DO WE VALUE WHAT CLIENTS THINK ABOUT THEIR LAWYERS? IF SO, WHY DON’T WE MEASURE IT?

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Abstract
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 U.S. - has undertaken an ambitious project to change the way lawyer-client communication skills are taught and assessed. Medical education in both the US and the UK has been transformed 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. The reliability and validity of such standardized patient (SP) examinations is now so well established that all U.S. candidates for the M.D. must now pass a half-day test involving 11 different SP examinations. GGSL is the site for a series of pilot projects testing whether a similar methodology using standardized clients (SCs) would be more valid, reliable and cost-effective than the current GGSL approach, which is widely used by many law schools, of having client roles played by students with

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assessment based on law teacher review of the interview videotape. In January 2006 over 250 GGSU students will conduct their required interviewing exercises with SCs and the SC assessments will be analyzed and compared with law teachers’ evaluations of the interview videotapes.

Introduction
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. ²

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” even if they seek to improve client satisfaction. ³ The failure of the legal profession to gather data about client satisfaction in a systematic way may be attributable to a widespread assumption among lawyers that clients care primarily about outcomes not process, an assumption inconsistent with growing evidence from social science research that the quality of lawyer-client communication is an extremely important determinant of client satisfaction.

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. ⁴ 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 project is guided to a significant degree by the example of the medical profession, where a greatly increased emphasis on patient satisfaction is both a cause and an effect of extensive social science research on doctor-patient communication. The analogous experience in the health care field indicates that the critical first step is to develop a practical and cost-effective method to assess the effectiveness of lawyer-client communication that correlates that assessment with the degree of client satisfaction.

A truism in education theory is that “we value what we measure” and “we measure what we value.” (This principle is repeated in the infamous student


⁴ For more information, see the ELCC website: http://law.gsu.edu/Communication/
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 process nor are there required law school courses in US law schools on client interviewing counseling (in comparison, for example, to legal research and writing).

To our knowledge there have been two prior experiments – both at American law schools – to emulate in part the rigorous approach developed in medical education for assessing communicative competence: the Standardized Patient (SP) assessment methodology. Over the past 30 years, medical education has given increasing emphasis to the use of "standardized patients" both for teaching and licensure. 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 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.

A 1992 article in the Journal of Legal Education reports on a well-designed experiment at the University of Arizona College of Law that involved Dr. Paula Stillman, a leader in the SP movement in medical education. The experiment was small scale; two "client instructors" were trained and 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.

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The pilot showed clear improvement in student interviewing skills according to this measure. Unfortunately this article apparently prompted no replication of this experiment at other law schools for almost two decades.

At the 5th International Clinic Conference in November 2001 at Lake Arrowhead, Professor Larry Grosberg reported on a much more ambitious pilot project using Standardized Clients at New York Law School. 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. 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 measures these later pilots as successful in terms of positive student evaluations about the experience of working with the SCs. He specifically includes 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.”

As detailed below, Scotland has designed a system of preparation for legal practice that is much more comprehensive than found in the U.S., especially in its aspirations to integrate academic education and professional training. In the Diploma in Legal Practice taken by the greatest number of candidates for the law license in Scotland, provided by the Glasgow Graduate School of Law, effective lawyer-client communication is not only valued but measured — in a mandatory simulated interviewing exercise that is marked according to detailed criteria based on review of the videotaped performance by qualified solicitors who are also teachers on the Diploma. Because large numbers of students are required to pass this exercise – an estimated 270 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 U.S. or in any other legal jurisdiction to our knowledge. If this experiment demonstrates that SCs are as reliable and cost-effective as the current system of teacher-driven assessment (and we hope, more so), then the project may prompt an entire country to change the way it measures professional competence in communicating with clients. 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.

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8 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 Journal of Legal Education 212 (2001).
9 Id. at 221-223.
10 Id. at 227.
11 See text accompanying note 37,infra.
The Effective Lawyer Client Communication (ELCC) Project

The origins of the Effective Lawyer Client Communication Project can be traced perhaps to the second in this series of international clinical conferences, which was held at Lake Arrowhead in September 1989. At that conference 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. 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. In 1994 he began to form collaborative partnerships with sociolinguists in United States. In 1996 he attended an international conference in Australia sponsored by the Australasian Professional Legal Education Council. His exposure at that conference to the sophisticated empirical work being done by researchers in the UK and Australia on the lawyer-client relationship led him to present at the fourth conference in this series, held at Lake Arrowhead 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, then directed by Christopher Roper and based in Sydney, to launch a “International Research Project on Lawyer-Client Communications.” The proposal 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

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13 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 Clinical Law Review 245 (1994). See also Gay Gellhorn “Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews,” 4 Clinical Law Review 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 Clinical Law Review 541 (1995); “Medical Paradigms for Counseling: Giving Clients Bad News,” 4 Clinical Law Review 391 (1998).
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 times and in communication with clients.

