the law license.

Scotland has designed a system of preparation for legal practice that is much more comprehensive than found in the United States, especially in its aspirations to integrate academic education and professional training. In the Diploma in Legal Practice provided by the Glasgow Graduate School of Law (GGSL)⁵ (which contains the largest number of Diploma students in Scotland) effective lawyer-client communication has been not only valued but measured in a mandatory simulated interviewing exercise that is assessed according to detailed criteria based on review of the videotaped performance by “tutors” – experienced lawyers who teach part-time at GGSL (much like adjunct professors at American law schools). Because large num-

³ David Stern, *Outside the Classroom: Teaching and Evaluating Future Physicians*, 20 GA. ST. U. L. REV. 877, 893-94 (2004).

⁴ *Clinical Skills - Entering the Second Year of Test Administration*, NBME EXAMINER (National Board of Medical Examiners) (Fall/Winter 2005), available at <http://www.nbme.org/Examiners/FallWinter2005/news.htm>.

⁵ The Glasgow Graduate School of Law is a joint initiative between the universities of Glasgow and Strathclyde.

bers of students are required to pass this exercise each year (over 250 in 2006) and because GGSL already devotes the resources necessary to provide a valid assessment for this high-stakes exam, Scotland provides the setting for the kind of rigorous testing of the SC model that has not taken place in the United States or in any other legal jurisdiction to our knowledge.⁶ Consequently, we developed a pilot project that has demonstrated that SCs can be as reliable as and more cost-effective than the current system of tutor assessment in Scotland. This project may eventually prompt an entire jurisdiction to change the way it measures professional competence in communicating with clients.⁷ We are convinced that if such a change in what “is measured” takes place, that change will serve as a catalyst for transforming what is valued in the practice of law.

It is important to note, however, that we do *not* conclude that all aspects of effective client interviewing and counseling can be assessed by use of standardized clients. As our pilot project progressed, we repeatedly narrowed both the interview exercise and the assessment instrument to focus on those components of client interviewing that we believed could be accurately evaluated by non-lawyers. For example, one question on the assessment instrument asks if the client understood what the lawyer said. This is clearly a relevant criterion of effective interviewing. A lay person playing the client role is not only able to answer this question but is actually in a better position to do so than a lawyer watching the video, for two reasons: (1) the SC is actually experiencing the interview and thus knows what she did and did not understand, and (2) a person with legal training is less likely than the SC to notice the interviewer’s use of terms and expressions with specialized legal meaning, which can often be a more subtle problem than just the use of “legal jargon.”⁸

We also want to emphasize that SCs are not merely recording levels of subjective “client satisfaction.” Specific lawyer behaviors and actions with a direct effect on competent interviewing are identified and evaluated by the SCs. For example, four out of the eight items on our primary assessment instrument (Part A) ask the SC to rate the

⁶ As described below, *infra* notes 23-26 and accompanying text, Larry Grosberg at New York Law School has done pioneering work on adapting SP methodology to legal education which has been of considerable guidance to us.

⁷ See *infra* Conclusion, Part V.

⁸ Of course the SC’s response to this question is most accurate if the SC actually did not understand something said by the lawyer. The more the SC participates in simulated interviews – in training and for assessment – the more the SC is likely to understand statements by a lawyer that a real client would not understand. SC training thus must emphasize the need to imagine how real clients would experience such an interview, taking place for the first time in their experience.

following aspects of the lawyer's behavior during the interview that are objective measurements of communicative competence: (1) how well did the lawyer listen, (2) what kind of questioning techniques were used, (3) did the lawyer summarize accurately what the client said, and (4) did the lawyer speak in a comprehensible way? As described in detail below, SCs were trained to refine their inherent ability to evaluate these issues and given an annotated scoring sheet for Part A with explanations and examples drawn from standard texts on client interviewing.

Because establishing rapport and trust are also essential elements of effective interviewing, three other questions on Part A did address these more subjective issues but with some specificity: (1) were the opening moments handled appropriately, (2) did the client feel comfortable with the lawyer, and (3) did the client feel confident with the lawyer dealing with her situation? These items were also explained in the annotated scoring sheet. The final question was closest to a simple measure of client satisfaction, but even that item was phrased in terms of actual action by the client: if the client had a new legal problem, would the client come back to the same lawyer?

In the final phase of our pilot project, for the January 2006 interviewing exercise at GGSL, we also experimented with an additional assessment instrument (Part B) which was designed to measure the student's ability to apply legal knowledge to the facts presented by checking whether the student asked for certain specific items of information needed to analyze the client's situation. It was the law teachers who designed the fact scenarios, and who therefore determined the fact pattern and resulting key questions that should be asked; the SCs were trained simply to report on a checklist whether those questions were in fact asked. Although we think Part B could be further refined, the data from the January 2006 pilot indicated that SC assessments using Part B were also valid and reliable.

This pilot project arose from the fortuitous intersection of two different initiatives in legal education: the Effective Lawyer-Client Communication (ELCC) project and Scotland's three-year course of professional legal education and training required for a law license. We therefore begin this article with an overview and brief history of the ELCC project, in Part I, and of Scotland's innovative integration of theory and practice in the process leading to legal practice in Part II. We then describe in some detail in Part III the three stages of the pilot project. We learned a great deal at each stage (much of which surprised us) and modified our project accordingly as we moved on. Our working hypothesis, drawing from the example of SP assessment in medicine, was that with proper training and carefully designed assess-

ment procedures standardized clients could assess important aspects of client interviewing with validity and reliability comparable to assessment by law teachers. As can be seen in our discussion of data from the final pilot in January 2006, in Part IV, we attempted diligently to disprove this hypothesis with a variety of analytical approaches but found the hypothesis supported by each analysis.⁹ We thus concluded that the hypothesis was sufficiently established to support the important educational decision by GGSL to shift to SC assessment for its mandatory interviewing exercise.

This article is intended to be a useful resource for persons interested in either replicating our experiment or in adapting various aspects of standardized client methodology to their own work. Such readers will find of particular value the last third of the article (Part III(E) - Part V) and the appendices, which contain the assessment forms used for each of the pilot projects, the annotated scoring sheet for our final form, and a brief set of guidelines for training standardized clients.

I. THE EFFECTIVE LAWYER-CLIENT COMMUNICATION PROJECT

The Effective Lawyer-Client Communication (ELCC) project was initiated in 1998 and has at various times included participants from Australia, England, India, Israel, Scotland, South Africa, and the United States and from a wide variety of disciplines.¹⁰ The long-term goal of the project is to determine whether international and interdisciplinary collaboration on the issue of lawyer-client communication can actually change basic institutional practices and beliefs in the legal profession. The history of the Effective Lawyer Client Communication Project is interwoven with two important initiatives that have promoted international collaboration in clinical legal education: the Global Alliance for Justice Education (GAJE)¹¹ and the International Clinical Conferences co-sponsored by the University of California - Los Angeles (UCLA) School of Law and the Institute for Advanced Legal Studies, University of London, often referred to as the "Lake Arrowhead Conferences" because on all but one occasion they have been held at the UCLA Lake Arrowhead Conference Center in the mountains above Los Angeles.¹²

⁹ By useful contrast, data from the first pilot in January 2005 conclusively disproved a hypothesis we were actually not asserting: that assessment by law students playing the role of a client would compare favorably to assessment by law teachers of the same interviews. *See infra* Part III (B).

¹⁰ For more information, *see* the ELCC web site: <http://law.gsu.edu/Communication/>.

¹¹ For more information, *see* the GAJE web site: <http://www.gaje.org>.

¹² The first conferences were co-sponsored by UCLA and Warwick University. One of the conferences was held in England in the Lake District.

At the second Lake Arrowhead conference, held in September 1989, one of the co-authors, Clark Cunningham, presented “A Tale of Two Clients: Thinking about Law as Language,” which was a working paper version of an article which appeared later that year in the *Michigan Law Review*.¹³ That article marked the beginning of Cunningham’s efforts to apply the methods and insights of sociolinguistics to the practice of law generally and specifically to the teaching of effective lawyer client communication in clinical legal education.¹⁴ In 1994 he began to form collaborative partnerships with sociolinguists in United States.¹⁵ In 1996 he traveled to Sydney to co-chair the working party that planned the creation of GAJE, at which time he first met Christopher Roper, the then-Director of the Centre for Legal Education (Australia) which hosted the working party meeting. While in Sydney he also attended an international conference sponsored by the Australasian Professional Legal Education Council (APLEC). His exposure at that conference to the sophisticated empirical work being done by researchers in the United Kingdom (UK) and Australia on the lawyer-client relationship led him to present at the fourth Lake Arrowhead Conference in October 1997, what he called “A Modest Proposal: Cross-National Empirical Research on Lawyer Client Communications.”

By the spring of 1998 the Washington University School of Law in St. Louis, where Cunningham was then a professor, had agreed to enter into a partnership with the Centre for Legal Education to launch an “International Research Project on Lawyer-Client Communica-

¹³ 87 MICH. L. REV. 2469 (1989).

¹⁴ See Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992); Clark D. Cunningham & Bonnie McElhinny, *Taking It to the Streets: Putting Discourse Analysis to the Service of a Public Defender’s Office*, 2 CLIN. L. REV. 285 (1995); Clark D. Cunningham, *Evaluating Effective Lawyer-Client Communication: an International Project Moving From Research to Reform*, 67 FORDHAM L. REV. 1959 (1999); and Clark D. Cunningham, *How to Explain Confidentiality?* 9 CLIN. L. REV. 579 (2003).

¹⁵ Cunningham was indebted to Professor Gay Gellhorn for introducing him to Professor Lynne Robins, an anthropologist who specializes in doctor-patient discourse and medical education. It was through Robins that he first learned about the SP movement in medical education and, as mentioned below, Robins has been an important research collaborator for the ELCC project. Robins earlier collaborated with Gellhorn on a pioneering application of sociolinguistics to clinical legal education: Gay Gellhorn, Lynne Robins, & Pat Roth, *Law and Language: An Interdisciplinary Study of Client Interviews*, 1 CLIN. L. REV. 245 (1994). See also Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLIN. L. REV. 321 (1998). Another important contributor to the application of research on doctor-patient communication to legal discourse has been Professor Linda Smith. See, e.g., Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the “Traditional” Interview and the “Client Centered” Interview*, 1 CLIN. L. REV. 541 (1995); *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 CLIN. L. REV. 391 (1998).

tions,” co-directed by Cunningham and Roper. The proposal¹⁶ stated, borrowing heavily from Cunningham’s 1997 Lake Arrowhead paper:

“A wide variety of legal scholars and social scientists from a number of countries have reached the conclusion that many if not most clients are deeply dissatisfied with the quality of lawyer-client communications, and that this problem not only affects public regard for the legal profession but also undermines fundamental principles of justice. Academics seem also to share a basic consensus about what needs to change to address the problem:

- lawyers need to let clients tell their stories with minimal interruption or efforts to fit the narrative into pre-existing legal categories, especially at initial interviews;
- lawyers need to give much more information to clients so that they understand the purpose of the lawyer’s questions and gain a basic understanding of the legal significance lawyer gives to their narrative and the aspects of the legal system that will affect their situation;
- lawyers need to share much greater control with clients over the process by which their cases and other legal concerns are handled as well as the nature of the outcome.

Although these critiques and proposal for reforms have been widely discussed in the academic literature over the past 10 years, there has been little or no impact on the actual practice of law. Recent research suggests two major reasons for this lack of impact:

- dominant practices of lawyer-client communications are deeply rooted in the professional culture of lawyering and are thus difficult to question or change;
- the academy has made no serious effort to present a plausible cost-benefit analysis that might persuade the profession to adopt its proposal for reforms.

A realistic program to improve lawyer client communications must be based on hard empirical evidence, with a broad database, that:

- large numbers of clients are in fact dissatisfied with their lawyers because of the quality of communications;
- this dissatisfaction is based on the factors analyzed by academics;
- adoption of academic proposals for reform would actually increase client satisfaction and improve the quality of information received and exchanged; and
- the demonstrable benefits of adopting reform proposals outweigh their very real costs, primarily measured in terms of increased lawyer time and in communication with clients.”

The proposal attached a copy of the 1997 Lake Arrowhead paper and explained why the proposal was called “modest”:

¹⁶ On file with author Cunningham.

“Although the proposal is not modest as to the amount of work entailed, the basic idea of comparative research about lawyer-client communications seems obvious and straightforward. Also, the suggestion is intended to encourage a kind of humility in the growing literature about lawyer-client communications. Looking across national boundaries not only suggests new ideas and approaches but can also prompt reconsideration of attitudes so dominant in one’s own culture that they seem self-evidently true.”

The proposal gave three examples of empirical research outside the United States that provided useful models, in particular Avrom Sherr’s extensive analysis of 143 actual solicitor interviews.¹⁷ In his project the interviews were assessed in three ways: (1) immediately after the interview, the client was questioned using a standard form; (2) also immediately after the interview, the lawyer was questioned; and (3) videotapes of the interviews were analyzed by experts according to criteria developed by Sherr based on his previous research on lawyer interviewing.

By the end of Spring 1998 the proposal had evolved into the Effective Lawyer-Client Communication Project with a distinguished international and interdisciplinary Advisory Board. In July 1998 Sherr¹⁸ hosted a meeting in London at the Institute of Advanced Legal Studies where Roper and Cunningham in consultation with members of the Advisory Board planned the first ELCC pilot project.¹⁹ The decision reached at this meeting was to select the initial client interview as the focus for the pilot project. The initial interview is, of course, the one unit of service that is constant across all forms of legal service delivery. It is also one of the most critical units of service. 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, sub-

¹⁷ Avrom Sherr, *The Value of Experience in Legal Competence*, 7 INT’L J. LEGAL PROFESSION 95 (2000)(an earlier version was presented at the 1996 APLEC conference). The other two examples cited were Livingston Armytage, *Client Satisfaction with Specialists’ Services: Lessons for Legal Educators*, 1 SKILLS DEVELOPMENT FOR TOMORROW’S LAWYERS: NEEDS AND STRATEGIES (Conference Papers) 355 (Australasian Professional Legal Education Council 1996) and Diana Eades, *Recognition of Cultural Differences in Communication: The Case of Robyn Kina*, 16 LANGUAGE AND COMMUNICATION 215 (1996).

¹⁸ Avrom Sherr was both a co-founder of the Lake Arrowhead Conferences and a member, along with Cunningham, of the first GAJE Steering Committee.

¹⁹ The meeting included, in addition to Sherr, Nigel Duncan from the Inns of Court School of Law, who was another member of the first GAJE Steering Committee, and Bryna Bogoch, an Israeli sociolinguist who was a visiting scholar at Oxford at the time. During parts of the meeting, the group was joined by Roger Smith, then Director of Education and Training for the Law Society of England and Wales, and by Sumitra Vignaendra, Senior Researcher at the Centre for Legal Education who was on a research visit to the Law Society.

stantive legal rights, what the client can do for himself or herself, and the need to preserve evidence. In many cases the initial interview may in fact be the most significant communication before outcome determinative events such as hearing or settlement. By assessing effectiveness at the outset of the case, this approach provides feedback to lawyers during provision of service, thus creating the possibility for improved service and increasing the relevance of the assessment both to lawyers and clients.

