

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.

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

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.

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).

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).

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>

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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.