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

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. 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 Sherr 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. The group selected 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, substantive 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 conferences, including 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 Conference of the Global Alliance for Justice Education in Trivandrum, India (December 1999). As a result of this process several law school clinics volunteered to participate in the pilot project including the Monash University


15 The meeting included, in addition to Sherr, Nigel Duncan from the Inns of Court School of Law and Bryna Bogoch, an Israeli sociolinguistic 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.

What Clients Think

School of Law, Melbourne, Australia; Brigham Young University Law School, Provo, Utah; NYU Law School, New York City (simulated interviews only); 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 Robbins. 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 Robbins 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. Lambert also conducted the preliminary statistical analysis of the 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.

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 Maharg 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. That experience of visiting the Atlanta Clinical Skills Assessment Center combined with discussion at and around the symposium has prompted the Glasgow Graduate School of Law to collaborate with the Effective Lawyer-Client Communication Project to run a pilot program in Scotland using standardized clients to assess solicitor candidates.

The Scottish context

In comparative terms, Scotland is a small jurisdiction. The legal profession of around 8,800 solicitors and some 400 practising advocates serving a population of around five million is smaller than the legal bar of many states in the US. 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. First, though, we shall outline the current initial training and education of law students and trainees in Scotland.

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17 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.

18 Nigel Duncan (see note, supra) and Larry Grosberg were also speakers at the GSU conference and joined Maharg and Cunningham on this visit.
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 LLB from an institution recognised 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 LLB can be studied in a variety of curricula. Those students taking the LLB 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 two years.

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 Law

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

After qualifying with an LLB degree, students who wish to enter the legal profession then begin the 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 and knowledge, 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

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20 For a summary, see http://www.ukcle.ac.uk/directions/issue2/survey.html
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 local centres are given flexibility to design the syllabi and the assessments for the above subjects. The course is taught predominantly by tutor-practitioners working in specific areas of the law, and designed and administered by the local centres. 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 for the most part 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. Currently there are four Diploma providers, all of them attached to university law departments or schools: Aberdeen, Dundee, Edinburgh and the Glasgow Graduate School of Law, a joint initiative between the universities of Glasgow and Strathclyde.

Either before their Diploma or during it, students must obtain a traineeship with a practising 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 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 programme known as the Assessment of Professional Competence (APC), which until recently was known as the Test of Professional Competence (TPC)\(^\text{21}\).

In the period 6 – 18 months into their traineeships, trainees are required to take another 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 practising certificate which enables them to practise in the courts under certain conditions. They can also, with the permission of their employer, spend six months of their training in another EU 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 practising 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 in 1994. As a result, a course in Practice Management was added to the curriculum; learning outcomes were

\(^{21}\) For more detailed information on this, see LSS website, [http://www.lawscot.org.uk/](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 trial assessments, it was decided not to proceed with this form of assessment.
clarified; and the structure of some subjects was reviewed and altered – notably Financial Services & Accounting. Perhaps most important, the LSS signalled where, in the syllabus 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, legal writing, drafting and legal research.\(^{22}\)

**Example: Interviewing**

An example of the post-1994 reforms in practice – albeit in a constrained way at the moment – is the development of interviewing skills on the GGSL Diploma. At present, following on from a lecture, multimedia unit and two workshops on this skill in the Foundation Course in the first two weeks, students can practise on simulated client meetings throughout the Diploma. In these simulations one student plays the client role after briefly reviewing a short scenario while the other student takes the lawyer role. Then the students switch roles with the client role based on a different but similar scenario. Their performances are videotaped, and sent to a tutor who gives feedback on the taped performance. At the end of the second semester 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 formative only. However, a little later, students conduct an exercise which receives summative assessment. Tutors view the videotapes, and mark the student performance as “merit,” “competent,” or “not yet competent.” Students who are deemed ‘not yet competent’ must repeat the assessment and in the rare case of the student who fails a second time, must then pass a written test.

For GGSL there are a number of issues regarding the interviewing exercises that remain unresolved:

1. 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, there has been no fundamental analysis of the underlying models taught, and the relationship of such models to evidence of actual client-practitioner interchanges.

2. The assessment by tutors based on videotape viewing has been shown to be sufficiently reliable for this moderately high-stakes purpose. (The final interviewing exercise must be “passed” as a condition of progressing towards licensure.) However, GGLS has not rigorously evaluated its validity as a measure of professional competence – particularly not when compared to the level of rigour that is apparent in medical curricula.

3. GGSL wishes to give feedback to other stakeholders in the professional training programme (eg training firms) on students’ skills learning and achievements, and this needs to be done in as streamlined, relevant and focused a form as possible.