ELCC and the proposed pilot were presented at a series of legal education conferences – in England, the United States and India.²⁰ As a result of this process several law school clinics volunteered to participate in the pilot project including the Monash University School of Law,²¹ Melbourne, Australia; Brigham Young University Law School, Provo, Utah; New York University Law School, New York City; and Case Western Reserve University School of Law, Cleveland, Ohio. By far the most significant contribution to the pilot project came from Case Western, where Professor Louise McKinney devoted a great amount of time and energy to obtaining university approval in developing client consent procedures for tape recording client interviews that could be analyzed by Cunningham and a sociolinguist, Professor Lynne Robins. The Case Western pilot was also the primary site for testing the forms to be filled out by client and interviewing lawyer immediately after the initial interview. Professor Robins and Professor Alan Lambert at the Washington University Psychology Department, an expert on attitudinal survey research, consulted on the development of the forms which were partly based on patient satisfaction questionnaires developed in the medical field.²² Lambert also conducted the preliminary statistical analysis of the

²⁰ These conferences included the Worldwide Advocacy Conference, Inns of Court School of Law, London, England (July 1998); The Conference on The Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues sponsored by the American Bar Association, Open Society Institute, and The Legal Services Corporation and held at Fordham Law School, New York City (December 1998); the Annual Meeting of the International Client Counseling Competition Board, Chicago (March 1999); the Midwest Clinical Teachers Association (October 1999); and the Inaugural Worldwide GAJE Conference in Trivandrum, India (December 1999). The presentation at Fordham Law School in December 1998 was published as Clark D. Cunningham, *Evaluating Effective Lawyer-Client Communication: an International Project Moving From Research to Reform*, 67 *FORDHAM L. REV.* 1959 (1999).

²¹ The partnership with Monash Law School also arose out of GAJE activities; the director of professional training programs at Monash, Professor Adrian Evans, was a member of the first GAJE Steering Committee.

²² Very helpful guidance in developing the forms was received from Dr. Melvin Hall, an ELCC advisory board member who is CEO of Press Ganey, the largest company in United States engaged in measuring patient satisfaction for hospitals and other health-care providers.

questionnaires filled out at the Case Western pilot site. However, because of the relatively small number of initial interviews conducted at the clinic where questionnaires were administered (less than 30), the sample size was not large enough for Lambert to reach any conclusions about the validity or reliability of the forms.

Cunningham had some familiarity with the use of standardized patients through his work with Professor Robins (who teaches at medical schools) but he became more interested in the potential relevance of SP methodology to the ELCC project when at the 5th Lake Arrowhead Conference in November 2001 Professor Lawrence Grosberg reported on a pilot project using Standardized Clients at New York Law School.²³ His first pilot project involved a single SC and 43 students in an upper level course on negotiating and counseling. He attempted to test validity following the approach used in medical education – correlating the SC assessment marks with marking by law teachers observing the same interviews on videotape – but the results, though suggestive in a positive direction, were not statistically significant, perhaps because of the small sample size.²⁴ His later pilots did involve much larger numbers – as many as 36 SCs for 457 students – using the first year Lawyering Course, but he did not try to replicate his earlier validation study. The SCs did fill out assessment forms that were given to students as constructive feedback but not incorporated into official marking. Grosberg judged these later pilots as successful in terms of positive student evaluations about the experience of working with the SCs. He specifically included in his paper the caveat that “[w]hether the SC could or should be used for high-stakes exams, or for an important graded exercise in a course, were distant concerns at most.”²⁵ In 2004 and 2006 Grosberg conducted additional studies comparing the scores given by SCs and by law professors during training of the SCs and found rates of agreement that supported the use of SCs, at

²³ His paper was published as Lawrence M. Grosberg, *Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client*, 51 J. LEGAL EDUC. 212 (2001).

²⁴ *Id.* at 221-223.

²⁵ *Id.* at 227. Grosberg was not the first to experiment with applying SP methodology to legal education. Almost 20 years earlier a small-scale experiment took place at the University of Arizona College of Law that involved Dr. Paula Stillman, a leader in the SP movement in medical education. Paula L. Stillman, Andrew Silverman, Michele Young Burpeau & Darrell I. Sabers, *Use of Client Instructors to Teach Interviewing Skills to Law Students*, 32 J. LEGAL ED. 395 (1982). The standardized clients, termed “client instructors” in the experiment, were trained and then interviewed by 14 law students. The research question appeared to be whether students would improve their interviewing skills from a first to a second SC interview as measured by the SCs’ rating of the interviews on an assessment form similar to that used by SPs. The pilot showed clear improvement in student interviewing skills according to this measure.

least in low stakes settings.²⁶

The ELCC project moved to the Georgia State University (GSU) College of Law in 2002 when Cunningham was appointed to the W. Lee Burge Professorship of Law & Ethics at GSU. His appointment brought an infusion of additional funding to the project from the Burge Endowment for Law & Ethics associated with his professorial chair. ELCC began the major leap forward leading to the current project in January 2004 when, in connection with a conference at the GSU College of Law on new approaches to assessing competency to practice law, Cunningham and co-author Paul Maharg (who is co-director of Professional Practice Courses at the Glasgow Graduate School of Law), visited the Atlanta Clinical Skills Assessment Center, one of the five centers around the country where the simulated patient examination is administered to medical students.²⁷ It was that experience of visiting the Atlanta Clinical Skills Assessment Center combined with discussion at and around the symposium that prompted the Glasgow Graduate School of Law to collaborate with the Effective Lawyer-Client Communication Project to run this pilot program in Scotland using standardized clients.

II. THE SCOTTISH CONTEXT

In comparative terms, Scotland is a small jurisdiction. The legal profession of around 8,800 solicitors and some 400 practicing advocates serving a population of around five million is smaller than the legal bar of many states in the United States. Scottish solutions to the problems of professional education are therefore those that are appropriate to this jurisdictional size, character and history. However it is one of the themes of this project that whatever the size and legal structures of a jurisdiction, there are many educational issues common to even those jurisdictions significantly different in size, structure and culture. The second theme deals with what has been in Scotland a particular concern, and that is the problem of educating for practice; and especially the design of active and ethical forms of learning that are most effective for training and education at the professional stage.

²⁶ Lawrence M. Grosberg, Professor, New York Law School, Presentation at the 4th International Journal of Clinical Legal Education Conference: Experimentation in Skills Learning and Assessment — Accountability and Data Collection (London, England, July 13, 2006). A summary powerpoint presentation is available directly from Professor Grosberg: Lgrosberg@nyls.edu.

²⁷ Cunningham was encouraged to learn about Scotland's professional training curriculum and introduced to Maharg by Nigel Duncan (*see note 19 supra*). Duncan, Maharg and Larry Grosberg (*see supra* notes 23-26 and accompanying text) were also speakers at the GSU conference and joined Maharg and Cunningham on the visit to the Atlanta Clinical Skills Assessment Center.

First, though, we shall outline the current initial training and education of law students and trainees in Scotland.

The training of both advocates and solicitors in Scotland takes the same route at the initial stages. All lawyers in Scotland must qualify with a Bachelor of Laws (LL.B.) from an institution recognized by the Law Society of Scotland (LSS), or they must pass the LSS's examinations. The great majority of students take the degree route into the profession. The LL.B. can be studied in a variety of curricula. Those students taking the LL.B. as their first degree after leaving school can take an Ordinary, three-year degree, in which they take a minimum of optional subjects apart from those core subjects deemed necessary by the LSS. They can also extend this to an Honours degree lasting four years. Those students who already have a degree in another discipline may condense the Ordinary three-year degree into a two year graduate-entry degree in law. A part-time study route of 5 or 6 years' duration is also available.

The first two or three years of the undergraduate degree are spent predominantly in the study of the subjects that are deemed by the LSS to be the core of knowledge demanded of a lawyer. These subjects, called the "qualifying subjects" because they are seen as in part defining the core of knowledge required of law graduates, are dealt with under different categories and to different depths in each of the universities offering qualifying law degrees; but in general terms, they deal with the following areas:

Public Law and the Legal System

Scots Private Law

Scots Criminal Law

Scots Commercial Law

Conveyancing

Evidence

Taxation

European Community Law²⁸

In addition to the above, all universities require all students (except those taking the two-year graduate course) to take non-law options in other social science or arts disciplines. The undergraduate law degree in Scotland is thus considerably varied. There is an emphasis generally on skills, but these are normally taken to be the skills of academic performance in case-analysis, essays, dissertations and the like. The most recent survey on teaching and learning in undergraduate law courses in Scotland would suggest that the great majority of

²⁸ See *Law Society of Scotland Examination Syllabus and Reading List*, at <http://www.lawscot.org.uk/> under "Education & Training."

skills training lies in the domain of academic rather than practitioner skills, as might be expected.²⁹

After qualifying with an LL.B. degree, students who wish to enter the legal profession in Scotland then begin a three-year course of professional training and education. This begins with a course called the Diploma in Legal Practice. Equivalent in many ways to the Legal Practice Course in England and Wales, the Diploma sets out to train law students in practice skills, knowledge, values and attitudes, and to equip them for the two-year traineeship that follows the Diploma. The Diploma curriculum, around 27 weeks in length, is set by the LSS, and consists of the following subjects:

- Civil Court Practice
- Criminal Court Practice
- Private Client (similar to Wills & Estates)
- Conveyancing
- Practice Management
- Financial Services & Accounting
- Professional Ethics
- Either Company (i.e. Corporations) & Commercial *or* Public Administration

Learning outcomes are specified by the LSS for each of the above subjects, but the course is designed and administered locally by five different university-based providers³⁰ which are given flexibility to design syllabi and assessments. The course is taught predominantly by part-time law teachers called “tutors” who are practicing lawyers working in specific areas of the law. Course materials in the form of student and tutor handbooks for each of the above subjects are issued by the LSS to the providers every year, and the LSS takes responsibility for updating these materials. The authors are generally drawn from the profession, and they produce what are for the most part resources for seminar discussion and workshops. The texts are an admixture of styles and precedents with some explanatory and didactic text.

Either before their Diploma or during it, students must obtain a traineeship with a practicing solicitor or a legal service employer in Scotland. On successful completion of the Diploma, they enter into a two-year contract of training with this employer. The traineeship is monitored by the LSS: trainees are required to submit logs of work

²⁹ For a summary, see <http://www.ukcle.ac.uk/directions/issue2/survey.html>.

³⁰ Currently there are five Diploma providers, all of them attached to university law departments or schools: Aberdeen, Robert Gordon, Dundee, Edinburgh and the Glasgow Graduate School of Law.

undertaken in the office, and review sheets are completed every quarter and submitted to the LSS for monitoring. These form part of the ongoing assessment of the training program known as the Assessment of Professional Competence (APC).³¹

In the period 6 – 18 months into their traineeships, trainees are required to take a short, 2 week course called the Professional Competence Course (PCC). This course is designed to build upon the knowledge and skills developed in the Diploma, and relies upon the office experience that trainees will have gained in their traineeship to date. At the start of their second year of training, trainees obtain a restricted practicing certificate which enables them to practice in the courts under certain conditions. They can also, with the permission of their employer, spend six months of their training in another European Union country. At the end of their second year, having fulfilled all the conditions of the LSS, obtained a discharge of their training contract and a signing-off statement from their employer, they can apply for a full practicing certificate and entry to the profession.

The current system for training lawyers after university is the product of a comprehensive review conducted by the LSS throughout the late nineties. As a result, a course in Practice Management was added to the curriculum; learning outcomes were clarified; and the structure of some subjects was reviewed and altered – notably Financial Services & Accounting. Perhaps most important, the LSS signaled where, in the syllabus of learning outcomes for each of the subjects, skills could be learned; and for the first time in the history of the Diploma since its inception in 1980, identified a body of professional skills that ought to be the focus of a considerable portion of the course, namely advocacy, negotiation, client interviewing, precognition-taking (i.e. witness or client statements), legal writing, drafting and professional legal research.³²

The mandatory interviewing assessment which is the focus of our pilot project is a product of these reforms prompted by the LSS, and is the culmination of a sequence of units on interviewing skills taught by GGSL in the Diploma. The topic is introduced in the first week as part of what is called the Foundation Course in Professional Legal

³¹ The APC until recently was known as the Test of Professional Competence (TPC). For more detailed information on this, see the LSS website, <http://www.lawscot.org.uk/>, under “Education & Training,” at “The Post-Diploma Traineeship Training Programme.” It was originally envisaged that the TPC would contain an element of open-book examination; but following a series of closely documented pilot assessments, it was decided not to proceed with this form of assessment. For further information on these pilots, contact Paul Maharg at paul.maharg@strath.ac.uk.

³² Set out in an unpublished paper, *Learning Outcomes for the Diploma in Legal Practice* (Law Society of Scotland 1999 on file with author Paul Maharg).

Skills through a lecture, multimedia units and two workshops where students practice simulated client meetings. In these simulations one student plays the client role after briefly reviewing a short scenario while the other student takes the lawyer role. Two students observe and provide feedback to both lawyer and client on a range of issues set out in an observational schedule. Then the students switch roles with the client role based on a different but similar scenario. During the rest of the semester students can practice, on a voluntary basis, and their performances are videotaped, and sent to a tutor who gives feedback on the taped performance.

At the beginning of the second semester, during Skills Week, students then go through the same cycle of *tell-show-do* in the same skills-set but at a higher level of sophistication – this time, the second set of interviews is actually a second interview with the same client, instead of yet another initial interview. Up to this point, the assessment of these exercises is only formative. However, a little later, students conduct the mandatory interviewing exercise which receives summative assessment.³³ When this pilot project began, tutors viewed the videotapes, and marked the student performance as “merit,” “competent,” or “not yet competent.” Students who were deemed “not yet competent” were required to conduct another videotaped interview and, in the rare case of the student who failed the second interview, were required to pass a written assessment.

This approach to teaching and assessing interviewing was viewed as somewhat problematic by GGSL, motivating its interest in the pilot project. The design and assessment of these exercises are based on a number of different models of what constitutes good professional interviewing. While the exercises mesh well within the curriculum, GGSL was aware that there had been no fundamental analysis of the underlying models taught, and the relationship of such models to evidence of actual client-practitioner interchanges. Although the assessment by tutors based on videotape viewing had been shown to be sufficiently reliable for this moderately high-stakes purpose, GGSL had not rigorously evaluated its validity as a measure of professional

³³ “Formative” assessment entails the feedback to students of data which will enable them to improve their knowledge, skills or performance. It generally happens during a program of study. “Summative” assessment, on the other hand, tests knowledge, skills or performance at the end of a program of study, and is designed less to provide feedback to students (though of course it may do so) and more to provide feedback to staff, regulatory bodies, etc on the nature of student achievement. See Thomas A. Angelo, & Kathryn Patricia Cross, *CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS* (2nd ed. 1993). In a typical clinic course assessment of communicative competence is only formative, e.g. instructor comments to a student after observing an actual or simulated interview. In contrast, in a course on client interviewing the final grade is a form of summative assessment.

competence – particularly not when compared to the level of rigor that is apparent in medical curricula. This assessment system is quite costly – tutor-practitioners are paid to review over 250 videotapes, each 20 minutes in length. Thus GGSL was interested in exploring alternatives that are demonstrably at least as valid and reliable as the current system that might be more cost-effective.³⁴ The GGSL wished to give feedback to other stakeholders in the professional training program (e.g. training firms) on students' skills learning and achievements, in as streamlined, relevant and focused a form as possible, and saw this pilot as contributing to that goal. Finally, for the last seven years the GGSL has been committed to radical improvement of professional legal education at a fundamental level. In its approach to many aspects of student activity on the Diploma, the School is implementing constructivist³⁵ and situated learning approaches to professional learning.³⁶ In this sense, it is a modern version of Dewey's

³⁴ Our partner in this project, the College of Law of England and Wales, also uses tutors to view interviews for summative assessment on the Legal Practice Course – on a scale of thousands of interviews – and also pays actors to take the client roles. Although like GGSL, the College of Law is most interested in improving the validity and pedagogical effectiveness of interviewing exercises through the SC project, the cost savings for it could be very considerable if SCs could reliably take over some or all of the assessment function.

