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**Listen Up: Conversation Analysis Shows How Law Students Fail -- and Succeed -- in a
Brief Advice Clinic
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People with important legal matters are often unable to afford representation. As a result, most parties with family law cases handle these cases themselves. Often, they rely upon brief advice clinics to help them do so. Law schools are required to provide pro bono opportunities for all law students. These pro bono opportunities can include volunteering at brief advice clinics together with volunteer attorneys. Is this a match made in heaven or a disaster waiting to happen?

Pro bono law students vary in their professional demeanor and skills interacting with clients in a brief advice clinic. They have a strong desire to help and to display their knowledge, but this sometimes creates problems and results in the clients getting less than adequate services. The attorneys who volunteer also vary in their skills as supervisors. Some provide a flood of information for the student, covering much more than the student can absorb and the particular client will need to know. Others are able to simultaneously instruct the student about the law and process while giving the student scripts to convey information and advice to the clients. Finally, these clients are challenging to interview and counsel. They invariably raise additional questions, but do not always provide the context or reason for their questions. This study closely analyzes the student-client dialogues and the student-attorney dialogues to identify what works and what does not at a student-staffed pro se clinic.

INTRODUCTION

This is a study of a Family Law Pro Bono Clinic that provides brief advice to pro se clients. The clinic is operated by law students involved in a pro bono program and by lawyer volunteers. When the client is seen by a law student, that student seeks the guidance of a lawyer volunteer after interviewing the client. Most frequently the consulting lawyer tells the student what advice to convey to the client, and the student alone counsels the client.

This study involved audio recording sixty-three consultations over a five-month period,¹ twenty consultations by attorneys and forty-three by law students relying upon attorney guidance.² Attorney consultations were the subject of a prior article, which will be referenced here as it is

¹ An earlier article reported the clients' and advisors' responses to a survey about the Clinic. See Linda F. Smith & Barry Stratford, *DIY in Family Law: A Case Study of a Brief Advice Clinic for Pro Se Litigants*, 14 J. L. & FAM. STUD. 167 (2012).

² Of these forty-three student-lead consultations, nine involved the student and attorney jointly providing the advice after the student had conducted the "interview" segment.

relevant.³ This article focuses on the consultations in which students alone interviewed and counseled the clients and in which the student-attorney consultation was also recorded. The author selected four student-client recordings that were representative of the range of recordings, including consultations that had strengths and consultations that were problematic. These consultations were transcribed. This article relies upon conversation analysis to understand and evaluate these consultations.

I. APPLIED CONVERSATION ANALYSIS

Conversation analysis (CA) is “the close examination of language in interaction” relying on recordings and transcriptions of those recordings.⁴ It is the “dominant approach to the study of human social interaction across the disciplines of Sociology, Linguistics and Communication.”⁵ Conversation analysis has been used to analyze doctor-patient communication for many purposes⁶ so that today there is “an evidence-based approach to communication skills in medicine.”⁷ Institutional applied conversation analysis studies “routine institutional talk -- the way that the business of the doctor’s clinic, the classroom, the interview, and so on is carried out.”⁸ CA holds the promise of describing “how the institution manages to carry off its work” and, if “applied to an interactional problem . . . it has the strong implication that a solution will be identified via the analysis of the sequential organisation of talk.”^{9 10}

³ Linda F. Smith, *Drinking From A Firehose: Conversation Analysis of Consultations in a Brief Advice Clinic*, 43 OHIO N. U. L. REV. 63 (2017).

⁴ Charles Antaki, *Six Kinds of Applied Conversation Analysis*, in APPLIED CONVERSATION ANALYSIS: INTERVENTION AND CHANGE IN INSTITUTIONAL TALK, 1-2 (Charles Antaki ed., 2011).

⁵ Tara Stivers & Jack Sidnell, *Introduction*, THE HANDBOOK OF CONVERSATION ANALYSIS 1 (Jack Sidnell & Tanya Stivers eds., 2013).