4. The current system is quite costly – tutor-practitioners are paid to review over 250 videotapes, each 20 minutes in length. It would be desirable to explore alternatives that are demonstrably at least as valid and reliable as the current system that might be more cost-effective.23

Current issues in professional education in 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.24 At present, the Law Society is considering the place of such assumptions, and a project such as the present one that analyses forms of educational interventions, provides models of practice, analyses the place of professional practice in a particular set of skills, and makes these available to the educational and professional practice communities is therefore very much welcome. It would help to resolve some of the current issues facing the Society, which include:

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

Variability across programmes of study
At present there is considerable variability between the different Diploma programmes 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 standardise the client-centred orientation of students and trainees, providers and firms. Take the example of interviewing, above. Are there equivalences between the standards of the GGSL and other providers of the DLP? If not, why not, in a small jurisdiction such as Scotland?

23 Our partner in this project, the College of Law of England and Wales, also employs tutors to view videotaped 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.

24 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', in Studies in the Philosophy of the Scottish Enlightenment, ed. M.A. Stewart (Clarendon Press, Oxford, 1990), pp.117-8, quoting Adam Ferguson's Lectures, mss EUL, 1775-6, fols.540-41
**Joined-up educational planning across elements of the professional training programme**

The Diploma, PCC, traineeship and assessment of training exist separately. They need to be harmonised, so that there are coherent approaches to skills learning and knowledge-building among the different stakeholders.

Within the Diploma, the present approach has been taken as far as it can go, and there is a need now to consider approaches that will resolve at least some of the above issues.

**The ELCC/GGSL Standardised Client Project**

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

1. Can the method of Standardised Client training and assessment be shown to be at least as valid and reliable as the current system used at GGSL to assess interviewing skills?

2. Is the method of Standardised Client training and assessment at least as cost–effective as the current system?

3. Could the method of Standardised Client training and assessment be more reliable, valid and cost-effective than the current system?

The project plan is divided into three stages over a 12-month period, culminating in a full-scale Standardised Client trial in the GGSL in January 2006. The three phases of the project are set out under the headings below. Phases 1 and 2 of the project are almost complete and a detailed summary of our initial findings and lessons learned is presented followed by a brief description of the remaining phase.

**Small pilot 1: GGSL Interviewing Assessment, January 2005**

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. The purpose of the discussion 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 – see the numbers in boxes and bold for each item to determine the breadth of marking across the four tutors at Appendix 3.

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 he seemed to listen (eg 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: 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 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. At this stage, we did not have the student-client’s measure of the student-lawyer to compare, but this is an extremely interesting point and we will come back to this again when we look at the analysis of the survey data in the next section. Throughout the discussion the tutors raised the general point that each of these items in the ‘assessor’s view’ form needed to be ‘standardised’ for student performance, rather than the performance that could be expected of second-year trainees, or first-year qualified lawyers.


GGSL arranged to have the three sets of 234 handwritten forms – client survey, interviewer assessment and tutor assessment – entered into an Excel database. This database 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 “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 results, we grouped the original 234 interviews by assessor to gauge differences.

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25 For example, if the interviews were assessed by only two assessors, one whose responses perfectly
Thus the original data set of 234 interviews was stratified by assessor (there were five assessors\(^{26}\)) 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 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.\(^{27}\)

We also performed a factor analysis on the responses of each separate role to explore the anticipated possibility that a particular role’s responses may be multiple measures of a smaller set of general ideas or constructs. This factor analysis strongly suggested that for each set of respondents the variations in responses to the form could be largely accounted 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 as indicated by this chart where the closer the number is to “1,” the stronger the apparent effect of a common underlying factor.

<table>
<thead>
<tr>
<th>Diploma Clients: Rapport + Information Exchange</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (made me feel comfortable)</td>
</tr>
<tr>
<td>3 (treated me with respect)</td>
</tr>
<tr>
<td>7 (was interested in me as a person)</td>
</tr>
<tr>
<td>8 (did not ask confusing questions)</td>
</tr>
<tr>
<td>9 (was someone I could trust)</td>
</tr>
<tr>
<td>10 (understood why I needed legal help)</td>
</tr>
</tbody>
</table>

26 The four tutors whose training was discussed above did most of the assessing and Fiona Westwood (see note 1, supra) assessed a small number, primarily videos where a first assessment had produced a “not yet competent” mark to provide quality control.

27 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.
The factor analysis score for Question 3 was 0.574 for the lawyer surveys as compared to 0.666 for the client surveys.

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

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.” The combination of these two apparently interrelated factors seemed to account for about 35% of the total variation in client responses. Two additional factors which we characterize as “lawyer’s explanation” and “client’s understanding” offer an additional explanation of response variation of 9% and 8% respectively.