³⁵ Constructivist learning approaches derive from a variety of sources, all of which emphasize the extent to which our experience of reality is not a given, but is socially constructed in the world, and distributed in social codes, objects and cultures. David Jonassen describes well the main principles of a constructivist approach to education: "Constructivist models of instruction strive to create environments where learners actively participate in the environment in ways that are intended to help them construct their own knowledge, rather than having the teacher interpret the world and insure that students understand the world as they have told them. In constructivist environments, like cognitive tools, learners are actively engaged in interpreting the external world and reflecting on their interpretations." David H. Jonassen, *Technology as Cognitive Tools: Learners as Designers*, at <http://it.coe.uga.edu/itforum/paper1/paper1.html> (1995).

³⁶ See Paul Maharg, *On the Edge: ICT and the Transformation of Professional Legal Learning*, 2006 WEB J. CURRENT LEGAL ISSUES No.3 (Special Edition on Legal Education), at <http://webjcli.ncl.ac.uk/2006/contents3.html>. For use of video lectures, see Patricia McKellar & Paul Maharg, *Virtual Learning Environments: the Alternative to the Box Under the Bed*, 39 LAW TEACHER 43 (2005) (Special Issue on Legal Education & ICT). For use of transactional learning environments on the web see Paul Maharg & Abdul Paliwala, *Negotiating the Learning Process with Electronic Resources*, in EFFECTIVE LEARNING AND TEACHING IN LAW 81 (Roger Burrige, Karen Hinett, Abdul Paliwala & Tracey Varnava, eds., 2002); Paul Maharg, *Virtual Communities on the Web: Transactional Learning and Teaching*, in *Aan Het Werk met ICT in Het Academisch Onderwijs - RechtenOnline 75* (Anton Vedder ed., 2004); and Karen Barton & Paul Maharg, *E-simulations in the Wild: Interdisciplinary Research, Design and Implementation*, in GAMES AND SIMULATIONS IN ONLINE LEARNING: RESEARCH AND DEVELOPMENT FRAMEWORKS (Clark Aldrich, David Gibson & Mark Prensky, eds., forthcoming 2006). For research into highly collaborative learning environments in professional legal education, see Karen Barton & Fiona Westwood, *From Student to Trainee Practitioner - a Study of Team Working as a Learning Experience*, 2006 WEB J. CURRENT LEGAL ISSUES No. 3 (Special Edition on Legal Education),

Laboratory School in Chicago – a place where experimentation and research takes place, and where staff and students can be experimental about their own teaching and learning.³⁷ The whole SC project was, therefore, from the point of view of the GGSL, one of a number of experiments in the use of simulation as a pedagogical praxis, at the core of which lies the concept of transactional realism – a concept implemented in Dewey’s practical educational work and in his educational writings.³⁸ Thus the development of the GGSL professional curriculum shared many underlying core concepts with most of the ELCC developments, and therefore there was synergy to be achieved in a joint project on SCs.

This pilot project also came at a fortuitous point in terms of the development of legal education throughout Scotland. Teaching and learning in every discipline is a site of struggle between competing discourses. Whatever method we use to teach skills and knowledge at the professional stage involves us in many assumptions about how we learn, what we learn and why, and what we expect students to do with that learning. This is not new. We can see the roots of it in enlightenment Scotland, in the developing discourse of a Scots legal system where educational vectors were powerful influences upon the profession and society.³⁹ At present, the Law Society is considering the place of such assumptions, and a project such as the present one that analyzes forms of educational interventions, provides models of practice, analyzes the place of professional practice in a particular set of

at <http://webjcli.ncl.ac.uk/2006/issue3/barton-westwood3.html>. For research into e-portfolios in professional legal education, see Karen Barton & Fiona Westwood, *Stopping to Think: Reflections on the Use of Portfolios*, Vocational Teachers Forum (UK Centre for Legal Education 2006), at <http://www.ukcle.ac.uk/resources/vtf/barton.html>.

³⁷ The distinguished philosopher and educator John Dewey was the first director of the University of Chicago Laboratory School (1896-1904). The School was experimental in many ways – in problem-solving education, child-focused learning, and above all what we would now call *situated* learning – that is to say, a continuum of learning between the smaller community of the school and the larger communities beyond it. See Laurel N. Tanner, *DEWEY’S LABORATORY SCHOOL: LESSONS FOR TODAY* (1997).

³⁸ The phrase “transactional realism” derives from Ralph Sleeper’s interpretation of Dewey’s practice. See Ralph Sleeper, *THE NECESSITY OF PRAGMATISM* 3 (1986).

³⁹ See for example the words of Adam Ferguson, “Now is your time to begin Practices and lay the Foundation of habits that may be of use to you in every Condition and in every Profession at least that is founded on a literary or a Liberal Education. *Sapere & Fari quae sentiat* are the great Objects of Literary Education and of Study. . . . mere knowledge however important is far from being the only or most important Attainment of Study. The Habits of Justice, Candour, Benevolence, and a Courageous Spirit are the first Objects of Philosophy the Constituents of happiness and of personal honour, and the first Qualifications for human Society and for Active life.” Quoted in Richard B. Sher, *Professors of Virtue: the Social History of the Edinburgh Moral Philosophy Chair in the Eighteenth Century*, *STUDIES IN THE PHILOSOPHY OF THE SCOTTISH ENLIGHTENMENT* 117-18 (ed. M.A. Stewart 1990) (quoting Adam Ferguson’s *Lectures*, mss EUL, 1775-6, fols.540-41).

skills and values, and makes these available to the educational and professional practice communities is therefore very much welcome. It may help to resolve some of the current issues facing the Society, which include the following issues:

Outcomes

Outcomes and standards need to be implemented with consistency throughout the professional program at each level. How should the Diploma link up to the traineeship? The PCC? How is interviewing, to take the above example, taken through the various levels of sophistication in skill and knowledge?

Variability across programs of study

At present there is considerable variability between the different Diploma programs in Scotland at the level of implementation. Quite apart from detailed outcome statements, there is a need to identify good practice and use that to standardize the client-centered orientation of students and trainees, providers and firms. Taking the example of interviewing: are there equivalences between the standards of the GGSL and other providers of the Diploma? If not, why not – particularly in a small jurisdiction such as Scotland?

Joined-up educational planning across elements of the professional training program

The Diploma, PCC, traineeship and assessment of training exist separately. They need to be harmonized, so that there are coherent approaches to skills learning and knowledge-building among the different stakeholders. In addition to the heuristics of complex simulation environments mentioned above, the GGSL is also involved in the design and deployment of portfolio-based and e-portfolio-based learning initiatives which will link up academic learning from the undergraduate LL.B. through the Diploma, PCC and traineeship to the early years of post-qualification and beyond.⁴⁰

III. THE ELCC/GGSL STANDARDIZED CLIENT PROJECT

The validity and reliability of the Standardized Patient method has been abundantly proven in the medical educational field. Can it be translated to the legal domain? The Standardized Client Project therefore aimed to address the following research question:

Can the method of Standardized Client training and assessment be shown to be at least as valid and reliable as the current system of tutor assessment used at GGSL?

The project plan was divided into three stages over two years,

⁴⁰ See Barton & Westwood, *supra* note 36.

culminating in a full-scale Standardized Client trial at GGSL in January 2006. The three phases of the project are set out under the headings below.

*A. Small Pilot 1: GGSL Interviewing Assessment, January 2005
(Phase 1)*

The aim of this stage of the project was to experiment with using the ELCC forms, developed for real client interviews, within the existing interviewing assessment regime at GGSL with the full cohort of 234 Diploma students taking the 2004/5 Diploma. The GGSL assessment and modified ELCC forms used in this pilot are reproduced at Appendix 1 and 2.

Phase 1 outline:

1. Use of ELCC form with students in the assessment, both lawyer and client.

This involved adapting the existing ELCC forms slightly and requesting each pair of students to fill them in at the end of the interviewing assessment. Each student filled out the client survey form after playing the client role and also filled out the lawyer form after conducting the interview where they took the lawyer's role. The students were informed that these forms would not be used in any way by GGSL in the grading and evaluation of their performance.

2. Use of ELCC form by tutor.

As well as grading the student interviews using the existing GGSL assessment form, tutors were asked to complete a slightly modified version of the form filled out by the lawyer conducting the interview. Again it was made clear to the tutors that the ELCC forms would not be part of the assessment process.

3. Training and moderation of assessors in the use of the ELCC form.

The four tutors who would be involved in assessing the student videos attended a training session where they viewed the tape of a student performance, chosen at random from among the tapes to be assessed. Following the viewing, tutors were given a short period of time to fill out the standard GGSL assessment form and the assessor version of the ELCC form without general discussion of the student's performance. Tutor assessment of each item on both forms was then discussed in a form of think-aloud protocol.⁴¹ The purpose of the dis-

⁴¹ A think-aloud protocol is used as a means to obtain data about the way individuals cognitively process information. Participants are asked to voice their thoughts, feelings and opinions as they complete a task. See K. Anders Ericsson & Herbert A. Simon, *Verbal Reports as Data*, 87 *PSYCHOLOGICAL REV.* 215 (1980).

cussion in one sense was to moderate the marking between tutors and improve inter-rater reliability. A second, and more ambitious purpose, was to try to understand the deductive thinking that lay behind the application of marks to the items.

Variation on the ELCC Form entitled “Client Interviewing: the assessor’s view” was fairly wide.⁴² The discussion that followed this assessment was very interesting. It was clear that tutors had different criteria in mind when they were marking the tape according to the “assessor’s view” form. Three points in particular arose from this discussion:

1. Item 5 (listened to the client) attracted the largest spread of marks: from “-2” to “+3.” Tutors debated whether or not the student had listened to the client. There was discussion about what “listening” actually constituted. Some assessors argued that in parts of the interview the lawyer seemed to listen (e.g. he allowed the client to tell her narrative without interruption, and seemed intent upon it); but in other parts he was more interested in *giving* the client legal information than in listening when she said significant things. Two tutors commented that “listened to the client” was too broad a measure to be applied consistently across the entirety of the 20 minute interview by one assessor, let alone a range of assessors. It became clear that the issue of advice-giving needed to be unbundled from listening somehow in the assessment process.

2. The only item that attracted unanimity was number 11 (client was able to say everything he or she wanted to say). There was general agreement that the client was able to say everything that she wanted to say. However, it was observed that the client did have special instructions that, if questioned by the lawyer about her motivation, she could admit that there was perhaps more than carelessness involved in the way she placed the goods in the shopping trolley in this case of alleged shop-lifting. The client was not probed on this matter. In other words, tutors were giving a relatively high mark for this item, but it did not necessarily mean that the performance under review in this item was an unqualified success. (The client might have said everything she “wanted” to say but did not say everything she *should* say in a well-conducted interview on these facts.)

3. The lowest marks were given for the final item (13) (the client would be likely to come back to this person for legal help in the future). The assessors found it hard to judge the student’s performance on this item by anything but the standards of professional, qualified lawyers, which of course is unfair to the student. Our four assessors

⁴² See *infra* Appendix 3 (compare numbers in boxes and bold for each item to determine the breadth of marking across the four tutors).

thought that the student-lawyer did not perform well largely because they perceived that what he did and said would not have induced *confidence* in the client. Throughout the discussion the tutors raised the general point that each of these items in the “assessor’s view” form needed to be “standardized” for student performance, rather than the performance that could be expected of second-year trainees, or first-year qualified lawyers.

B. Preliminary Statistical Analysis of January 2005 Diploma Pilot.

GGSL arranged to have the three sets of 234 handwritten forms – client survey, interviewer assessment and tutor assessment – entered into an Excel data base. This data base was then forwarded to GSU for processing and preliminary analysis.

We first looked for statistically significant correlations between responses to the same question from each of the three roles (client, lawyer, and assessor). To our surprise there was essentially *no* correlation among the roles. For example, looking across the entire 234 interviews, the lawyers’ responses to the statement “The client did not understand some things I said” did not correlate to the clients’ responses to the statements that “The lawyer said things I did not understand.” This lack of correlation means that the lawyers’ prediction of how the client would respond to this statement was no better than chance. This failure of the lawyers to predict how the clients they interviewed would respond was consistent for all 13 questions.

The tutors were no better than the interviewing lawyers at predicting how the clients would respond, i.e. their aggregated responses likewise demonstrated no statistical correlation with the corresponding client responses. Furthermore, there was no correlation between the lawyers and tutors. The interviewing lawyers’ responses thus failed to predict *either* how the client *or* the assessing tutor would respond to such items as “asked confusing questions” or “the client did not say everything that he or she wanted to say.”

In contrast, a correlation analysis of the 13 responses from each role associated with an interview revealed statistically significant correlations ($p < .05$) in virtually all comparisons *within* roles. These very high internal rates of correlation on the surveys indicates that the form seems to have generated a consistent pattern of responses from each class of subjects (clients, lawyers and assessors).

In recognition of the fact that differential assessor performance could muddy our results⁴³ we grouped the original 234 interviews by

⁴³ For example, if the interviews were assessed by only two assessors, one whose responses perfectly predicted the clients’ responses and one that was opposite of these responses, aggregate correlation analysis would incorrectly indicate that there was no

assessor to gauge differences. Thus the original data set of 234 interviews was stratified by assessor (there were five assessors⁴⁴) and new correlation studies for each assessor with the client response were performed. Although an analysis of variance (ANOVA) showed that there was a difference in average correlation among assessors ($p < .05$), none of the assessors' responses showed a high level of correlation with client responses. One assessor achieved statistically significant ($p < .05$) correlation with the client in 3 out of 13 questions, 3 assessors achieved 1 in 13, and the last had no questions with statistically significant correlations. In one instance, the assessor's average correlation was negative.

In 8 out of the total of 234 interviews the student playing the client role answered the final item (13) ("likely to come back to this person for legal help in the future") with a negative number. We analyzed these interviews in more detail. Client and assessor surveys were compared and in every case but one the assessor and the client score differed by at least 4 points (on a possible range of 9 points) and in all but one case the assessor thought the client *would* want to come back to the same lawyer for a new matter.⁴⁵

We also performed a different kind of statistical analysis – called factor analysis – to explore the possibility that some of the separate items on the ELCC questionnaire were actually measuring essentially the same underlying feature or characteristic of a given interview. Factor analysis is a statistical technique used to explain patterns among observed variables (such as answers to the 13 items) in terms of fewer unobserved variables known as factors. This analysis produces a number for each observed variable called a "factor loading"; the closer this number approaches "1" the stronger the relationship between the observed variable and an underlying factor.

Factor analysis did indeed strongly suggest that for each set of respondents (clients, lawyers and assessors) there were patterns in the responses to the form that could be largely accounted for by a few underlying factors. For clients, six preliminary questions seemed to cluster together (1, 3, 7, 8, 9, 10) and with the final "general satisfaction" Question 13:

association between responses at all.

⁴⁴ The four tutors whose training was discussed above did most of the assessing and Fiona Westwood (*see supra* note *) assessed a small number, primarily videos where a first assessment had produced a "not yet competent" mark to provide quality control.

⁴⁵ This disparity was not due to any general tendency by the assessors to be overly optimistic about whether clients would want to return to the same lawyer. A quick scan of the overall data indicated that assessors were not reluctant to give a negative number response to item 13 in other cases.