⁶ See, e.g. J. Heritage & J.D. Robinson, *The Structure of Patients’ Presenting Concerns: Physicians’ Opening Questions*, 19(2) HEALTH COMMUN. 89-102 (2006); V.T. Gill, A. Pomerantz & P. Denvir, *Pre-emptive Resistance: Patients’ Participation in Diagnostic Sense-Making Activities*, 32(1) SOCIOL. HEALTH. ILLN. 1-20 (2010); A. Perakyla, *Agency and Authority: Extended Responses to Diagnostic Statements in Primary Care Encounters*, 35(2) RES. LANG. SOC. INTERACT. 219-47 (2002).

⁷ JONATHAN SLIVERMAN, SUZANNE KURTZ & JULIET DRAPER, *SKILLS FOR COMMUNICATING WITH PATIENTS*, 1 (3rd ed., 2013).

⁸ Antaki, *supra* note 4, at 6.

⁹ *Id.* at 8.

¹⁰ This article utilizes a modified version of Gail Jefferson’s transcription methods, representing the talk as it is produced (though with proper spelling and some punctuation), identifying overlapping talk with double slashes, passive listening back-channel cues with brackets [], pauses with periods (one per second), emphasis with **bold** print, and action with <laughter>. See Alexa Hepburn & Galina B. Bolden, *the Conversation Analytic Approach to Transcription in Sidnell & Stivers, supra* note 5 at 57-67 and Harvey Sacks et al., *A Simplest Systematics of the Organization of Turn-Taking for Conversation*, 50 LANGUAGE 696 (1974).

While this article focuses upon the talk itself, the Appendix analyzes various characteristics of the conversations, comparing the time for each consultation, the control of the floor as between the student and client, the length of utterances by both clients and students, and the amount of overlapping talk. This data provides a context with which to compare the weaker and stronger consultations. For example, the better consultation is longer, has fairly equally shared floor time during the interview portion, has student dominance of floor time during the counseling segment, and features the longest utterances by both client and student.

II. OPENINGS, INTRODUCTIONS AND PROFESSIONALISM

The recordings from the outset vary in the professionalism displayed in the ways the students introduce themselves to the clients and explain the operation of the clinic.

A. The Best Introduction

Here is the best from the four transcribed recordings:

Time	Sec.	Speaker	Utterance
01:47 1:53	5	Law Student 1	My name is Steven, I'm a law student—I'm a third-year law student up at the University of Utah. This is Heather. Have you told them about yourself?
1:53 1:56	3	Law Student 2	I'm a 1L, a one-year law student also, same school.
1:56 2:12	17	Law Student 1	Um, so what I'll do is I'll talk with you and figure out what your legal issues are. [okay] And then um I'll go and I'll consult with an attorney. The attorney will either tell me what you need to hear or they'll come and talk with you themselves, depending on what's um going on, okay? So are you Jill?
2:13	1	Client	I am.
2:14 2:16	2	Student 1	And you're the client you're the person we're here for. And you are-
2:16 2:19	3	Sister	I'm her sister, I'm just kind of //support for her//
2:19 2:58	40	Law Student 1	//Support,// fantastic. Um, so this back form is, just so you know what you signed, it's your copy, [okay] you can write on it or throw it away or do whatever you want. Um, I'm going to read through this real quick [32 – 54 seconds]. Yeah, we're fine. A lot of people here tonight.

The student introduction is polite and fairly thorough in explaining the process in clear language. The student also identifies the client and asks for an introduction to the third party.

However, he does not address confidentiality or explain that the presence of a third party may eliminate any attorney-client privilege, a nuance which only the most careful attorneys at the Clinic do.¹¹ Nor does the student explain that he is not permitted to advise the client without the oversight of an attorney.

The student expresses empathy for the client by stating she is the “person we are here for” and by indicating that “support” is “fantastic.”

However, the student does not characterize the client as the person he will *listen* to; rather the student assumes control over the encounter indicating “I’ll talk with you” and that he will “figure out what your legal issues are.”