### Diploma Clients: Lawyer’s Explanation

<table>
<thead>
<tr>
<th>Question</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 (explained what would do next for me)</td>
<td>0.69</td>
</tr>
</tbody>
</table>

### Diploma Clients: Client’s Understanding

<table>
<thead>
<tr>
<th>Question</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 (said everything I wanted to say)</td>
<td>0.64</td>
</tr>
<tr>
<td>12 (I know what I need to do next)</td>
<td>0.6</td>
</tr>
</tbody>
</table>

For the lawyer role, 41% of the variation seemed to be related to the same “rapport + information exchange” factor, 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 clients and gave more weight to the “listening” question (5). Responses to Question 5 may have reflected both rapport and quality of information exchange.

### Diploma Lawyers: Rapport + Information Exchange

<table>
<thead>
<tr>
<th>Question</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (felt comfortable)</td>
<td>0.76</td>
</tr>
<tr>
<td>5 (felt like I listened well)</td>
<td>0.67</td>
</tr>
<tr>
<td>7 (felt like I was interested in client as a person)</td>
<td>0.62</td>
</tr>
<tr>
<td>8 (did not think I asked confusing questions)</td>
<td>0.64</td>
</tr>
<tr>
<td>9 (trusted me)</td>
<td>0.75</td>
</tr>
<tr>
<td>10 (thought I understood why needed legal help)</td>
<td>0.74</td>
</tr>
<tr>
<td>13 (would want me again)</td>
<td>0.61</td>
</tr>
</tbody>
</table>

---

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

29 The factor analysis score for Question 5 was 0.654 for the lawyer surveys as compared to 0.563 for the client surveys.
An additional 12% of the variation in the lawyers’ responses could be accounted for what could be called a “mutual understanding” factor as judged by Questions 2 and 4.

<table>
<thead>
<tr>
<th>Diploma Lawyers: Mutual Understanding</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2 (did client understand what I said)</td>
<td>0.51</td>
</tr>
<tr>
<td>4 (did I understand what was most important to client)</td>
<td>0.56</td>
</tr>
</tbody>
</table>

The factor analysis for the assessor role showed more variation, about 65% for three factors. The primary factor also focused on “rapport + information,” explaining 44% of the variation, with a 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):

<table>
<thead>
<tr>
<th>Diploma Assessors: Rapport + Information Exchange</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (made client feel comfortable)</td>
<td>0.78</td>
</tr>
<tr>
<td>3 (treated client with respect)</td>
<td>0.75</td>
</tr>
<tr>
<td>5 (listened to client)</td>
<td>0.76</td>
</tr>
<tr>
<td>7 (was interested in client as a person)</td>
<td>0.69</td>
</tr>
<tr>
<td>8 (did not ask confusing questions)</td>
<td>0.6</td>
</tr>
<tr>
<td>9 (was someone client could trust)</td>
<td>0.77</td>
</tr>
<tr>
<td>10 (understood why client needed legal help)</td>
<td>0.78</td>
</tr>
<tr>
<td>11 (client able to say everything)</td>
<td>0.71</td>
</tr>
<tr>
<td>13 (would want the same person again)</td>
<td>0.75</td>
</tr>
</tbody>
</table>

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 to do next,” explaining about 11% of the response variance:

<table>
<thead>
<tr>
<th>Diploma Assessors: What To Do Next</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6 (explained what lawyer would do next)</td>
<td>0.6</td>
</tr>
<tr>
<td>12 (client aware of what client needed to do next)</td>
<td>0.7</td>
</tr>
</tbody>
</table>

The factor analysis for the assessor also identified a “client understanding” factor, judged by Question 2, explaining 10% of the variance.
Diploma Assessors: Client Understanding

<table>
<thead>
<tr>
<th>Factor</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 (said things client did not understand)</td>
<td>0.8</td>
</tr>
</tbody>
</table>

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.

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. We had data for the client role and for the lawyer role from 61 interviews. 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 by either a "*" or "**" following the correlation score.

Lawyer Correlation Scores with Real Clients

<table>
<thead>
<tr>
<th>Factor</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (made client feel comfortable)</td>
<td>.404**</td>
</tr>
<tr>
<td>2 (said things client did not understand)</td>
<td>0.233</td>
</tr>
<tr>
<td>3 (treated client with respect)</td>
<td>.486**</td>
</tr>
<tr>
<td>4 (did not understand what was most important)</td>
<td>0.237</td>
</tr>
<tr>
<td>5 (listened to client)</td>
<td>.418**</td>
</tr>
<tr>
<td>6 (explain what lawyer would do next)</td>
<td>.466**</td>
</tr>
<tr>
<td>7 (was interested in client as a person)</td>
<td>.288*</td>
</tr>
<tr>
<td>8 (asked confusing questions)</td>
<td>.315*</td>
</tr>
<tr>
<td>9 (was someone client could trust)</td>
<td>.554**</td>
</tr>
<tr>
<td>10 (understood why client needed legal help)</td>
<td>.428**</td>
</tr>
</tbody>
</table>

---

30 See text accompanying note 17, supra. The data set also included surveys completed one semester by clients of the GSU tax clinic.