Diploma Clients: Rapport + Information Exchange

| | |
|---|------|
| 1 (made me feel comfortable) | 0.76 |
| 3 (treated me with respect) | 0.67 |
| 7 (was interested in me as a person) | 0.62 |
| 8 (did not ask confusing questions) | 0.64 |
| 9 (was someone I could trust) | 0.75 |
| 10 (understood why I needed legal help) | 0.74 |
| 13 (would want the same person again) | 0.61 |

Questions 1, 3, 7 and 9 seemed to relate to a factor we call “rapport” while 8 and 10 seem to relate to a factor we call “information exchange.” Two additional factors which we characterize as “lawyer’s explanation” and “client’s understanding” seemed to underlie another pattern of responses by clients:

Diploma Clients: Lawyer’s Explanation

| | |
|---|------|
| 6 (explained what would do next for me) | 0.69 |
|---|------|

Diploma Clients: Client’s Understanding

| | |
|--------------------------------------|------|
| 11 (said everything I wanted to say) | 0.64 |
| 12 (I know what I need to do next) | 0.60 |

For the lawyer role, the “rapport + information exchange” factor also seemed to be present, although the same respondents when placed in the lawyer role did not give as much weight to the “respect” question (3) for judging rapport as they did when responding as clients⁴⁶ and gave more weight to the “listening” question (5).⁴⁷ Responses to Question 5 may have reflected both rapport and quality of information exchange.

⁴⁶ The factor analysis score for Question 3 was 0.574 for the lawyer surveys as compared to 0.666 for the client surveys.

⁴⁷ The factor analysis score for Question 5 was 0.654 for the lawyer surveys as compared to 0.563 for the client surveys.

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Diploma Lawyers: Rapport + Information Exchange

| | |
|--|------|
| 1 (felt comfortable) | 0.76 |
| 5 (felt like I listened well) | 0.67 |
| 7 (felt like I was interested in client as a person) | 0.62 |
| 8 (did not think I asked confusing questions) | 0.64 |
| 9 (trusted me) | 0.75 |
| 10 (thought I understood why needed legal help) | 0.74 |
| 13 (would want me again) | 0.61 |

The lawyers' responses also indicated a pattern that we call a "mutual understanding" factor as judged by Questions 2 and 4.

Diploma Lawyers: Mutual Understanding

| | |
|--|------|
| 2 (did client understand what I said) | 0.51 |
| 4 (did I understand what was most important to client) | 0.56 |

The factor analysis for the assessor role also revealed a pattern that focused on "rapport + information," over an even larger total set of questions – all the questions found in either client or lawyer sets plus Question 11 (client able to say everything wanted to say):

Diploma Assessors: Rapport + Information Exchange

| | |
|--|------|
| 1 (made client feel comfortable) | 0.78 |
| 3 (treated client with respect) | 0.75 |
| 5 (listened to client) | 0.76 |
| 7 (was interested in client as a person) | 0.69 |
| 8 (did not ask confusing questions) | 0.60 |
| 9 (was someone client could trust) | 0.77 |
| 10 (understood why client needed legal help) | 0.78 |
| 11 (client able to say everything) | 0.71 |
| 13 (would want the same person again) | 0.75 |

The assessors' second most significant factor did not have a parallel in the client and lawyer sets and seemed to focus on what could be characterized as "what the lawyer would do next":

Diploma Assessors: What the Lawyer Would Do Next

| | |
|--|------|
| 6 (explained what lawyer would do next) | 0.60 |
| 12 (client aware of what client needed to do next) | 0.70 |

The factor analysis for the assessor also identified a “client understanding” factor, judged by Question 2:

Diploma Assessors: Client Understanding

| | |
|---|------|
| 2 (said things client did not understand) | 0.80 |
|---|------|

This factor analysis suggests that clients, lawyers and assessors had similar underlying ideas or intuitions about what factors were important for an effective interview. What prevented their responses from correlating was their widely differing opinions about whether those factors were actually present during the interview.

C. Real Clients Correlation Analysis and Factor Analysis

Our concern about the reliability of using students to play the various roles led us to examine, with both correlation analysis and factor analysis, a smaller set of interviews with real clients for comparison purposes with the original data set. These surveys were filled out by clients of the law school clinics mentioned above.⁴⁸ We had data for the client role and for the lawyer role from 61 interviews.⁴⁹ Here, the correlations between client responses and lawyer predictions of those responses were much stronger. On 11 out of 13 questions, the predictions by the lawyers had a statistically significant correlation with the corresponding client responses, as indicated on the following chart. (Where the correlation number is accompanied by “*” the correlation is statistically significant and where the number is accompanied by “**” the correlation is highly significant.)⁵⁰

⁴⁸ See *supra* text accompanying note 21. The data set also included surveys completed one semester by clients of the GSU tax clinic.

⁴⁹ Five of the client interview forms, however, were not filled out completely.

⁵⁰ “*” = $p < .05$, “**” = $p < .01$

Lawyer Correlation Scores with Real Clients

| | |
|--|---------|
| 1 (made client feel comfortable) | 0.404** |
| 2 (said things client did not understand) | 0.233 |
| 3 (treated client with respect) | 0.486** |
| 4 (did not understand what was most important) | 0.237 |
| 5 (listened to client) | 0.418** |
| 6 (explain what lawyer would do next) | 0.466** |
| 7 (was interested in client as a person) | 0.288* |
| 8 (asked confusing questions) | 0.315* |
| 9 (was someone client could trust) | 0.554** |
| 10 (understood why client needed legal help) | 0.428** |
| 11 (client able to say everything) | 0.246* |
| 12 (client knows what to do next) | 0.286* |
| 13 (would want the same person again) | 0.292* |

Because the real client data involves a relatively small sample gathered from many different sites, we are cautious about giving too much weight to this statistical analysis. We are also concerned that because the vast majority of clients gave very positive responses to all the items⁵¹ that the high rates of correlation might be an artifact of mutual client and lawyer satisfaction with the interview rather than lawyer accuracy at gauging the client's experience. However, we did note that in 2 out of the 4 cases where the client gave a "Not Sure" (0) response to Question 13 (would want the same lawyer) the lawyer accurately predicted that response.⁵² It is interesting that the only two questions where lawyers did not appear to predict real client responses to a significant degree asked whether lawyer said things the client did not understand (2) and whether the lawyer understood what was most important to the client (4). Because both Questions 2 and 4 would seem to turn on the lawyer's ability to "read" the client – either to be aware that the client was not understanding what the lawyer was saying or to understand what was most important to the client – it might be expected that the very lawyers whose clients might give them

⁵¹ 46 out of 61 clients gave the highest possible score to the final question (would want same person again) and it was not uncommon to see an almost "perfect" score on all 13 items.

⁵² In the other two "Not Sure" cases, the lawyers predicted responses of 2 and 3, rather than 4, which may also indicate some perception by the lawyers that the client was not entirely satisfied with the interview experience.

lower scores on these items might not be good at predicting that the clients would do so.

A factor analysis of the real client surveys showed similar but even more powerful factor effects than the January 2005 Diploma pilot. The first construct can still be labeled “rapport and information exchange” though with perhaps a greater emphasis on rapport. This factor alone accounts for more than 65% of the variance, and importantly includes a very significant factor loading for response 13, the indication of whether the client would return to the same lawyer.

Real Clinic Clients: Rapport + Information Exchange

| | |
|---|------|
| 1 (made me feel comfortable) | 0.90 |
| 3 (treated me with respect) | 0.90 |
| 5 (listened to me) | 0.90 |
| 9 (was someone I could trust) | 0.80 |
| 10 (understood why I needed legal help) | 0.90 |
| 13 (would want the same person again) | 0.90 |

The second construct combines “explanation and understanding” and accounts for about 15% of the variance.

Real Clinic Clients: Understanding + Explanation

| | |
|--|------|
| 4 (understand what was most important to me) | 0.70 |
| 6 (explain what lawyer would do next) | 0.60 |

A factor analysis of the lawyer role produced two constructs explaining a total of 70% of the underlying variance. The first construct, as for the real clients, picks out the same questions to focus on elements of “rapport and information exchange” and explained 52% of the variance.

Real Student Lawyers: Rapport + Information Exchange

| | |
|---|------|
| 1 (made me feel comfortable) | 0.90 |
| 3 (treated me with respect) | 0.92 |
| 5 (listened to me) | 0.95 |
| 9 (was someone I could trust) | 0.90 |
| 10 (understood why I needed legal help) | 0.91 |
| 13 (would want the same person again) | 0.90 |

The lawyers' second construct also could be characterized as "explanation and understanding," but here, factors more attributable to the client were included, like not understanding what was said, being confused by questions, and not saying everything they wanted to say. This factor accounted for about 18% of the variance.

From this initial statistical analysis we made the following observations:

1. There are very high internal correlations on the surveys indicating that the form seems to be comprehensible and unambiguous for each class of subjects (clients, lawyers and assessors). Given that in all three roles the factor analysis reveals one dominating construct, this is not surprising. Where a subject rates the interview in a particular way on one question, the subject tends to be consistent throughout the survey.

2. We found almost no correlations between the surveys filled out by different classes of subjects. In other words, lawyers did not predict how clients would be filling out their surveys at any better rate than random chance. Likewise, the assessors did no better than random chance in predicting how the clients experienced the interview. There was no correlation between lawyer and assessor surveys. Taken alongside the previous result, this is quite intriguing in that there seems to be a clear understanding and agreement *within* each "role" about how to judge an interview performance; however the particular judgement is not shared between roles.

3. Even when the data is stratified by assessor, there is not an acceptable level of correspondence between client responses and assessor responses. Some assessors are better than others, but none of those in this study were able to anticipate client responses.

4. The substantially more significant correlation among clients and lawyers revealed by the correlation analyses and factor analyses of the real client data suggest that concerns about students playing the two roles is warranted.

The reactions of the GGSL tutors during the training session, as well as the divergence in the assessor-lawyer-client scores on the ELCC form, served as an early warning sign to us that we needed to explore the validity and reliability of the assessment form further. We needed to be confident that the assessment instrument we would use in the final stage of the project would measure the important as well as appropriate criteria; and that this measurement was accurate, objective and repeatable both within and across the Standardized Client group.

D. Small Pilot 2: Use of SCs on the Professional Competence Course (Phase 2)

The second phase of the project concentrated on the recruitment and training of the Standardized Clients, to be used within the Interviewing Skills element of the two week Professional Competence Course (PCC) required of trainee-solicitors during their two-year traineeship. We selected the PCC as our first experiment with using SCs because the scale could be kept small (only 7 students were involved); because the PCC involved two interview activities in the same week, thus allowing us to compare student performances with different SCs; and because the interviewing activity is not a graded assessment. We also thought that trainees who were about a year into their traineeship would be able to provide useful feedback on the activity, and because we look to the day when the SC methodology is part of a continuum of teaching and assessing lawyer-client communication that extends from at least the first week of the Diploma (possibly earlier) through into the formative years of practice.⁵³

To recruit SCs we approached a group of people who were already known to us: the monitors for previous interviewing skills assessments at GGSL, such as the January 2005 exercise. This group of mainly retired people, many of whom previously worked in teaching, were in many ways ideal for this project having been associated with GGSL for a number of years and therefore familiar with the existing assessment regime. We knew they were reliable individuals and had established good working relationships with them. Of the group approached, 15 agreed to take part in the project (9 women and 6 men)

⁵³ This particular PCC course is run by the WS Society (*see infra* note 84 and accompanying text) in partnership with the GGSL. The experience gained by the WS Society through its participation in the PCC pilot has encouraged it to use SCs as part of its specialty certification assessment procedures. The WS Society and GGSL have also continued using SCs to play client roles in the PCC courses they offer, although the assessment form is not used because none of the modules in the PCC are summatively assessed, though of course trainees are given feedback on their performances.

and be trained as Standardized Clients.⁵⁴

For the initial phase of training we drew upon the skills of Dr. Jean Ker and her colleagues at the Clinical Skills Unit of the University of Dundee Medical School, who have considerable standing and experience in training standardized patients for a number of their clinical courses. Not only did we model our recruitment and training procedures on those used at Dundee, but Dr. Ker and a colleague⁵⁵ came to Glasgow to facilitate the initial training workshop. At this stage we concentrated solely on training the Standardized Clients to role play effectively to a script, deferring the topic of assessment. The initial workshop facilitated by the trainers from Dundee was followed up by two additional workshops facilitated by the GGSL academic staff. These sessions involved, first, a detailed analysis of the scripts that would be used in the PCC course itself and general discussion about the client's situation, emotional state and main concerns. Agreement on how the client should play a particular role was established and this was then followed by intensive one-to-one role-plays observed by the rest of the group. In the two latter workshops the lawyer was played by one of the GGSL lecturers who had not previously seen the PCC scenarios. Each role-play was followed up by a feedback session when the group gave feedback to both the client and lawyer using the modified version of the ELCC form.

We decided that we would use the modified ELCC form from the January 2005 pilot at this stage for a number of reasons. First, we wanted the clients to become familiar with the general concept of assessment as part of the Standardized Client process. Secondly, we wanted to test the validity and reliability of the form prior to standard setting or training the Standardized Clients in its use. Finally, we wished to use the form as part of the existing formative feedback session already in place on the PCC. In hindsight this was a crucial decision for us as the lessons we learned from this particular aspect of the project were invaluable in informing the further development of our assessment instrument for use in the main SC trial in January 2006.

The first phase of Standardized Client interviews took place over two non-consecutive days in early October 2005. On the first day, half of the trainees on the Private Client (i.e. Wills & Estates) stream of the PCC interviewed one client and the other half interviewed another: each client role-played a different scenario. Each interview was videotaped and the SC marked the trainee solicitor using the modified ELCC form on completion. The forms were sent, along with the vide-

⁵⁴ We ended up using only nine SCs in the January 2006 exercise.

⁵⁵ The colleague was Gordon Morris, a trained actor and regular standardized patient at Dundee Medical School, who is also involved in training Standardized Patients there.

otapes, to the tutor who would be providing formative feedback to the trainees later in the week. After the feedback session, which involved re-playing parts of each interview tape, the trainees completed another initial interview with a different SC.

The initial student feedback from the PCC trial was very encouraging, and confirmed our expectations that using standardized clients would improve the learning experience for the participants. Feedback from the trainees on the Private Client stream of the course where SCs were interviewed was compared to feedback from trainees on the Commercial stream, where trainees interviewed each other. In the Private Client stream, across three measures, the participants rated the interviewing section of the course at A(38%), B(48%), C(14%) (where A is the highest score in a 5-point scale). In the Commercial stream, across the same three measures, the ratings were A(18%), B(37%), C(20%), D(24%), E(2%). Clearly the trainees who interviewed standardized clients had found this particular aspect of the course more useful than those who interviewed another trainee role-playing the client. The trainees' comments also backed this up. Most of the Private Client stream made favorable comments, for example:

"Most useful part of the course. Standardised client allowed the most real-life practice of interviewing. As horrible as it was, it was useful to watch video and to get tutor's feedback."

"Very useful area of course, good feedback. Standardised client excellent."

In comparison, the Commercial stream voiced impatience with having to do more than one interview (though indicating some appreciation of the practical experience).

None of the seven trainees were graduates of the GGSL Diploma program and only one had been required to conduct a simulated client interview on videotape in the Diploma. On the first day of SC interviews, one SC was interviewed by four different trainees and the other was interviewed by three. Each SC gave one of their lawyers a "2" to Question 13 (would want same lawyer again) and likewise both SCs gave those lawyers negative responses or "unsure" responses to Questions 5 (listened), 7 (interested in me), 11 (said everything) and 12 (do next).⁵⁶ The distribution of responses to Question 13 for the other 5 interviews was: one "4", two "3s" and two "2s."