B. The Weakest Introduction

A weaker introduction is as follows:

Time	Sec	Speaker	Utterance
0:00 - 0:05	5	Law Student	Um Thank you so much. Okay. Welcome to the Family Law Clinic.
0:05 - 0:06	1	Client	Thanks.
0:06 - 0:33	27	Law Student	We are, I’m a law student, I’m a second-year. So I’m going to do the intake part of this—Ask you some questions [okay] See if we can figure out what’s going on. Then I’ll go scrounge up an attorney. Who’ll float in here [okay] hopefully more of them soon. [okay] And we’ll get them involved in the actual legal advice. [oh okay] So I’m just the Questions Person. [okay] So I can start by the little paperwork we gave you? [This] I just want to peek at that. [okay] And I want to give you your copy of this.

While this law student also accurately explains the process, she does not share names (perhaps because the students wear name tags and the client’s name is on the paperwork). This client, also, has a companion, but the student does not address him or discover his role; she does not address confidentiality or privilege. She, too, fails to include the information that as a student she is not permitted to give her own advice to the client.

Of concern is her choice of expressions -- “scrounge up an attorney who’ll float in here,” referring to the “little paperwork,” calling herself “just the question person” and asking to “just

¹¹ See Smith, *Firehose supra* note 3 at 72-73 in which most clients had a companion, but only one of the four attorney interviewers explained privilege and told the client she might need to ask the support person to leave if she were to ask about certain issues.

. . . peek” at the Intake form. This is highly informal and minimizing language.¹² It does not display the highest professionalism and likely will not engender confidence.

Despite the minimizing language, this student also asserts responsibility for and control of the interview. This student will “Ask you some questions . . . See if we can figure out what’s going on.” She is also responsible for “scrounging” up attorneys who, she suggests, are currently in short supply.

C. Conclusions About Openings

What can be gleaned from these recordings of introductions at this brief advice clinic? The student introductions were devoid of “chit chat” and, like the attorney introductions at the Clinic,¹³ very brief and to the point. They focused on the process that would be followed in understandable language, but did not touch on confidentiality or privilege. It would seem that such brevity was designed to meet the Clinic’s needs to process a press of clients and the clients’ needs for efficiency.

The better student presented a more professional demeanor without employing legal jargon.

Both students approached the consultation with the client as if they, the students, were in control of the encounter -- they would “talk . . . figure out” and “ask questions” rather than “listen.” This subtle preference for student control presages some of the problems we encounter later in some of the consultations.

Here, it is worth asking not just how these students served their clients, but also how this pro bono program served the students educationally. Do these pro bono students understand confidentiality, privilege and the unauthorized practice of law? Might these students develop habits and scripts for client meetings that will be too succinct for their work with future clients in full-service settings?

III. INTAKE FORMS

The Clinic asks that clients complete Intake Forms that ask them “what happened” and “how can we help?” The Intake Forms are the clients’ first opportunity to present themselves and their concerns and goals to the Clinic volunteers. Some clients choose to provide minimal information, perhaps because they can save face by telling their stories orally and sharing upsetting or embarrassing information in the course of a conversation.¹⁴ However, other clients

¹² “Minimizing language” are words or phrases that imply uncertainty or self-effacement. See WENDY CAPLAND, *YOUR NEXT BOLD MOVE FOR WOMEN: 9 PROVEN STEPS TO EVERYTHING YOU EVER WANTED* (2013); JERRY WEISSMAN, *PRESENTING TO WIN: THE ART OF TELLING YOUR STORY* (2008).

¹³ Smith *Firehose supra* note 3 at 69-72.

¹⁴ Self-disclosure may threaten a person’s “face” but “by working a disclosure into a conversation in a smooth and natural way, the face-threatening implications of disclosing

include important, even upsetting, information on the Intake Form. This, too, may make sense as the clients can control their written words and thus frame the consultation. Studies have found that clients often include the most important information during initial exchanges in a conversation¹⁵ and this may carry over to intake forms as well.

Unfortunately, the literature about client interviewing does not address how intake forms should affect the oral interview.¹⁶ This study presents an opportunity to explore that issue.