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

32 "*" = p<.05, "**" = p<.01
33 46 out 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.

34 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.
The second construct combines “explanation and understanding” and accounts for about 15% of the variance.

<table>
<thead>
<tr>
<th>Real Clinic Clients: Understanding + Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 (understand what was most important to me)</td>
</tr>
<tr>
<td>6 (explain what lawyer would do next)</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Real Student Lawyers: Rapport + Information Exchange</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (made me feel comfortable)</td>
</tr>
<tr>
<td>3 (treated me with respect)</td>
</tr>
<tr>
<td>5 (listened to me)</td>
</tr>
<tr>
<td>9 (was someone I could trust)</td>
</tr>
<tr>
<td>10 (understood why I needed legal help)</td>
</tr>
<tr>
<td>13 (would want the same person again)</td>
</tr>
</tbody>
</table>

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 can make a number of interesting 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). This is re-assuring for us in terms of verifying our confidence in the survey instrument. Given that in all three roles, the factor analysis reveals one dominating construct, this is not surprising.

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35 Real lawyers’ responses to Questions 7 (interested as a person) and 12 (client knows what to do next) also produced fairly high factor analysis scores under this construct: 0.78 and 0.72 respectively. The real clients also produced similar scores for these questions: 0.79 and 0.77.
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.

We are still analyzing the wealth of data we have obtained from this survey but it should be noted that this study is NOT a typical case where inter-rater disagreement undermines the reliability of the data. We rather expected there to be differences between the client, lawyer and assessor. Perhaps what we did not expect was such consistent and widespread difference and much of our effort at this point in time is focused on trying to make sense of these results. At this point we are NOT proceeding on the assumption used in validation of standardized patient assessments in the medical field that the “golden standard” against which SC assessments should be validated is the assessment that a qualified solicitor or academic lawyer would give on the same item. After all, if a real client answers the question “The lawyer asked confusing questions” with a positive number, the client is absolutely right even if another lawyer watching the interview (live or on video) did not notice any question the lawyer thought would confuse the client. No one knows better than a real client whether the client felt comfortable (question 1), felt treated with respect (3), perceived the lawyer as interested in her as a person (7), trusted the lawyer (9), said everything she wanted to say (11), knows what to do next (12), or would want the same lawyer again (13). However, we are less confident that a role-playing client will provide comparably valid responses, particularly over time as the SC loses the “freshness” of a lay person’s perspective. We also, of course, want the SC’s responses to the form to reflect more than simulated client satisfaction, especially if used for a high-stakes summative assessment.36

36 We are aware that many leading researchers on the topic of professional legal competence are skeptical of relying on client satisfaction as a significant measure of competence. See, e.g., Sherr, Moorhead & Paterson, Lawyers, The Quality Agenda (1994); Moorhead et al, Quality and Cost (2001); Alan Paterson, Peer Review and Quality Assurance (Paper to be presented at 6th International Clinic Conference 2005).
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 Standardised Client group.

Small pilot 2: use of SCs on the Professional Competence Course (PCC)
The second phase of the project concentrated on the recruitment and training of
the Standardised 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 apprenticeship. 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 exercises in the same week,
thus allowing us to compare student performances with different SCs; and because
the interviewing exercise is not a marked assessment. We also thought that
trainees who were about a year into their apprenticeship would be able to
provide useful feedback on the exercise, 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 the first week of the Diploma through into the
formative years of practice.

To recruit SCs we approached a group of people who were already known to us:
the monitors for our previous interviewing skills assessments, 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) and train as Standardised
Clients.

For the initial phase of training we drew upon the skills of Dr. Jean Ker and her
colleagues at the Dundee Clinical Skills Unit who have considerable standing and
experience in training standardised 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 colleague came to Glasgow to facilitate the initial
training workshop. At this stage we concentrated solely on training the
Standardised Clients to role play effectively to a script. 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.

37 This particular PCC course is co-sponsored by GGSL and the venerable bar organization formally
known as the Society of Writers to Her Majesty’s Signet (WS Society). The WS Society is planning to
launch in 2006 a rigorous mid-career speciality certification program for Scottish solicitors that would
test not only substantive legal knowledge and advocacy skills but also proficiency in interacting with
clients and handling ethical issues. The experience gained by the WS Society through its participation
in the PCC pilot has encouraged it to consider using SCs as part of its speciality certification assessment
procedures.
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 introduce the modified ELCC form 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 Standardised Client process. Secondly, we wanted to test the validity and reliability of the form prior to standard setting or training the Standardised 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 Standardised 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 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 Standardised Client marked the trainee solicitor using the modified ELCC form on completion. The forms were sent, along with the videotapes, 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 Standardised Clients would improve the learning experience for the participants. Feedback from the trainees on the Private Client stream of the course where Standardised Clients 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 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 standardised 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). 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 (although both SCs were under time pressure to leave and the debriefing was too hasty). 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. When he invited discussion of 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.