On the second round of interviews three days later one of the same SCs was interviewed by the 4 lawyers who did not interview that SC on the first day and a new SC was interviewed by the other three. The responses to Question 13 (and the other questions) were mark-

⁵⁶ One SC also gave negative responses to 4 (most important to me) and 10 (why I needed legal help); the other gave also gave a negative response to 9 (trust).

edly lower on the second day. Not only did two lawyers again receive a “-2” but three lawyers received 0 (not sure). Of the two remaining lawyers, one received a 2 and the other a 3.⁵⁷

One of us (Cunningham) observed three of the second day interviews; his impressionistic assessment of those interviews was consistent with the SC responses. After the interviews that day he debriefed both SCs. He concluded from this debriefing that both SCs were primarily influenced by what we have called the “rapport + information exchange” factor identified by the statistical analysis of the January 2005 Diploma pilot. In explaining their numerical responses they repeatedly emphasized that the lawyers seemed rushed, preoccupied and nervous and that (perhaps as a result) failed to understand what was most important to the clients (as indicated in their scenarios) despite repeated attempts by the SCs to talk about what really concerned them.⁵⁸ When invited to discuss the assessment procedures, the SCs complained about some features of the form – especially the questions where a negative number would indicate a positive performance (2, 8). It also appeared that the two SCs were tending to interpret the questions about “comfort” and “trust” in terms of whether the lawyer was really listening to them and understood what was most important to them. At least one SC seemed uncomfortable with answering the questions about being treated with respect and whether the lawyer was interested in the client as a person.

E. The Main SC Trial: GGSL Interviewing Assessment, January 2006 (Phase 3)

1. Refining the Assessment Instrument

In early October 2005, immediately following the PCC pilot, we made several fundamental changes to the modified ELCC form. Taking into account the overall results and statistical analysis of the January 2005 pilot; the varying tutor assessments in the training for that pilot; the statistical analysis of the real client data; the quantitative and

⁵⁷ One of the lawyers received a “-2” to Question 13 on both days. Interestingly, the top scoring lawyer on first day was the other “-2” on the second day.

⁵⁸ We have naturally speculated about why some of the same trainees scored lower on the second interview, especially when one would hope that the first experience would improve the second performance. One theory is that Cunningham’s presence might have made those three trainees more nervous (though that would not explain the performances of the students he did not observe). Another possibility is that some well-intentioned interventions by an inexperienced tutor who met with the students in the morning that preceded the second interview (in a session observed by Cunningham) might have had a counterproductive effect on their performance that afternoon. The scenarios for the second day were also somewhat more challenging in that discerning what was “most important” to the SCs required particular attention and sensitivity to the background family dynamics of the situations.

qualitative data obtained from the PCC pilot in October 2005; and consultations with our partners at the College of Law of England and Wales, we decided to move away from the attitude survey/client satisfaction origins of the original ELCC form and towards a more explicit assessment format, as explained in more detail below.

We also decided to tell students explicitly to focus primarily on obtaining information and establishing the client's objectives. We made this decision to de-emphasize the giving of advice for several reasons. First, for practical reasons, the GGSJ interviewing assessment is limited to 25 minutes, which may be an unrealistically short period of time to conduct a full initial meeting. Second, we were convinced that one of the most important things for Diploma students to learn was the importance of patient and attentive listening, especially in the early part of a client meeting. Forcing students to render advice within the first 25 minutes could undermine that objective, tempting them to interrupt, ask leading questions and jump to conclusions. Third, we believed that standardized clients were inherently competent to assess many features of a competent interview at the information gathering stage, while they would require briefing by legal experts to evaluate the quality of advice given. Therefore we removed questions that related to the advice giving stage, such as ELCC item 6 (explain what he or she would do next for me).

We then took the modified assessment form to the 6th International Clinical Conference held at the UCLA Lake Arrowhead Conference Center in California at the end of October 2005, having sent in advance an early version of this paper including the revised form to a number of conferees who teach and write on the subject of client interviewing and counseling. Three of the co-authors attended the conference (Cunningham, Jones and Maharg); Dr. Jean Ker took the place of Karen Barton who was unable to come. We presented the project and the draft form to a well-attended session⁵⁹ and received many useful comments at the session and informally at other times during the conference. We then hammered out the final version of the form during a several hour working session around a table in the lounge of the conference center.⁶⁰

⁵⁹ Our co-panelists at the conference included two of Britain's leading researchers on measuring the quality of legal services: Professor Alan Paterson (Strathclyde Law School) and Professor Avrom Sherr (Institute of Advanced Legal Studies, University of London). Professor Sherr is also the author of a widely used text on client interviewing and counseling: *CLIENT CARE FOR LAWYERS* (2nd ed. 1999). Their comments during and outside the conference session were much appreciated.

⁶⁰ The Lake Arrowhead conference gave Gregory Jones his first opportunity to interact with the Scottish team members other than by email and was only Clark Cunningham's second in-person meeting with Jean Ker. For much of this working session in the hotel

Due in large part to the contributions of Dr. Ker, the assessment form that emerged from this final working session resembled much more closely the type of form used in medical education by standardized patients. For example, in the clinical skills examination required in the United States for the medical license there are three components to the assessment:

1. The patient fills out a form evaluating the clinical examination from the patient's viewpoint in terms of communicative competency, rapport, respect and the physical aspects of the examination.
2. The patient also completes a checklist reporting whether the candidate asked specific questions, conveyed particular information and advice, and conducted certain physical examinations – events that should have taken place according to the expert who designed that particular patient scenario.
3. After the examination, the physician candidate immediately goes to a desk and writes in a simulated patient chart the information normally recorded there. This written report is graded by a health care professional, not the patient.⁶¹

A composite score is compiled from all three components which is used to determine whether the candidate passed the examination.⁶²

We decided to revise our form into three comparable parts: A, B and C. Part A was a further refinement of the ELCC questionnaire, reduced to the following 8 items:

1. The greeting and introduction by the student lawyer was appropriate
2. I felt the student lawyer listened to me
3. The student lawyer approach to questioning was helpful
4. The student lawyer accurately summarised my situation
5. I understood what the student lawyer was saying
6. I felt comfortable with the student lawyer
7. I would feel confident with the student lawyer dealing with my situation
8. If I had a new legal problem I would come back to this student lawyer

Items 2-5 focused on the “information exchange” factor we had

lounge we were joined by Linda Smith, Professor of Law at the University of Utah (*see supra* note 15), who made valuable contributions.

⁶¹ UNITED STATES MEDICAL LICENSING EXAMINATION: STEP 2 CLINICAL SKILLS CONTENT DESCRIPTION AND GENERAL INFORMATION, *available at*: <http://www.usmle.org/step2/Step2CS/Step2CS2006G1/2006Step2CS.pdf>.

⁶² Each examination is recorded but normally the recorded examination is reviewed and assessed only if the candidate files an appeal from failing the test. Interview with Betty A. Turner, Manager, Atlanta Clinical Skills Assessment Center (January 30, 2003).

previously identified as underlying responses to many of the questions on the ELCC form; items 1, 6 and 7 related to “rapport”; and we kept the “general satisfaction” question from ELCC question 13 as item 8. We designed Part A – like the comparable section in the standardized patient assessment – to ask questions that could be answered with reliability and validity by a properly trained layperson. Essentially the form was intended to reinterpret the “dos and don’ts” of good interviewing found in standard texts on interviewing into terms that we hoped would be comprehensible to our lay SCs and would build from what appears from our research to be their natural tendency to recognize and value rapport and effective information exchange.

The responses to each item were reframed as a familiar “grading scale” from poor to outstanding expressed entirely in positive numbers (1-5) instead of a Likert scale asking for degree of agreement or disagreement with a statement. A perfect score would be 40 (a score of 5 for all 8 items).

To give some substantive content to these numbers and increase the reliability of SC scoring, we adapted another feature of standardized patient assessment: an annotated scoring sheet.⁶³ In the annotated version of Part A, each item is followed by a plain language summary of how the lawyer should handle that portion of the interview. Then, under the numerical scale, “anchoring statements” are provided to give examples of lawyer behavior that would correspond, for example, to a 1, 3 or 5 score.⁶⁴ (The annotated scoring sheet appears in Appendix 5). The non-annotated version of the scoring sheet was given to Diploma students before the assessment activity.

Part B was designed to be a case specific checklist limited to whether the student had asked for 7 particularly important items of information. Part B was scored simply by answering Yes or No as to whether each item was asked. A “Yes” was scored as a 1 and a “No” was scored as a 0, so a perfect score on Part B would be 7. Part B was

⁶³ For a sample annotated scoring sheet, see Robert C. Smith, Interview Rating Form: Physician Training Manual and Reference, available on the ELCC web site at <http://law.gsu.edu/Communication/SmithStudy-Manual.pdf>.

⁶⁴ In writing the annotated scoring sheet we made particular reference to the description of a model interview in the standard text on interviewing used by the College of Law of England and Wales. Ch 9, *Introduction to Oral Communication Skills*, and Ch 10, *Interviewing and Advising*, Annabel Elkington et al, *SKILLS FOR LAWYERS* 71-94 (College of Law Publishing 2005) (Gemma Shield is the author of these chapters). The approach to client interviewing taken in these chapters is consistent with other leading UK texts in the field such as Avrom Sherr, *CLIENT CARE FOR LAWYERS* 1-49 (2nd ed. 1999) and Hugh Brayne & Richard Grimes, *THE LEGAL SKILLS BOOK: A STUDENT’S GUIDE TO PROFESSIONAL SKILLS* 91-179 (2nd ed. 1998). See also Fiona Westwood, *ACCELERATED BEST PRACTICE: IMPLEMENTING SUCCESS IN PROFESSIONAL FIRMS* 25-31 (2004) (building valuable client relationships).

obviously inspired by the checklist of physician questions and actions completed by a standardized patient. Although, unlike Part A, Part B requires legal expertise to determine what information is particularly critical for a given scenario, we believed that standardized clients could be trained to recognize accurately whether a pre-determined item of information had been asked. Because the case scenarios used in January 2006 may be used again in some assessment setting, we can only provide the following general questions as examples. (Prior to the interviewing assessment, we provided to Diploma students similar general examples of the type of items that might be included in Part B of the scoring sheet.)

1. Asked for your full name and address
7. Asked for details of estate

Because Part B questions were specific to each case scenario, and would be identified by the lawyer-tutors who designed the scenario, it was not possible to develop them at the working session at the Lake Arrowhead conference and there was not time for the same level of scrutiny by our entire team as for Part A. In retrospect we believe Part B could have been better designed. As illustrated by the above examples, some items involved compound questions (#1) and some were rather vague (#7). We also did not provide an annotated scoring sheet for Part B. As a result, when reviewing the actual scoring sheets from the January 2006 exercise, we found that some standardized clients and some tutors as well struggling to give “Yes or No” responses, sometimes responding “maybe”, “in part” or more detailed qualifiers, and occasionally writing down “0.5.” for a particular score. Nonetheless, as reported below, despite imperfect drafting and training, there was generally good agreement between standardized clients and tutors in scoring Part B.

Part C required the student immediately after the interview to “write up the notes of the interview in the form of a note to file,” which would be graded only by a tutor (on a scale of 0-6). Part C obviously resembles the patient chart record assessment in the standardized patient examination. Part C sets aside one component of the exercise as assessed only by a legal expert; it also provides an opportunity to address the “advice giving” aspect of an initial client meeting by allowing the student to indicate in the note to file what advice he or she thinks should be given. (Indeed in real life, at least for their early interviews, Diploma graduates may well be limited to gathering information, with advice to be given either by a qualified solicitor or, if by the trainee, only after review and approval by a qualified solicitor.)

As for standardized patient examinations, the raw scores for

Parts A, B and C would be converted into a total composite grade. It was decided that Part A would count most heavily with relatively modest weight given to Parts B and C because the focus of the assessment was on basic communicative competence rather than the application of legal knowledge. The raw scores on Parts A (0-40) and B (0-7) were doubled and added to the raw score on Part C (0-6) to produce a total number that would be 100 for a perfect score (i.e. $80 (\text{PtA}) + 14 (\text{PtB}) + 6 (\text{PtC}) = 100$)⁶⁵. The total score converted into the following three level grading system used at GGSL:

| | |
|------------------------|----------|
| Merit (M): | 80 - 100 |
| Competent (C): | 50 - 79 |
| Not Yet Competent (N): | 0 - 49 |

Parts A and B were incorporated into a single sheet to be completed by both SC and tutor. (An edited version of Parts A and B as used in the January 2006 exercise appears in Appendix 4.) The file note written pursuant to Part C only went to the tutor. The student received a modified version of Part A (e.g. The client understood what I was saying) to be completed immediately after the interview. The student's form played no role in the grade received by the student or in our analysis of the January 2006 pilot; however, we collected this data for potential future research. In the future when Part A as completed by the SC is used for assessment, the student will receive the completed form when grades are announced and can compare it with the student's own prediction of how the client experienced the interview.

2. *Training of Standardized Clients and Tutors*

The final stage of preparation for the January 2006 exercise involved further training of the standardized clients in role play and in the use of the new assessment form. This process required us to undertake a comprehensive standard setting process involving all of the Standardized Clients and GGSL tutors involved in the assessment process. This stage was the most complex and time-consuming phase of the project and therefore merits a detailed explanation of the approach we took. (A brief set of guidelines for training standardized clients based on our experience in this pilot project appears in Appendix 6.)

We were aware that further practice in role-play was essential for

⁶⁵ This scoring system retained the relative weighting of communication skills, fact finding and advice giving in GGSL's previous assessment form which was used as the summative assessment instrument up to and including the January 2005 interviewing assessments (see *infra* Appendix 1).

the standardized clients in order to build their experience and confidence, and so we invited our pool of standardized clients to play the part of the clients in the intramural rounds of International Client Counseling Competition at GGSL in autumn 2005. This additional “live” practice was extremely beneficial for all who took part and allowed the clients to hone their skills, not only as actors and improvisers in the given scenarios, but as observers of students’ behavior and performance. Spontaneously, they began to exchange views on which students they thought had performed particularly well or badly; they discussed the reasons why they favored one encounter over another; and they reflected on whether they agreed with the judges’ decisions or not. The judges were also helpful in providing the SCs with feedback on their own performance. In retrospect, although we did not intend to focus on assessment at this stage, it was an integral element of the interaction that could not be avoided. The standardized clients behaved much as any normal client would in the same situation and formed their own judgments of the students interviewing them, based on their currently held views of an effective interview. Our task was to standardize these views and reach a common understanding of what constituted a “competent”, “not yet competent” and “meritorious” interview.

In the last quarter of 2005, we undertook a series of training sessions with the Standardized Clients, this time specifically focusing on the assessment process itself. At this point we had identified nine persons who would play the client role in the January 2006 exercise out of the total pool of 15 and only these nine were involved in this final round of training focused on assessment. We had already recorded two interviews conducted by students from a previous year of the course as part of their training for the final of the International Client Counseling Competition. The same scenario was used in each video and it concerned the same subject matter (Wills and Estates) that our assessment scenarios would be based on.

Interview 1 was selected as an example of a “not yet competent” performance and Interview 2 was at the top of the “competent” performance. The academic staff at GGSL⁶⁶ viewed the interviews independently and marked them according to the criteria and rating scales devised for the new assessment form (Part A). The three staff members then held a moderation meeting where they discussed the individual marks awarded against each criterion for both interviews and explained reasons for their decision. There was generally very close agreement between them and they were able to agree on a “GGSL

⁶⁶ The academic staff at GGSL consists of two of the co-authors — Barton and Maharg — and Fiona Westwood (*see supra* note *).

standard score” for each criterion for both interviews: a total score of 15 for Interview 1 (where 20 would be a “competent” rating) and a total score of 31 for Interview 2.

The initial training sessions were facilitated by GGSL academic staff and involved only the nine Standardized Clients. As a group, the staff and standardized clients examined Part A of the new assessment form and discussed the criteria and descriptors, working to form a common understanding of how to apply the ratings. Then all participants viewed Video 1 of a student interview with client. Each SC marked the interview independently using the version of Part A annotated with associated descriptors.