In studying the four consultations, it is useful to have the relevant excerpts from the Intake Forms:

A. Spouse Won't Return Children

- Household: *1 Adult, 6 children*
- Who is the opposing party:
Jason
- What happened? Briefly describe what has happened that brings you to the Clinic:
Jason has taken the children & won't give them back. I need info on what to do next in the divorce.
- How can we help? Briefly describe what questions you have and/or the help you think you want. [no response]

B. Domestic Violence and Visitation Problems

- Who is the opposing party?
My ex-husband
- What Happened? Briefly describe what has happened that brings you to the Clinic:
Visitation has been sporadic [sic] following arrests of my Ex for domestic violence and violation of protective order. Ex began asking again recently. My children are scared to visit with their father but he forces them to go. Recently, when they refused to exit my car at a scheduled visit, he called the police involving them.

should be lessened. . . . In general a person who discloses later in a conversation is evaluated more favorable than one who makes the same disclosure early in a conversation.” Thomas Holtgraves, *The Language of Self-Disclosure*, in HANDBOOK OF LANGUAGE & SOC. PSYCHOL. (Howard Giles & w. Peter Robinson, eds.) 198 (1990). See Erving Goffman, *On Face-Work: An Analysis of Ritual Elements in Social Interaction*, 18 PSYCHIATRY: JOURNAL FOR THE STUDY OF INTERPERSONAL PROCESSES 214 (1955) reprinted in INTERACTION RITUAL, 5 (1967); THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959); FRAME ANALYSIS (1974); FORMS OF TALK (1981) regarding face-saving and face-threatening behaviors.

¹⁵ See Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLIN. L. REV. 321, 325-26 (1998); Linda F. Smith, *Always Judged -- Case Study of An Interview Using Conversation Analysis*, 16 CLIN. L. REV. 423, 442-43 (2010).

¹⁶ See Smith, Firehose supra note 3 at 74.

- How can we help? Briefly describe what questions you have and/or the help you think you want.

I would like to know what rights my children (9 & 13) have regarding visitation. Can I request a reduction or supervised? What can I do to make them feel safe? How do I begin the process of changing visitation?

C. Divorce, DV and Sale of Home

- Household: *1 Adult,*
- Income: *\$300 month* Assets: *\$0*
- Who is the opposing party *[no response]*
- What Happened? Briefly describe what has happened that brings you to the Clinic:
Domesict [sic] violence -- separation
Divorce, preservation of my home
- How can we help? Briefly describe what questions you have and/or the help you think you want:
Information on my rights through divorce. Need attorney provided for me pro bono. Do I need to file something to stop immediate sale of home by husband by end of next month.

D. Checking Forms for Divorce

- Opposing party? *Husband*
- What happened? *Seeking Divorce*
- How can we help? *Review of form given to me by spouse*

These Intake Forms vary in the degree to which the clients provide a narrative, share facts and reveal goals. Three of the four raise immediate serious concerns the clients want addressed: husband has taken children and “won’t give them back;” children upset and not wanting to visit (client, victim of domestic violence, wants to protect children and alter visitation); and domestic violence and husband is trying to sell marital home (client wants to stop this).¹⁷ All of the students begin their consultation by considering the Intake Forms, a technique we have found to be useful.¹⁸ However, the concerns highlighted on these forms often do not get the attention they deserve as the oral interview progresses. The next section will demonstrate *that* this happens. Thereafter we will explore why the client’s highlighted immediate problems and goals sometimes fall to the wayside.

IV. CHALLENGES IN THE “INTERVIEW” SEGMENT

¹⁷ Two of the four clients interviewed by attorneys similarly shared very personal information on their Intake forms, while the other two listed only goals and avoided setting forth their problems. See Smith, *Firehose*, *supra* note 3 at 87, 145.

¹⁸ Smith, *Firehose*, *supra* note 3 at 145.

Attorney advisors at the Clinic who are given Intake Forms with sufficient detail typically begin with narrow questions or the review of documents rather than by soliciting a client narrative.¹⁹ These students are only somewhat more willing to invite or listen to the client’s narrative. However, challenges arise and mistakes are made. In three cases below the students lose focus on the essential concerns of the clients in favor of trying to understand legal documents, or procedures, or to prematurely advise and redefine the client’s concern.