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

39 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.

40 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 the 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.
Taking into account the overall results and statistical analysis of the January 2005 pilot, the varying tutor assessments in the training for that pilot, our own team’s variance in applying the modified ELCC forms to selected videos from that pilot, the statistical analysis of the real client data; the quantitative and qualitative data obtained from the PCC pilot in September 2005, and consultations with our partners at the College of Law of England and Wales, we have determined to make major modifications to the form that will be used by the SCs for the January 2006 pilot. Our current draft (incorporating the guide discussed below) appears in Appendix 4 but we look forward to feedback during the upcoming Lake Arrowhead conference; indeed, we plan to finalize the form that weekend while our team has the rare opportunity for extended face-to-face meetings.41

The current draft SC questionnaire moves away from the attitude survey/client satisfaction origins of the original ELCC form and towards an assessment format – despite our misgivings about appearing to put laypersons in the position of judging the professional competence of lawyers in training. We hope to strike an appropriate balance in the following ways:

1) The new form follows the chronological order of the first part of a model interview, following in particular the standard text on interviewing used by the College of Law of England and Wales.42

2) The form interprets the “dos and don’ts” of good interviewing found in this text into terms that we hope are both comprehensible to our lay SCs and also build from what appears from our research to be their natural tendency to recognize and value rapport and effective information exchange.

3) The form is reduced from 13 to 7 items, with only former Question 13 (would want the same person again) being retained purely for formative assessment and research purposes.

4) The other 6 items are now framed as a familiar “grading scale” from poor to outstanding expressed entirely in positive numbers (where 1 is lowest score and 9 is the best) instead of a Likert scale asking for agreement or disagreement with a statement.

5) A detailed guide to the form has been created that will not only be used to train the SCs but will also be given to students in advance of the exercise. In this guide, each item is preceded by a plain language summary of how the lawyer should handle that portion of the interview. Then under the numerical scale “anchoring

---

41 The Lake Arrowhead conference will give Gregory Jones his first opportunity to interact with the Scottish team members other than by email and will only be Clark Cunningham’s second in-person meeting with Jean Ker.

42 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 (Sweet & Maxwell 2nd ed. 1999) and Hugh Brayne & Richard Grimes, The Legal Skills Book: A Student’s Guide to Professional Skills 91-179 (Butterworths 2nd ed. 1998). See also Fiona Westwood, Accelerated Best Practice: Implementing Success in Professional Firms 25-31 (Palgrave Macmillan 2004) (building valuable client relationships).
“statements” are provided to give examples of lawyer behavior that would correspond, for example, to a "1-2" "5" or "8-9" score.

**Main SC trial: GGSL Interviewing Assessment, January 2006**

The final stage of the project involves further training of the standardised clients in the use of the assessment form as well as a standard setting process with all of the Standardised Clients and GGSL tutors involved. We are aware that further practice in role-playing is also essential in order to build their experience and confidence, and so we have invited our pool of standardised clients to play the part of the clients in the regional heats of International Client Counselling Competition this autumn. The SC project will culminate in January 2006 when the full cohort of GGSL students will be assessed in interviewing skills. In summary:

- All 270 students on DLP course to complete interviews with Standardised Clients.
- All interviews to be videotaped.
- Assessment criteria split into two parts:
  - Communicational elements (new version of the assessment form)
  - Professional knowledge elements
- Students to be assessed by tutors (communicational and professional knowledge elements) and Standardised Clients (communicational element only)
- Summative encounter: Standardised Client meets with lawyer; Standardised Client fills out questionnaire. Lawyer fills out the mirror. Lawyer fills out note to file. Examiners mark note to file form and video.
- Analyse correlation of two assessment processes, ie by tutor, and by Standardised Clients, for correlations.
- Build in statistical and sociolinguistic analyses of the data.
- Process to be transparent to students and tutors.
APPENDIX 1: GGSL Interviewing Skills Assessment Schedule

Name of assessor: ____________________________
Name of student interviewer: ____________________
Registration number: _______________________

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

Total mark out of 200: __________

Please tick relevant box:

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>MARK SPAN</th>
<th>ASSESSMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Merit</td>
<td>151-200</td>
<td></td>
</tr>
<tr>
<td>Competent</td>
<td>101-150</td>
<td></td>
</tr>
<tr>
<td>Not yet competent</td>
<td>0-100</td>
<td></td>
</tr>
</tbody>
</table>
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. |
| strongly disagree | disagree | not sure | agree | strongly agree |
| -4 | -3 | -2 | -1 | 0 | +1 | +2 | +3 | +4 |

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

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

The client…

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

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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.

| 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. |
|---|---|---|---|---|---|---|---|---|---|
| -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

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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.