Standardized Client Scores were recorded and compared with each other and with the GGSL Standard Score. A wide variation in the total scores awarded was observed, from a high of 29 to a low of 17; the average of all nine scores was 22. None of the SCs rated the interview as low as the GGSL standard (15). Comparison and discussion of the scores awarded took place. Differences of opinion and interpretation were aired and discussed further.

All participants then viewed Video 2 and again each SC marked the interview independently using Part A. On Video 2 there was much less variance both among the SCs and from the GGSL standard. Individual total scores ranged from 25 - 33 and the average score (29) was within 2 points of the GGSL standard (31).

The standardized client training then moved to the actual interview scenarios to be used for the January 2006 exercise and expanded to add the scenario specific checklist, Part B. Three additional “live” interviews were marked where one standardized client role-played the interview scenario he or she had been assigned and the academic staff played the role of the interviewing lawyer. The remaining SCs and GGSL academic staff observed. All observers as well as the SC playing the role marked the interview using Part A and Part B of the form.

The first interview was conducted by an academic staff member with the intent of demonstrating an excellent performance. The GGSL staff gave this interview a total score of 37. The SCs all recognized that this was a very good interview giving total scores ranging from 30 -37 with an average of 34. (A score of 32 or better would earn a Merit ranking if only Part A was used to calculate the grade.) For the second live interview, the staff member intended to demonstrate a not-competent performance. The GGSL score was 13 (with 20 the equivalent of a “competent mark”) and all the SCs also gave a “not-competent” score, ranging from 11 - 16 with an average score of 14. The third (and final) live interview was conducted to be a high-end “competent” performance. The GGSL and SC scores virtually con-

verged. The GGSL score and average SC scores were both 30 and 6 out of 9 SCs gave scores of either 30 or 31.

We were very pleased to see a steady reduction in the degree of variation on Part A over the course of the training session – a common standard was being established. There was universal agreement by all participants for Part B on all the three live interviews on each occasion.

A similar approach was taken in training the tutors, although there were only three interviews viewed and marked, all on video. The tutor training took place after the January 2006 interviewing exercise, before they began marking. The first interview was a randomly selected video from the January 2006 exercise. As with the Standardized Clients, the scores awarded after viewing the first video showed a wide variation across the tutors (12 - 20) and difference between the average tutor mark (16.7) and the GGSL standard score (21.7). However there was unanimous agreement on the scoring of Part B between the tutors and GGSL staff. The tutors were also supplied with copies of the randomly selected student's note to file (Part C), and all awarded the same mark for this item independently.

The remaining two videos were the same videos as those used for the second assessment training with the SCs. For the first of these videos the tutor scores ranged from 15-22 (average of 21.3), compared to the GGSL standard score of 15. For the second video the variation was reduced (25-31) and the average tutor score (28.5) was closer to the GGSL standard (31) than for the first video.⁶⁷

IV. ANALYZING THE DATA FROM THE JANUARY 2006 PILOT

The main trial took place in January 2006 when 265 Diploma students undertook interviews with one of nine SCs on one of three scenarios (Scenarios A, B and C). The students were informed in advance only that the subject matter of the interview would be Private Client (i.e wills and estates), and that it would be an initial interview with a new client. At the briefing session immediately prior to the interview, students were given an instruction sheet with the name of the client and a one-sentence description of the reason for the interview. All interviews were videotaped and on average lasted for approximately 20 minutes. It was made clear to students that their final mark would be based on the tutor score, and that their own self-assessment on Part A and SC scores on Parts A and B were only being recorded as part of the research project.

⁶⁷ It is interesting to note that the average score for the Standardized Clients on the second video (29.1) was somewhat closer to the GGSL standard (31) than the average score produced by the tutors (28.5).

Statistical analysis of 259 of these interviews⁶⁸ from the January 2006 pilot revealed dramatically different results than produced by the January 2005 pilot. Whereas *none* of the 13 questions in the 2005 pilot demonstrated statistically significant correlations between client and tutor responses, *all* 8 questions in Part A and *all* 7 questions in the various versions of Part B showed correlations between standardized client and tutor responses at high levels of statistical significance.⁶⁹

The same standard correlation analysis used for the January 2005 pilot produced the following data.⁷⁰

| Question | Correlation of Clients with Tutors |
|------------------------------|------------------------------------|
| A1: Greeting | 0.289 ** |
| A2: Lawyer Listened | 0.177 ** |
| A3: Questioning was Helpful | 0.366 ** |
| A4: Accurately Summarized | 0.261 ** |
| A5: Understood the Lawyer | 0.146 * |
| A6: Felt Comfortable | 0.226 ** |
| A7: Confident with Lawyer | 0.274 ** |
| A8: Come Back to this Lawyer | 0.284 ** |

The responses to Part A were ordinal by design, meaning that respondents were forced to choose one of five numbers on a scale.⁷¹ When analyzing the correlation of ordinal numbers, we must consider the fact that there will naturally be more ties because the scores can not be drawn from between two numbers on the scale (e.g. a respondent could not write down 2.5 or 4.3 as a response). Because choice is limited there will be more ties, and correlations may therefore be overstated. Alternate methods of analysis known as “rank correlation measures” offer more conservative statistics that take this risk into

⁶⁸ Out of the original 265 assessment interviews that took place, in 3 cases the client data were missing and in 3 cases the student data were missing; we therefore did not include these six interviews in the analysis. Additional missing data resulted in sample sizes of 258 or 257 on some analyses.

⁶⁹ Standardized client and tutor responses were correlated but not identical. For example, review of the average scores assigned to each item revealed that the standardized clients tended to give slightly higher scores than the tutors. (As might be expected, the students were more generous in their self-evaluation than either standardized clients or tutors as measured by average scores on each item.)

⁷⁰ “*” = $p < .05$, “***” = $p < .01$

⁷¹ Ordinal numbers are numbers used to denote the position in an ordered sequence: first, second, third, fourth, etc., as opposed to continuously measured interval numbers, where, for example, an infinite number of values would be possible between any two of the ordinal numbers. For example, temperature would be a continuous interval measurement, whereas class rank would be an ordinal measurement.

account.⁷² We therefore applied four different types of rank measures to the January 2006 data – (1) Somers’ *d*, (2) Kendall’s *tau-b* (3) Kendall’s *tau-c*, and (4) Goodman and Kruskal’s *gamma* — and once again found even under each of these very conservative approaches that the relationship between client responses and tutor responses was highly significant across the board. (The closer the number listed under “Significance” approaches zero, the higher the degree of statistical significance.)⁷³

| | Ordinal Relationship of Clients to Tutors | | | | | | | |
|----|---|--------------|-------|--------------|-------|--------------|-------|--------------|
| | Somers | Significance | Tau-b | Significance | Tau-c | Significance | Gamma | Significance |
| A1 | 0.2 | 0 | 0.2 | 0 | 0.21 | 0 | 0.34 | 0 |
| A2 | 0.2 | 0.002 | 0.2 | 0.002 | 0.13 | 0.002 | 0.306 | 0.002 |
| A3 | 0.3 | 0 | 0.3 | 0 | 0.264 | 0 | 0.469 | 0 |
| A4 | 0.2 | 0 | 0.2 | 0 | 0.187 | 0 | 0.319 | 0 |
| A5 | 0.1 | 0.025 | 0.1 | 0.025 | 0.098 | 0.025 | 0.211 | 0.025 |
| A6 | 0.2 | 0.002 | 0.2 | 0.002 | 0.138 | 0.002 | 0.267 | 0.002 |
| A7 | 0.2 | 0 | 0.2 | 0 | 0.193 | 0 | 0.371 | 0 |
| A8 | 0.3 | 0 | 0.3 | 0 | 0.234 | 0 | 0.372 | 0 |

Similarly, we investigated the statistical relationship between responses for Clients and Tutors to questions in Part B. As mentioned above, this part of the instrument was more likely to have incomplete responses; our analysis was limited to those interviews where responses from both SC and tutor were complete and clearly indicated either “Yes” or “No.” Because Part B responses were words, not numbers in a significant order, and only two responses were possible, a different method of analysis was required, called the *Phi* chi-square-based measure of nominal association.⁷⁴ The relationship between re-

⁷² Rank correlation measures such as (1) Somers’ *d*, (2) Kendall’s *tau-b* and (3) *tau-c*, and (4) Goodman and Kruskal’s *gamma* indicate both the statistical significance of the relationship between the two variables and the strength of the relationship as indicated by the value of the test statistic. These values can be interpreted as a proportional reduction of error in predicting *rank* of the dependent variable (ignoring ties).

⁷³ We are intrigued to note that under all the correlation analyses the responses to Question 5 (“understood the lawyer”) show somewhat less significant correlation than all the other items in Part A. It seems likely that the lay person actually playing the client role is in a better position to judge whether he or she understood what the lawyer said than an experienced lawyer watching the video. If this assumption is correct, then the lower correlation rate on Question 5 suggests that substituting standardized clients for tutors may produce *more* valid results, at least on this issue.

⁷⁴ Values on a nominal scale have no numeric meaning, as we typically think about numbers. They are simply names given to categories: red and blue, or small, medium, and large, etc. Where there are only two categories (as here, in “yes” and “no”) the nominal categories are called dichotomous. Similar to the adjustments discussed earlier with ordinal measures, measures of nominal association, like *Phi*, take into account the inherent bias

sponses to Part B between Clients and Tutors was shown to be highly significant with a very large proportion of agreement.

| | Dichotomous Nominal Relationship of Clients to Tutors | |
|----|---|--------------|
| | Value of <i>Phi</i> | Significance |
| B1 | .705 | .000 |
| B2 | .645 | .000 |
| B3 | .668 | .000 |
| B4 | .420 | .000 |
| B5 | .689 | .000 |
| B6 | .610 | .000 |
| B7 | .607 | .000 |

At this point we had exhausted conventional statistical analysis for evidence that might disprove our hypothesis that properly trained SCs could provide assessment comparable to tutors in reliability and validity. We then looked at the data to determine whether there were specific interviews where the SC and tutor disagreed to a degree that the ultimate grade would be different. Using the GGSL formula for converting raw scores into grades,⁷⁵ we computed grades for Part A independently, Part B independently, and a combined grade for both parts.⁷⁶ This calculation produced the following three tables A, B and C. (For three interviews the SC did not complete Part B so the total cases in Tables B and C are 254.) By adding the numbers on the diagonal running from top left to bottom right on each table, we can produce the total number of interviews where the SC and tutor scores produced the same grade. The lowest rate of agreement was on Part B where the SC and Tutor produced the same grade in 64% of the interviews (162/254) . On Part A they agreed in 68% of the interviews (170/257). Combining the Part A and Part B scores yielded the highest rate of agreement on the combined grade: 70% (179/254).

The interviewing assessment functions as a gatekeeper for en-

from the reduced choice in rating. The Phi chi-square-based measure of nominal association indicates both the statistical significance of the relationship of variables in 2 by 2 contingency tables and the strength of the relationship as indicated by the value of the test statistic. This value may be interpreted as the proportion of cases that lie on the diagonal, or in other words, where the two roles agree.

⁷⁵ The GGSL formula was 80% - 100% equaled Merit; 50% - 79% equaled Competent; and below 50% was Not Yet Competent. Our conversion of raw scores differed slightly in that a raw score that converted exactly to 50% of total possible points was treated as a Not Yet Competent.

⁷⁶ As indicated below, our calculation of overall rating as reported in Table C over-predicted cases of actual failure because it did not include scores on Part C.

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trance to the profession; students must pass this assessment to graduate from the Diploma.⁷⁷ Therefore the primary concern is the possibility of what we call Type I and Type II errors. A Type I error rejects a student as “not yet competent” who is actually “competent”; a Type II error accepts a student as “competent” who is actually “not yet competent.”

Examination of Table C below shows that, in terms of the overall rating of Parts A and B, the standardized client would have deemed the student “not yet competent” in 24 cases where the tutor would have rated the student “competent.” If one assumes that the tutor assessment is correct for these interviews, the standardized clients produced Type I errors in roughly 9% of the overall population of cases. Further, the rate of such disagreement seems to be approximately the same in Part A alone (25 such cases) and Part B alone (20 such cases).

Part A

| | | Tutor | Tutor | Tutor | Total |
|--------|-------------------|-----------|-------|-------------------|-------|
| | | Competent | Merit | Not Yet Competent | |
| Client | Competent | 152 | 7 | 24 | 183 |
| Client | Merit | 28 | 6 | 3 | 37 |
| Client | Not Yet Competent | 24 | 1 | 12 | 37 |
| | Total | 204 | 14 | 39 | 257 |

Part B

| | | Tutor | Tutor | Tutor | Total |
|--------|-------------------|-----------|-------|-------------------|-------|
| | | Competent | Merit | Not Yet Competent | |
| Client | Competent | 56 | 26 | 11 | 93 |
| Client | Merit | 33 | 90 | 2 | 125 |
| Client | Not Yet Competent | 18 | 2 | 16 | 36 |
| | Total | 107 | 118 | 29 | 254 |

⁷⁷ A student who fails the interviewing assessment is allowed to take it again. All of the 10 students who failed the January 2006 exercise passed on the second attempt.

Parts A & B

| | | Tutor | Tutor | Tutor | Total |
|--------|-------------------|-----------|-------|-------------------|-------|
| | | Competent | Merit | Not Yet Competent | |
| Client | Competent | 158 | 6 | 14 | 178 |
| Client | Merit | 31 | 7 | 0 | 38 |
| Client | Not Yet Competent | 23 | 1 | 14 | 38 |
| | Total | 212 | 14 | 28 | 254 |

GGSL has an existing procedure in place to guard against Type I errors. Every interview which receives a failing grade from a tutor is reviewed by a member of the academic staff who re-marks the interview. If the grade assigned on re-marking is a pass, the student passes the assessment. For the January 2006 interview 18 students received “Not Yet Competent” grades when Parts A, B and C were combined.⁷⁸ Of these 18 students, 8 received a “Competent” grade on re-marking; thus a Type I error was found in 44% of the cases deemed “Not Yet Competent” by the tutor.

We further focused on the 18 cases where the tutor assigned a failing grade, compiling charts for each comparing the raw score assigned to each item by the SC, the tutor, and the staff member on re-marking as well as total scores on Parts A & B for all three assessors and raw scores on Part C for tutor and staff member.

Chart 1 presents 4 out of 8 Type I errors on scoring Part A. In these cases the difference in raw score on Part A between tutor and staff member was 2 points or less, indicating that the “error” was more a matter of borderline judgment. In 3 of these cases (Students D, G and H) the SC agreed with the staff assessment that performance on Part A was at a competent level. In the other case in Chart 1 (Student E) the SC rated the student slightly lower than did the tutor.

⁷⁸ Table C indicates that 28 students would have been deemed “Not Yet Competent” based solely on the combined tutor scores for Parts A and B. Obviously good scores on Part C pulled some of these 28 students up into the passing range.

CHART 1

| Student Code | Tutor | Staff | SC |
|--------------|-------|-------|----|
| D | 19 | 20 | 24 |
| E | 19 | 21 | 18 |
| G | 20 | 22 | 25 |
| H | 18 | 20 | 20 |

Chart 2 displays the other 4 cases of Type I error on Part A, where there were 4 or more points separating the tutor assessment from the score on re-marking. It is interesting to note that in all 4 of these cases the SC assessment is much closer to the staff assessment than the tutor's score, although in one case (Student C) the SC score would have yielded a borderline failing grade (19) where the staff assessment was barely passing (20).