One student ping-pongs back and forth between client and supervising attorneys because, during the counseling phase(s), the client or her companion asks additional questions. All the “interview” segments are referenced here. The second student learns much new information during the counseling phase, but fails to take that information back to an advisor to get better tailored advice. This additional information is discussed with “Counseling” below. The third student begins to provide referrals, information and then legal advice before checking in with a supervising attorney. The information-gathering utterances are dealt with here and the counseling utterances are considered below.

A. Spouse Won’t Return Children -- But Student Focuses on Procedure

In this interview the student begins by referencing the Intake Form, then asks an open question that invites a narrative. The client and her male companion do provide a succinct narrative:

Time	Sec.	Speaker	Utterance
0:38 - 0:50		Law Student	Yeah. So that’s your copy. And so, just tell me briefly what you’re working on.
0:50 - 1:06	16	Client	Um, I’m going through a divorce [okay] dropped the kids off at his house, Thank-, the day after Thanksgiving and he won’t give them back. . . . He, . uh, he what else?
1:06 - 1:35	29	Male Friend	You dropped the kids off at his house to give him visitation. There hasn’t been any temporary custody or anything [okay] in the divorce. He is ill, it’s a disease. He’s got MS or something and he complains a lot that he can’t take care of the kids or whatever. Like this is six kids. This isn’t like one or two kids, this is six kids. And she took the kids over there one day, dropped them off, kind of for a visitation, and, he just wouldn’t give them back.
1:35 - 1:38	3	Law Student	So they’ve been there since the day after Thanksgiving?
1:38 - 1:56	18	Client	Since the day after Thanksgiving. [okay] And I’m sure it has a lot to do with, um he’s starting to get billed every month from the state for child support. . Um, anyway, so I’m mainly here to figure out what to do. Because this is his Answer to my, to the divorce,

¹⁹ Smith, *Firehose*, *supra* note 3 at 88.

			and I don't know what to do from here
--	--	--	---------------------------------------

Both the Intake form and this initial narrative clearly outline the problem -- the client's estranged husband is keeping the children from her. At this point the student might develop a more thorough time line (when did they separate, what were their practices for shared parenting during the separation, what did she do after he refused to return the children) and might do some follow up questioning related to custody (the children's ages, the primary caretaker, the husband's medical problems).

However, the student homes in on the "Answer" the client references, asking the leading question: "Okay, so you have the Answer?" The client agrees that she has the Answer and volunteers: "That's at, that's when he started- that's when this all started, is when he got the divorce papers //and//" appearing to try to return to the main issue of getting her children returned. The student focuses on when the Answer was filed instead.

After ten turns by student, client and friend about the Answer, the friend raises a slightly different question and goal: "She just needs to know . if she can continue with this divorce without an attorney, or what she's got to do to get an attorney." There follows a minute (and sixteen turns) of discussion about what representation the client's spouse might have, including the possibility that he may have come to the Clinic. It appears that the inquiry about the Answer and the husband's representation has derailed the student's focus on the client's immediate problem that the husband has the children and won't give them back.

At 3:52 the student volunteers that she will "go find an attorney" and the "interview" ends.²⁰ The student begins the conference with an attorney as follows:

0:00 - 0:14	14	Law Student So we're in the middle of a divorce. [okay] Tanya filed the divorce, her spouse, answered. Um She's not sure what to do next.
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Amazingly, inexplicably, when meeting with the attorney (see below) the student doesn't mention that the husband has "taken the children & won't give them back." Why?

The student has transformed the client's concerns about getting her children back from her estranged husband into a civil procedure question about what happens after an Answer is filed. Is this due to a failure to listen? Or preoccupation with legal technicalities?