<table>
<thead>
<tr>
<th></th>
<th>-4</th>
<th>-3</th>
<th>-2</th>
<th>-1</th>
<th>0</th>
<th>+1</th>
<th>+2</th>
<th>+3</th>
<th>+4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>strongly disagree</td>
<td>disagree</td>
<td>not sure</td>
<td>agree</td>
<td>strongly agree</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The lawyer…

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

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.  
12. The client was aware of what he or she needed to do next.  
13. The client would be likely to come back to this person for legal help in the future.

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Appendix 4: Client Interviewing
Evaluation Form
[October 05 Draft]

Scenario Reference: __________________________

Name of Student Lawyer: __________________________

Student Lawyer Registration No: __________________________

Standardised Client Name: __________________________

For each item, circle the number corresponding to the scale below and specific guide for that item.

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
<td>Poor</td>
<td>Fair</td>
<td>Good</td>
<td>Outstanding</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Guides to each item are intended to give examples of lawyer behaviour that would be poor, fair, outstanding, etc. but you need not observe every listed example of such behaviour to circle the corresponding number.

1. Good beginning (key aspects to look for: recognition, respect, rapport, encouragement)

This item is designed to assess the degree to which the lawyer can make you feel at ease in the first few minutes of the interview. The lawyer should greet you warmly and explain his or her role in the firm. It is also designed to assess the degree to which the lawyer previews the structure and purpose of the interview with you. This is basically an explanation by the lawyer of the purpose and possible stages of the interview, in order to give you a preview of what will happen during the interview.

<table>
<thead>
<tr>
<th>1-2</th>
<th>3-4</th>
<th>5</th>
<th>6-7</th>
<th>8-9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not greeted and the lawyer did not introduce himself/herself</td>
<td>Introductions were perfunctory; you were offered time of day, then straight to matter.</td>
<td>You were greeted appropriately and there was some recognition of your situation.</td>
<td>You were greeted very well and ‡ engaged in some small talk; then led into the matter quite fluently.</td>
<td>Fluent and confident greeting; engaged you in small talk; made you feel at home from the start.</td>
</tr>
<tr>
<td>Addressed you inappropriately or not at all.</td>
<td>Poor or rambling explanation of interview structure.</td>
<td>One-sentence preview of the interview: brief but at least effective.</td>
<td>Structure of interview explained in detail.</td>
<td>Excellent survey of direction of interview and reasons for stages in the interview</td>
</tr>
<tr>
<td>No attempt to preview interview</td>
<td>You felt slightly uncomfortable</td>
<td>You felt neither comfortable nor uncomfortable</td>
<td>You felt comfortable</td>
<td>You felt very comfortable</td>
</tr>
</tbody>
</table>
2. Good listening (key aspects to look for: using silence, reassuring, indicating understanding, giving encouragement to speak, body language and eye contact)

After preliminary introductions, the lawyer should let you tell your story, learning what is most important from your perspective about what has happened, about your feelings, about your concerns, and about what you want to happen. The lawyer should rarely interrupt and should remain silent when you need time to think and plan your next statement. It will be necessary for the lawyer to ask you some encouraging questions during this stage to keep you talking, but these questions should be open-ended and follow up on your own train of thought. The lawyer should recognize and reflect your feelings if you express them. The lawyer should pay close attention to you while you speak and take notes as necessary to record key names, dates and other details.

<table>
<thead>
<tr>
<th>1-2</th>
<th>3-4</th>
<th>5</th>
<th>6-7</th>
<th>8-9</th>
</tr>
</thead>
<tbody>
<tr>
<td>You didn’t feel comfortable while attempting to tell your story.</td>
<td>You were given some opportunity to talk, but you felt as though the lawyer wasn’t really interested.</td>
<td>You were able to tell your basic story, but the lawyer missed opportunities to reflect your feelings and ask encouraging questions.</td>
<td>You were able to tell your story at your own pace but the lawyer didn’t encourage you to say everything that is important to you.</td>
<td>You were able to tell your story and felt that the lawyer was encouraging and really interested in your point of view.</td>
</tr>
<tr>
<td>You felt like the lawyer wasn’t listening to you at all.</td>
<td>You felt like the lawyer only listened to parts of what you said.</td>
<td>You felt like the lawyer was a good listener.</td>
<td>You felt like the lawyer was an excellent listener and allowed you to say everything you wanted to say.</td>
<td></td>
</tr>
</tbody>
</table>
3. Good questioning (key aspects to look for: offering observations, reflecting back using your own words, checking responses, appropriate questioning)

After it is clear that you have finished telling your story in your own words, the lawyer will ask clarifying questions. There will be relevant information that you have not yet told the lawyer which will only be learned through good questioning. The lawyer should be begin with open-ended questions and use your own words as much as possible: for example, “When you said that things are a bit frosty now between you and your sister, can you tell me what you mean by ‘frosty?’” Questions should follow your train of thought and not jump from topic to topic. The lawyer should move to closed and leading questions only when open questioning is no longer productive. The lawyer should precede questions with an explanation that helps you understand where the lawyer is going. An explanation should especially be given if you might not understand the purpose of the question or be made uncomfortable by the question. The lawyer should not ask more than one question at a time. The lawyer should take notes.