CHART 2

| Student Code | Tutor-Part A | Staff-Part A | SC-Part A |
|--------------|--------------|--------------|-----------|
| A | 17 | 21 | 23 |
| B | 19 | 25 | 24 |
| C | 16 | 20 | 19 |
| F | 18 | 25 | 21 |

As to Part B, we initially noted that GGSL accepted for grading purposes responses of "partial yes" (which we rejected in our analysis), assigning those responses a score of 1 and a "full yes" a score of 2. In 4 out of 8 cases the difference in raw score among tutor, staff member and SC was a point or two – a matter of borderline judgement. Chart 3 displays the other 4 cases, where there was a more substantial difference in score among tutor, staff and SC. In 3 of these cases (Students E, F, H) the tutor and SC apparently made similar Type II errors, giving failing scores (below 7) where the staff member gave a passing score.

CHART 3

| Student Code | Tutor-Part B | Staff-Part B | SC-Part B |
|--------------|--------------|--------------|-----------|
| A | 10 | 10 | 6 |
| E | 6 | 8 | 4 |
| F | 5 | 10 | 6 |
| H | 6 | 10 | 6 |

We then turned to the 10 cases where the tutor and staff member agreed that the student failed the exercise. In 2 of these cases the SC assessment form was missing. In 2 of the remaining 8 cases, the SC gave a failing grade on Part A, and in 4 cases the SC gave a borderline pass (20 or 21). In none of the failing cases did the SC give higher than a 23 on Part A. On Part B the SC and staff scores were very close; in the two cases with a point differential greater than 2 both the SC and the staff member gave a failing grade on Part B but the SC gave a lower failing grade.

We drew several conclusions from this review of cases where the tutor assigned a failing grade. First, some inter-rater disagreement is inevitable, especially where borderline decisions are involved. Second, experienced lawyers (i.e. the tutors and the staff member) can come to different conclusions about the quality of a client interview based on a video review of that interview. Third, this sample did not indicate a pattern that SCs were more likely to commit a Type I error than tutors, and furthermore the sample contained a number of examples where the SC score was closer to the staff assessment than the tutor score.

Of course the sample of 18 interviews where the tutor gave a failing grade did not identify all the possible Type I errors where the SC gave a failing mark that should have been a pass. In considering this issue we were intrigued by the one case identified on Table A where the SC gave a failing score on Part A yet the tutor marked the performance as a Merit. Three of us (Barton, Cunningham and Maharg) then reviewed the video ourselves. None of us thought the interview deserved a Merit grade and were inclined to agree with the SC that it was a “not yet competent” performance.

We then devised a rather ad hoc experiment. We arranged for all of the tutors involved in the original marking and seven of the original clients to view and mark this video and four other videos where there were varying types of tutor/SC disagreement.⁷⁹ Three of the videos

⁷⁹ In two of the other videos the SC gave a Merit score on Part A where the tutor gave a failing score, in one video the SC gave a perfect score of 40 on Part A while the tutor

involved Scenario A, the other two were Scenario B. The tutors received the written scenarios provided to the client to examine before marking. Likewise, the clients were given the scenarios to read before viewing the videos. One client had acted Scenario A in January and three other clients had acted Scenario B. As it happened none of the individuals who originally role-played the client in these five videos were able to attend any of the sessions we organized. There was no suggestion to the participants in this experiment that the scoring in any particular interview by either tutor or SC was suspect. We amended Part A of the assessment form slightly so that all participants could insert a comment after each item to explain why they marked in a particular way to help in our analysis.

The results for the interview that had originally attracted our attention were very interesting. The tutor who had originally marked the interview gave comparably high scores on the remarking⁸⁰ and in commenting on Item 8 (come back to same lawyer) wrote: “One of the best interviews I’ve seen.” In contrast 6 out of 7 SCs agreed with the original client in giving a failing score on Part A, and the seventh SC gave a barely passing score of 22. The average total score of the 7 SCs (18.1) was virtually identical to the total score given by the original client (18). Although none of the tutors judged the performance “not yet competent,” their average total score (when the original tutor is excluded) was a very low pass (22.5) and 3 out of 5 doubted that the client would want to come back to the same lawyer — giving a score of “2” to item 8 where the original tutor gave a score of “5” to the same question. Thus a case we identified as a potentially serious Type I error by an SC – failing a student who performed very well – turned out to look more like a Type II error by the tutor – judging a student to be competent (indeed meritorious) whose performance was either failing or at the borderline of competence.

No clear pattern emerged from our review of the other four videos, which had been selected largely to provide contrasting examples to the target video.⁸¹ The number of cases where the SC and tutor

gave a mid-range Competent, and in the fourth the SC gave a very low failing score while the tutor gave a low-range Competent.

⁸⁰ Total score on Part A on initial marking was 33 and on reviewing was 31.

⁸¹ The experiment was fruitful in other ways, however. At the video review sessions with the SCs we prompted discussion with a few questions. In response the SCs all indicated that marking from video was much harder than marking as the client. They commented that items 1, 5, 6 and 8 were the most difficult assessment criteria to use. Criteria 5 (understood the lawyer) was most commented on and the main issue raised was that the annotated score sheet concentrated too much on ‘jargon’ which in itself was not always the salient problem. Fluid, confident, helpful explanations, as opposed to disjointed, hesitant, confusing or rambling explanations were the main indicators of good practice in their view. Finally, most of them were in favor of having space for comments on the marking sheet in

scores differed significantly is too small for meaningful statistical analysis. Perhaps an in-depth qualitative study of all these interviews – including sociolinguistic analysis guided by the comments provided by SCs and tutors on the re-marking experiment – would reveal some systematic reasons why SCs and tutors disagree in the small number of cases where they do. However, such a study is beyond the scope of our current project and is not necessary to reach the practical conclusions of importance to GGSL and other providers of legal education.

V. CONCLUSION

The Glasgow Graduate School of Law is fully persuaded by the results of this project that using Standardized Clients for the interviewing examination is as valid and reliable as tutor assessment. Therefore, effective with the 2006-7 academic year, GGSL will no longer use video reviews by tutors to grade the mandatory interviewing examination and will rely instead on assessment by SCs.⁸² Also as a result of the success of this pilot project, the College of Law of England and Wales – the largest provider of postgraduate legal education in the United Kingdom⁸³ – will undertake a similar pilot at one of its campuses in early 2007. A further spin-off of the project is being implemented by the WS Society (formally titled “The Society of Writers to Her Majesty’s Signet”), an independent membership organization for lawyers based in Edinburgh which is one of the oldest professional bodies in the world.⁸⁴ The WS Society plans to use SCs to assess both communicative competence and ethical decisionmaking for experienced lawyers who apply for its new specialty accreditation program.⁸⁵

the future, especially for the final item (would you go back to the lawyer?) as this was such a subjective item. Most SCs were able to recall at least one experience of marking a student “competent” in all of the other elements, but that for some reason or other they did not feel they would wish to come back to that person, and it would have been helpful to have the space to explain why that was the case.

⁸² As described above in Part E(1) (Refining the Assessment Instrument) a small portion of the grade will be based on review of a written note to file by a tutor or other law teacher. Interviews will be still be videotaped and in all cases where the SC assessment results in a failing grade, the videotape will be reviewed by a member of academic staff and marked again using the same criteria used by the SC. If the staff member concludes that the interview demonstrated a competent performance, the grade will be changed to a pass. As discussed in Part IV, such a second review is currently required at GGSL for cases where the initial video review by a tutor results in a failing grade and is similar to the quality control procedure used for standardized patient examinations.

⁸³ See the College of Law web site: <http://www.college-of-law.co.uk/>.

⁸⁴ See *About Us* on the WS Society web site: <http://www.wssociety.co.uk/>.

⁸⁵ See the Signet Accreditation web site: <http://www.thesignetaccreditation.co.uk/>. See also, Clark D. Cunningham, *Legal Education After Law School: Lessons from England and Scotland*, 33 *FORDHAM URB. L. J.* 193, 208-9 (2005).

The impact in Great Britain of the GGSL project suggests that the use of SCs may have transformative effect in legal education in the United States and elsewhere. We therefore conclude by summarizing the costs and benefits (1) of using standardized clients just to play the client role in interviewing exercises and (2) of using SCs also to assess such exercises.

We have no doubt that the benefits of using SCs instead of students to play the client role are substantial. The primary disadvantages are the direct financial expenses – SCs are typically paid for their time and often reimbursed for expenses – and the substantial indirect costs of staff time devoted to recruiting, training and maintaining a pool of SCs. While it is true that a student who plays a client role in an activity can learn something from experiencing an interview from the client perspective, we view this as an incidental and relatively minor educational benefit, greatly offset by the problems created for the interviewing student. One of the main problems we have observed when using students (or non-trained actors) to role-play clients in the assessment of interviewing skills is that the performance of the student being assessed is highly dependant on the performance of the student playing the client. While we have seen many examples of “excellent” clients who were able to behave true to character, there are many other examples of situations where the client behaved in such a way that it made it difficult to assess the interviewer. This means that although students may, on paper, be presented with the same scenario, there was a wide variation in how that scenario was actually played out. In other words the predictive validity of the assessment was poor. Some of these client-induced problems along with a possible explanation of the reasons for these are outlined below.

When SCs played the client role, there appeared to be a truer measure of a student’s performance or ability, which was not affected to the same extent by variable client role-play performance in the way it had been previously. Furthermore, we observed that the students took the interviewing assessment much more seriously.⁸⁶ The use of SCs who could be prepared thoroughly and rehearsed also allows the creation of more complex and nuanced scenarios.

What are the additional benefits and potential costs of using SCs to assess? We deliberately framed our research question as whether assessment by SCs could be shown to be *as* valid and reliable as the method currently used by GGSL, video review by tutors. We are

⁸⁶ It also appeared that the process of self-assessment using Part A and the task created by Part C of writing up the note to file made them reflect on their own performance much more closely. We believe they became aware of information they had missed or details they had not recorded.

Problems observed using students as clients:

| The student clients: | Possible reasons: |
|---|--|
| misunderstand the facts | not familiar enough with the scenario |
| don't stick to the scenario | not familiar with the scenario or feel free to "improvise" |
| are not true to character | can not imagine how a client would act in the given situation |
| make it too easy for the interviewer | read from the scenario, volunteer information, take control of the interview, know the law |
| make it too difficult for the interviewer | deliberately keep things back, play devil's advocate |
| respond inappropriately | have not been trained how to act "in-role" and suppress personal bias |

therefore not prepared to claim that SC assessment is *more* valid or reliable. We do note, however, two factors that might contribute toward greater validity and reliability for SC assessment. SCs are generally more available for and amenable to extensive assessment training than full-time teachers or practicing lawyers, which has the potential of increasing reliability. As to validity, as we have pointed out previously, the responses of a real client to most of the items on Part A would be factually true (assuming the client responded with sincerity). If the client said she did not understand the lawyer, a differing opinion that everything said was comprehensible reached by watching a videotape of the interview would simply be wrong. A lay person who experiences the client role shares to some extent the inherent authority of a real client in this respect.

Even assuming that SC assessment is no more valid and reliable than tutor assessment, it has benefits not provided when law teachers do the assessment. Significantly, when we give to a standardized client a summative assessment role, as legal educators we then practice what we preach by making what the client thinks important in the most salient way for the student: a marked exercise where most of the grade is given by the client.

The challenge of redesigning assessment for standardized clients had the benefit of causing GGSL to re-think its whole approach to teaching and learning interviewing and client communication skills. One result was the insight that the key educational objective for

teaching interviewing to students about to enter practice was to convey the importance – and difficulty – of clear explanation and good listening. Their prior legal education would not have included these lessons and indeed instead encouraged them to rush into what that education had taught them to value: the academic application of legal rules to settled facts. Empirical research collected by the ELCC project indicated that their apprenticeship was not likely to emphasize skills of listening and explanation. Thus the interviewing component of the Diploma was the key moment for teaching these skills. Narrowing the mandatory interviewing exercise to focus on the initial stage of the interview and to exclude advice giving was the result.

GGSL also realized that it needed to “teach to the test” and therefore introduce new material into the curriculum. As part of this curricular change GGSL added a lecture to the Foundation Course (provided by Cunningham in Fall 2005) presenting key empirical research collected by the ELCC project. This lecture is in the process of being expanded into written course material.⁸⁷

A very tangible and consequential benefit is that using SCs will be less expensive over time to GGSL than their current practice of paying tutors to view and mark videotaped interviews. The cost savings may be even greater for programs like our research partner, The College of Law of England & Wales, that already pays actors to play the client role for their mandatory interviewing assessment and also incurs the cost of assessment by law teachers of those interviews. For programs where the alternative to SCs is marking by full-time academic staff and the cost of assessment is thus not readily identifiable as a separate budget item, the cost /benefit analysis needs to factor in the value of staff time that would be freed up for other teaching, administrative and research activities. In the United States, the effective cost of having full-time staff grade interviewing exercises is that courses on client interviewing typically have limited enrollment and are not offered in enough sections that the entire student body could take the course. Lawrence Grosberg has described how using SCs has increased opportunities for formative assessment (but not actual grading) for the large-enrollment required course on Lawyering Process at New York Law School.⁸⁸

In a sense, one of the benefits for the participant institutions has been the inter-jurisdictional and interdisciplinary collaboration on the project. There is so much that we have learned from each other over the length of the project to date that could not have been learned in

⁸⁷ For a very preliminary draft, see Clark D. Cunningham, *What Clients Want from Their Lawyers* (2006), available on the ELCC web site, *supra* note 10.

⁸⁸ Grosberg, *supra* note 23, at 223-27.

any other way than working with each other; and this has resulted in fairly radical change, in the GGSL at least, to our working practices.

But perhaps the most substantial benefit of using standardized clients to assess communicative competence is that the issue of effective communication can be approached more systematically – and seriously – when there is a cost-effective and objective way of measuring such competence. In *Measuring and Managing Patient Satisfaction*, published by the American Hospital Association, the authors confidently assert:

Health services providers today are confronted with two principal challenges. The first is to gain insight into what is important to the patients they serve. The second is to “move the needle,” or make measurable changes in the patients’ experience of the health care encounter.⁸⁹

They link these health care priorities with the evolution of customer-centered service throughout the business world: “customer satisfaction is considered by most to be at the core of good business practices.” However, in striking contrast to the health care industry (or indeed any other service industry), lawyers generally do not use even the most rudimentary methods for finding out how their clients experience the services they provide and thus have no way of measuring “how the needle moves.”⁹⁰ Standardized clients do not provide the only “needle” but once the legal profession has at least one gauge to *measure* “what clients think” it can begin to demonstrate that it truly *values* what clients think.

⁸⁹ William J. Krowinski & Steven R. Steiber, *MEASURING AND MANAGING PATIENT SATISFACTION* ix (1996).

⁹⁰ See Clark D. Cunningham, *Evaluating Effective Lawyer-Client Communication: an International Project Moving From Research to Reform*, 67 *FORDHAM L. REV.* 1959 (1999) (summarizing information about limited use of client satisfaction data in the United States).