During what should be the counseling phase the client and her companion provide new information and raise new questions. During the third meeting the client mentions that she has

²⁰ Actually, after the consultation with the attorney, there are four additional interview-counseling conversations with the client and three additional consultations with attorneys. The additional interviewing-counseling conversations are dealt with below under Counseling.

filed for temporary orders and has a hearing date. The student does not interview further about the hearing or review the documents the client has filed. Later during that third meeting the friend asks about whether the husband’s “legal aid” attorney who is handling his “SSI disability” case would prevent the client from getting an attorney from “legal aid.” The student does not interview about this topic, but first guesses and then commits to check with an attorney. During the fourth meeting the friend raises yet another issue -- whether the case will be dismissed in 120 days. Again, the student does not interview about the topic but commits to get directions from an attorney. These “interview” segments during the “counseling” phases were all brief and driven by client questions. It would have been preferable for the student to have probed for additional questions or concerns during the initial “interview.”

B. Domestic Violence and Visitation Problems -- Client Narrative v. Documents

The client has provided a compelling narrative on the Intake Form, so the student turns to an appropriate topic -- what the custody/visitation order is -- rather than soliciting a narrative:

Time	Sec.	Speaker	Utterance
0:00 -5	5	Law Student	All right Betina. So can you tell me what your custody order is now?
0:05 -7	2	Client	It’s currently //inaudible//
0:06 -8	2	Law Student	// Ooo //documentation!
0:07 - 26	19	Client	I have my actual divorce decree but there’s also a protective, there’s two protective orders in place. [Okay] This, um civil protective order does outline some visitation, but then somebody told me that may not be in effect anymore because it’s was in May. But this is where it sits on this protective order, which is Tuesday nights.
0:26 - 35	9	Law Student So this modified what’s in your //divorce decree//
0:34 - 37	3	Client	//I believe// so, but then somebody told me this may not be in effect anymore?
0:37 - 44	7	Law Student	Okay, so in a minute I will ask a lawyer how long a protec-, well actually I’ll read through it and see if the order says.

The client provides a narrative response on the topic requested -- the current court order -- as well as the relevant legal documents. She concludes with a concern that the most recent order may no longer be in effect. Although the student identifies this as an issue she could take to an attorney, she and client then spend two minutes (over sixteen turns) reading through the documents together trying to answer that question.

Once the student points to the provision regarding visitation, the client volunteers her longest narrative (1:06 minutes) about the incident referenced on the Intake Form:

2:45 - 2:50	5	Law Student	Okay so he can't see you for two years, but he, but this says he gets the-
2:50 - 3:56	1:06	Client	The children just on those dates. They're listed on this I'm just so confused by this whole thing I'll have to be honest with you but they're listed on this protective order. Um, their schools are listed, just stay away from their schools, stay away from their house [right], except for this parent time [inaudible]. And the problem we're having is with this parent time he pretty much was ignoring them. He violated his protective order in uh the 27th of November [right]. I went ahead and pressed charges on this one cuz we've been going through this for years. [right] Whe- the day he found out that I had pressed charges, he immediately said, "Look, I want to start seeing my kids again" – They're petrified of him, absolutely scared out of their wits. Um the first time he actually exercised it was this Monday a week ago [right] so, and um, we did the neutral drop off point we did all of that. And my children were so scared, my 10-year-old was literally vomiting on herself, she was so afraid to go with him. He was demanding she get out of the car, my 12-year-old was crying. Um, he finally called 911 and said that we had a domestic dispute, two cops came with flashing sirens [right] got out, I've got a copy of that report. He demanded that they um, that they arrest me, and this is just an information report explaining what had happened.
3:56 - 58	2	Law Student	And what did the cops end up doing?
3:58 - 4:18	20	Client	Nothing. They told him to go away [//inaudible//] They said we're not going to take these children out of this car, here's the protective order. It does not state, yes, it states this is your time, which your wife your ex-wife brought the kids there, which is what this states. [right] And the children won't get out of the car. And my 9 year old, even in the police report, said that she was curled up in a in a ball [//fetal position//] Yeah just scared out of her mind, and they're absolutely petrified of him.