<table>
<thead>
<tr>
<th>1-2</th>
<th>3-4</th>
<th>5</th>
<th>6-7</th>
<th>8-9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
<td>Poor</td>
<td>Fair</td>
<td>Good</td>
<td>Outstanding</td>
</tr>
<tr>
<td><strong>Key facts and issues were missed:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer used mostly closed questions.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>You had no idea why most questions were being asked.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Some questions put you off, confused - or offended you.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took no notes.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Some important facts and issues were missed:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer used questions rather aimlessly. Used closed questions too much.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seemed to miss the point or jump to conclusions.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rarely explained why questions were being asked.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took limited notes.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Most of the relevant facts and issues were identified and the main ones followed up on:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer followed general pattern of open then closed questions.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer sometimes explained reason for asking question</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took appropriate notes.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Most of the relevant facts and issues were followed up on:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer used a variety of questions appropriately to clarify your story.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>You could see why you were being asked particular questions.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reason for asking questions was explained where necessary.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took full notes.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>All important facts and issues were followed up on:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excellent use of a wide variety of questions.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Difficult or uncomfortable questions were preceded by good explanations.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took careful notes while still paying attention.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4. **Good summarizing (key aspects to look for: accurate, non-judgemental).**

After you have told your story and the lawyer has asked clarifying questions, the lawyer should give you a complete summary of the important facts, your concerns, and what you want to be done. The lawyer should then check the completeness of this summary with you and modify it if you have more to say.

<table>
<thead>
<tr>
<th>1-2</th>
<th>3-4</th>
<th>5</th>
<th>6-7</th>
<th>8-9</th>
</tr>
</thead>
<tbody>
<tr>
<td>No summary or confirmation of facts and concerns OR lawyer's summary was insensitive to or dismissive of your concerns.</td>
<td>Attempted summary of your narrative, but left out key facts and concerns. Did not ask for your help in correcting. Did not show real understanding of your point of view. Asked ‘anything more?’ in perfunctory way.</td>
<td>Initial summary missed some key facts or issues, but corrected after further discussion with you.</td>
<td>Good summary, confirmed by you. The only changes required were to minor details.</td>
<td>Very good summary. You were satisfied, no details needed corrected. Your main feelings and concerns were clear from the summary.</td>
</tr>
</tbody>
</table>

5. **Used clear language (key aspects to look for: plain English, clear, unambiguous)**

This item is designed to assess the degree to which the lawyer speaks in a way you can understand. The lawyer should not use legal terms without providing a clear explanation.

<table>
<thead>
<tr>
<th>1-2</th>
<th>3-4</th>
<th>5</th>
<th>6-7</th>
<th>8-9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer used jargon repeatedly, and took no account of your level of understanding. When you asked for explanations, he or she made no attempt to respond, or alter jargon used.</td>
<td>Lawyer used some jargon and had to explain to you what it meant, generally not doing this well. Kept on using jargon.</td>
<td>Lawyer seldom used jargon, and when you asked for explanation gave good explanation. Learned from this and did not use unexplained jargon in remainder of interview.</td>
<td>Lawyer used jargon only where necessary, and provided clear explanation without your having to ask.</td>
<td>Lawyer avoided jargon except where necessary. Explanations were clear, simple, elegant. Could explain even complex legal issues.</td>
</tr>
</tbody>
</table>
6. **Good rapport (key aspects to look for: attentive, polite, comfortable, pleasant, interested, connection).**

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.

<table>
<thead>
<tr>
<th></th>
<th>Not at all</th>
<th>Poor</th>
<th>Fair</th>
<th>Good</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-2</td>
<td>Lawyer was bored, uninterested, rude, unpleasant, cold, or obviously insincere.</td>
<td>Lawyer was mechanical, distracted, nervous, or insincere or used inappropriate remarks,</td>
<td>Lawyer was courteous to you and encouraged you to confide in him or her.</td>
<td>Lawyer was generally attentive to and interested in you. You felt confident to confide in him/her.</td>
<td>Lawyer showed a genuine and sincere interest in you. There was a sense of connection between you and the lawyer.</td>
</tr>
</tbody>
</table>

7. **If I came back with a different need for legal help, I would want the same person to help me.**

<table>
<thead>
<tr>
<th></th>
<th>Not at all</th>
<th>Probably not</th>
<th>Maybe</th>
<th>Probably</th>
<th>Definitely!</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>