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**APPENDIX 1: GGSL INTERVIEWING SKILLS
ASSESSMENT SCHEDULE**

Name of assessor: _____

Name of student interviewer: _____

Registration number: _____

| | Interviewer demonstrates that he/she can . . . | Marks | | | | |
|----|---|-------|-----|-----|-----|------|
| | | 0-2 | 3-4 | 5-6 | 7-8 | 9-10 |
| | Introduction | | | | | |
| 1 | Meet and greet the client | | | | | |
| 2 | Explain structure of interview | | | | | |
| 3 | Encourage client to explain problem and concerns | | | | | |
| 4 | Confirm his/her understanding of client's problem and concerns | | | | | |
| | Questioning | | | | | |
| 5 | Identify key topics | | | | | |
| 6 | Question client appropriately and systematically | | | | | |
| 7 | Identify further facts required | | | | | |
| 8 | Avoid giving premature legal advice | | | | | |
| | Explaining | | | | | |
| 9 | Explain legal rights and apply law to the client's problem | | | | | |
| 10 | Explain fees &/or Legal Aid/Legal Advice & Assistance | | | | | |
| | Advising | | | | | |
| 11 | Outline legal/non-legal options and evaluate these with the client | | | | | |
| 12 | Defer advice, if appropriate, in anticipation of further factual/legal research | | | | | |
| 13 | Identify and deal appropriately with ethical issues | | | | | |
| | Concluding | | | | | |
| 14 | Determine if he/she is appointed | | | | | |
| 15 | Confirm plan which specifies action, time frames, solicitor & client tasks | | | | | |
| | Presentation | | | | | |
| 16 | Introduce & conclude appropriately | | | | | |
| 17 | Establish and maintain rapport with client | | | | | |
| 18 | Listen to client | | | | | |
| 19 | Avoid legal jargon | | | | | |
| 20 | Demonstrate courteous and professional attitude to the client | | | | | |

Total mark out of 200: _____

Please tick relevant box:

| CATEGORY | MARK SPAN | ASSESSMENT |
|-------------------|-----------|------------|
| Merit | 151-200 | |
| Competent | 101-150 | |
| Not yet competent | 0-100 | |

APPENDIX 2: ELCC FORMS MODIFIED FOR JANUARY 2005
 DIPLOMA PILOT
 CLIENT INTERVIEWING: THE CLIENT'S VIEW

Scenario Reference _____

Name of Student Lawyer _____

Student Lawyer Registration No _____

This survey is being conducted in order to assess GGSL processes, not student performance. It will not be used in the assessment of any student. Your answers will not be shown to the student who interviewed you in the role of the lawyer, or any tutor involved in marking students.

For questions 1-10, please indicate how much you agree or disagree with each statement about the student who played the lawyer who interviewed you.

For each item, you may circle any number corresponding to the scale below.

| | | | | | | | | |
|--------------------------|----|-----------------|----|-----------------|----|--------------|----|-----------------------|
| -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| strongly disagree | | disagree | | not sure | | agree | | strongly agree |

The lawyer. . .

| | | | | | | | | | |
|---|----|----|----|----|---|----|----|----|----|
| 1. Made me feel comfortable. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 2. Said things I did not understand. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 3. Treated me with respect. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 4. Did not understand what was most important to me. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 5. Listened to me. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 6. Did not explain what he or she would do next for me. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 7. Was interested in me as a person. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 8. Asked confusing questions. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 9. Was someone I could trust. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 10. Understood why I needed legal help. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

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

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

CLIENT INTERVIEWING: THE LAWYER’S VIEW

Scenario Reference _____

Name of Student Lawyer _____

Student Lawyer Registration No _____

This survey is being conducted in order to assess GGSL processes, not student performance. It will not be used in the assessment of any student. Your answers will not be shown to the student you interviewed in the role of the client, or any tutor involved in marking.

For questions 1-13, please respond by imagining how the *client* would respond if asked the question. We realise this is a difficult task and may involve some guessing on your part. For each item, you may circle any number corresponding to the scale below.

| | | | | | | | | |
|--------------------------|-----------|-----------------|-----------|-----------------|-----------|--------------|-----------|-----------------------|
| -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| strongly disagree | | disagree | | not sure | | agree | | strongly agree |

The client. . .

| | | | | | | | | | |
|--|----|----|----|----|---|----|----|----|----|
| 1. Felt comfortable. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 2. Did not understand some things I said. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 3. Felt treated with respect. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 4. Felt as if I did not understand what was most important to him or her. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 5. Felt like I listened well. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 6. Felt like I did not explain what I would do next for him or her. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 7. Felt like I was interested in him or her as a person | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 8. Thought I asked confusing questions. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 9. Trusted me. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 10. Thought I understood why he or she needed legal help. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 11. Did not say everything that he or she wanted to say. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 12. Knows what he or she needs to do next. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 13. Would want me to help him/her, if they came back with a different need for legal help. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

CLIENT INTERVIEWING: THE ASSESSOR'S VIEW

Scenario Reference _____

Name of Student Lawyer _____

Student Lawyer Registration No _____

This survey is being conducted in order to assess GGSL processes, not student performance. Your answers will not be shown either to the student playing the client, or to the student conducting the interview, nor will it be used in the assessment of any student. Please fill out this form *after* completing the conventional GGSL interviewing assessment sheet.

| | | | | | | | | |
|---|----|-----------------|----|-----------------|----|--------------|----|-----------------------|
| <p>For questions 1-10, please indicate how much you agree or disagree with each statement about the student who played the role of the lawyer conducting the interview. For each item, you may circle any number corresponding to the scale below.</p> | | | | | | | | |
| -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| strongly disagree | | disagree | | not sure | | agree | | strongly agree |

The lawyer . . .

| | | | | | | | | | |
|---|----|----|----|----|---|----|----|----|----|
| 1. Made the client feel comfortable. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 2. Said things the client did not understand. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 3. Treated the client with respect. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 4. Did not understand what was most important to the client. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 5. Listened to the client. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 6. Did not explain what he or she would do next for the client. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 7. Was interested in the client as a person. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 8. Asked confusing questions. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 9. Was someone the client could trust. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 10. Understood why the client needed legal help. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

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

| | | | | | | | | | |
|--|----|----|----|----|---|----|----|----|----|
| 11. The client was able to say everything he or she wanted to say. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 12. The client was aware of what he or she needed to do next. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 13. The client would be likely to come back to this person for legal help in the future. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

APPENDIX 3: RANGE OF RESPONSES BY TUTOR-ASSESSORS
DURING JAN 05 TRAINING

Scenario Reference _____

Name of Student Lawyer _____

Student Lawyer Registration No _____

This survey is being conducted in order to assess GGSL processes, not student performance. Your answers will not be shown either to the student playing the client, or to the student conducting the interview, nor will it be used in the assessment of any student. Please fill out this form *after* completing the conventional GGSL interviewing assessment sheet.

For questions 1-10, please indicate how much you agree or disagree with each statement about the student who played the role of the lawyer conducting the interview. For each item, you may circle any number corresponding to the scale below.

| | | | | | | | | |
|-------------------|----|----------|----|----------|----|-------|----|----------------|
| -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| strongly disagree | | disagree | | not sure | | agree | | strongly agree |

The lawyer. . .

| | | | | | | | | | |
|---|----|-----------|-----------|-----------|----------|-----------|-----------|-----------|----|
| 1. Made the client feel comfortable. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 2. Said things the client did not understand. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 3. Treated the client with respect. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 4. Did not understand what was most important to the client. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 5. Listened to the client. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 6. Did not explain what he or she would do next for the client. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 7. Was interested in the client as a person. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 8. Asked confusing questions. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 9. Was someone the client could trust. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 10. Understood why the client needed legal help. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

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

| | | | | | | | | | |
|--|-----------|-----------|-----------|-----------|----------|-----------|-----------|----|----|
| 11. The client was able to say everything he or she wanted to say. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 12. The client was aware of what he or she needed to do next. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |
| 13. The client would be likely to come back to this person for legal help in the future. | -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

APPENDIX 4

Glasgow Graduate School of Law / Effective Lawyer-Client Communication Project: January 2006 Pilot: Client Interviewing Assessment for Diploma in Legal Practice Students

After the interview both the Standardized Client (SC) and the Tutor Assessor complete this global rating form (A1-A8) and case specific checklist (B1-7). The student also fills out a version of A1-A8.

Interviewing Assessment Marking Sheet (Scenario A)

Name of assessor (SC or Tutor): _____

Name of student lawyer: _____

Registration number: _____

PART A: Global Rating

- 1. The greeting and introduction by the student lawyer was appropriate 1 2 3 4 5
2. I felt the student lawyer listened to me 1 2 3 4 5
3. The student lawyer approach to questioning was helpful 1 2 3 4 5
4. The student lawyer accurately summarised my situation 1 2 3 4 5
5. I understood what the student lawyer was saying 1 2 3 4 5
6. I felt comfortable with the student lawyer 1 2 3 4 5
7. I would feel confident with the student lawyer dealing with my situation 1 2 3 4 5
8. If I had a new legal problem I would come back to this student lawyer 1 2 3 4 5

PART B: Case Specific Checklist (Specify 'Yes' or 'No' to each item on the list)

- 1. Asked for your full name and address
2. Asked for [deleted]
3. Asked for [deleted]
4. Asked for [deleted]
5. Asked for [deleted]
6. Asked if [deleted]
7. Asked for details of estate

APPENDIX 5: STANDARDISED CLIENT ASSESSMENT CRITERIA

1. The greeting and introduction by the student 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 a minimum attempt to make conversation with you, set you at ease, and deal with other matters such as reassuring the client about confidentiality, before coming to the matter in hand.

| 1 | 2 | 3 | 4 | 5 |
|--|--|--|--|--|
| No attempt to meet & greet you; plunges straight into matter | Offered time of day, then straight to matter | Attempt to greet you, and some recognition of client situation | Greeted you; engaged in some small talk; and attempted to lead you into the matter | Fluent and confident greeting; engaged you in small talk; made you feel at home from the start |

2. I felt the student lawyer listened to me.

This item is designed to assess the degree to which the lawyer can listen carefully to you. This entails *active* listening – where it is necessary for the interview structure or the lawyer’s understanding of your narrative, the lawyer will restate or feed back elements of the story to you; the lawyer will not interrupt, cut you off, talk over you or rush you in conversation. The lawyer will take notes where appropriate without losing 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. Few notes, or spends most of the interview head-down, collecting; little or no restatement or feedback to you | 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. Little or no restatement back to you; few notes or rarely looks at you. | Lawyer rarely interrupts or cuts off or rushes you. Little restatement, but you are allowed to tell his or her story to some extent; more interested in notes taken than in eye-contact with you. | Where lawyer interrupts, it is because you are wandering in your narrative. Lawyer restates your narrative to check understanding or where otherwise appropriate. Lawyer does not provide opportunities for you to lead the discussion where appropriate. Notes are taken. | Lawyer gives you the opportunity to lead the discussion where appropriate. Lawyer uses silence and other non-verbal facilitators to give you an opportunity to expand. Lawyer restates or feeds back to reassure you of his or her understanding of your narrative. Ample notes taken and used where appropriate in the interview. |

3. The student 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. 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. It 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 |
|--|--|---|---|--|
| <p>Lawyer ignores your cues or misses obvious facts that require questioning; lawyer uses closed questions where open would be better, or <i>vice versa</i>. No indication that there is an awareness of the difference between closed & open questioning techniques.</p> <p>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</p> | <p>Lawyer uses questions rather aimlessly; does not seem to know what he or she is looking for. Does not preview sets of closed questions ('I'd like to know a bit more about. . .' or 'Tell me more about . . .'). Some awareness of important cues and facts. Uses too many or too few questions</p> <p>Some attempt by lawyer to identify relevant facts; no attempt to pursue in questions; no statement to you about the need for further information</p> | <p>Lawyer can question systematically, but uses too many questions in doing so. Tends to favour closed questions</p> <p>Lawyer identifies relevant facts; pursues further facts required in questions; no statement to you about the need for further information</p> | <p>Lawyer can appreciate when to use open & closed questions; can question systematically; can pursue facts and legally relevant information.</p> <p>Lawyer identifies relevant facts; pursues further facts required in questions; informs you about the need for further specific information</p> | <p>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.</p> <p>All relevant facts required are identified by the lawyer; thorough questioning to determine extent of information required; you are clear that you need to bring further information to another meeting or send information to the lawyer.</p> |

4. The student 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), incomplete, and has to be heavily revised by the client. No link between this and future action. No or very little communication over client concerns. | Summary of client narrative reasonably attempted, and client has to revise details. Attempted link to future action. Little sensitivity to client concerns | Good summary, possibly more than one, of client narrative. Client satisfied with lawyer’s understanding. Links to future action, and lawyer shows sensitivity regarding client’s concerns in his or her summary | Very good summary or summaries of client narrative. Client satisfied, no details corrected. Links to future action and 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 student lawyer was saying

This item is designed to assess the degree to which the lawyer avoids 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 explanations, he or she makes no attempt to respond, or alter jargon used. | Lawyer uses some jargon and has to explain to you what this means, generally not doing this well. When you ask for explanations he or she gives poor explanations, and does not shift register in the rest of the interview. | Lawyer uses some jargon, and when you ask for explanation is able to give this. Learns from this and does not use jargon in remainder of interview. | Lawyer uses jargon only where necessary, and provides explanation of this to you. | Lawyer avoids jargon except where necessary. Explanations are clear, simple, elegant. In the course of the interview can communicate complex legal issues to you without recourse to jargon. |

6. I felt comfortable with the student 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. | Lawyer was mechanical, distracted, nervous, insincere or used inappropriate remarks, | Lawyer was courteous to you and encouraged you to confide in him or her. | Lawyer was generally attentive to and interested in you. You felt confident to confide in him/her. | Lawyer showed a genuine and sincere interest in you. There was a sense of connection between you and the lawyer. |

7. I would feel confident with the student 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 |
|--|---|---|---|--|
| Lawyer is insensitive to client issues; or lawyer dominates interview and client; language and gesture not appropriate to the interview; no apparent structuring of legal matter | Lawyer is distant or domineering, but some attempt to be sensitive to client concerns; little attempt to structure the interview; random, aimless questions, abrupt transitions that leave you confused | Some attempt to structure the interview and the legal matter; manner is helpful but uncertain; client has space to explain but transitions are poor | Good structure, manner is helpful and lawyer is sensitive to client issues. Transitions uncertain but lawyer attempts to reassure client where necessary, and tries to structure the legal matter | Excellent manner, with good transitions, well structured interview that also allows the client space to talk while structuring the legal matter well. 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 student lawyer

This item is designed to assess in general terms your view of the student lawyer.

| 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 6: GUIDELINES FOR USING STANDARDIZED CLIENTS**A. Scenario Drafting**

1. While drafting the fact pattern, identify to yourself key items of information that should be obtained during the course of the interview. This list can be used later to develop a checklist similar to Part B in the GGSL assessment instrument.
2. Use feedback from clients to revise the scenario in such a way that it makes sense to the client:
 - a. Use simple language and avoid legal jargon;
 - b. Clearly identify the main client concern(s);
 - c. Separate personal details and facts from the narrative.
3. Allow clients to add some of their own personal details that they will easily remember where appropriate in the narrative.
4. Structure the narrative into three distinct stages;
 - a. Opening statement;
 - b. Information to be revealed on general questioning;
 - c. Information to be revealed on specific questioning.

B. Client Training

1. Select clients with no legal knowledge.
2. Move the clients through four stages:
 - a. induction to role-playing;
 - b. familiarization with script(s);
 - c. practice and feedback;
 - d. confidence and consistency building.
3. Basic 'Role-play' Workshop to include the following elements:
 - a. presentation to outline the role of the Standardized Client;
 - b. view video of good and bad role plays and discuss;
 - c. practice role-playing a simple scenario in pairs;
 - d. practice acting emotions;
 - e. practice improvisation.
4. Familiarize clients with the script(s) they will need to learn:
 - a. Read it as a group;
 - b. discuss the role;
 - c. how the client would feel;
 - d. how they would react to specific questions etc.; and
 - e. clear up any ambiguities or misunderstandings.
 - f. Use any feedback obtained from clients to update or modify the scenario as appropriate.
5. Practice the scenario(s) with a member of staff playing the role of the solicitor, observed by other clients who will provide constructive feedback.
6. Build confidence and consistency by providing opportunities for the clients to practice role playing in a variety of settings, for example, in formative assessment situations, client counseling competitions, etc.