The student's response above asks the client to conclude the story of the encounter with the police, which the client does. But then the student returns to the paper work. At this point the student might have asked the client to continue the narrative -- what has happened with the children and the ex-husband in the eight days since this encounter? Or the student might have begun to pursue topics relevant to the issue of the children and visitation with their dad -- the reasons for their fears, the relationship, prior encounters, etc. The client is presenting an upsetting narrative and asking for help in protecting her children and changing what appears to be a very dysfunctional visitation situation. More inquiry into this topic would have been useful.

However, the student returns to the paperwork in an effort to determine what orders are in place. In nine separate turns over a minute and a half they review the divorce decree and discuss various provisions. The student notices a requirement to mediate prior to seeking modification, and notes “So we’ll have to see if that applies.” The client points out a provision permitting the client to make a final decision in a dispute, but the student opines “It doesn’t seem that it would cover visits.” At that point the client raises a new issue -- the paternal grandparents threatening to seek visitation rights:

5:47 - 6:14	27	Client	No, I don’t think so either. So what he has is this one which, I I’m sorry t’ to throw up another issue, but I jus’ his parents who have not seen my children in six years say they’re going to file for grandparents rights. My ex-husband is the one who has filed this. He put in here that it’s in the best interest of the children that they do not be left alone with his family. [right] Do you think if they ever went for grandparents rights that this would carry some weight? [//um Do I think//] That their own son put that in there?
6:14 - 6:16	2	Law Student	Right, I think it’s definitely something that you should show them.

Here we have the student seizing control to provide some kind of advice, unaided by attorney oversight. But it is not clear exactly what the student’s advice is -- to whom should the client show this language?

They again return to the documents and find the various provisions for parent-time, including that the father’s alternate weekends not include over-night visits and the client has the children for all holidays. (These provisions are very unusual, as Utah statute provides a minimum standard parent time of alternate weekends from Friday evening to Sunday evening, and alternating equal holidays.)²¹ This exploration takes another minute-and-a-half and involves 14 separate turns. The client ends with stating she is “just so confused” to which the student responds “right, okay” and then the client inserts her second narrative about the most recent incident which she has not yet mentioned:

7:45 - 8:07	22	Client	I have two little girls that don’t want to go, and I I made them go yesterday. And while they were there yesterday, he was just very very verbally abusive to them. My 12-year-old had her cell phone he literally in a restaurant wrestled it out of her hand. Pinned her down, said that’s my effin you know, give me your effin cell phone, started cussing at her. Took it away. [right] And then threatened to leave her in a restaurant, I mean, and this is someone who hasn’t seen his kids in two months.
8:07- 8:28	21	Law Student	Okay. So I’m going to go talk to a lawyer and I’m going to um ask him what steps you can take with regards to the kids not wanting to see your, see their dad [yeah] and to his behavior when he does have them,

²¹ Utah Code Ann. § 30-3-35.

			And also what effect the um mediation stipulation in here //will have in the divorce//
8:27- 8:28	1	Client	//Perfect, yeah// I just need to know which direction to head in.
8:28 - 8:29	1	Law Student	I'll be back.
8:29 - 8:30	1	Client	Thank you.

Note, the student should have learned of this most recent incident had she asked the client to complete a timeline after her narrative about the prior Monday's interaction with the police. Here again, the student might have been wise to engage in further interviewing about this incident or about the relationships so that she could share a more comprehensive picture of the client's situation with an advisor. The student and client spend eight-and-a-half minutes in the interviewing segment, and spend most of it reading court papers trying to determine what they say and under two minutes listening to the client's narratives.

C. Divorce, DV and Sale of Home -- Redefining the Issue & Providing Advice

This student does not ask for a narrative, but asks two narrow questions about the client's lack of employment and then turns to immediately provide a referral for the client's divorce:

35	3:07 - 3:42	Law Student 1	Okay. I'm, I'm sorry that I have to ask that. The reason is is that, um, it looks like you qualify for Legal Aid, um—what that is is it's, um, uh well, well where there's domestic violence it may be, all the fees may be waived. Um and they may represent you in your divorce, because you make less than 125% of the poverty line. [okay] And because there's domestic violence. [okay] So um, remind me to give you that information before you leave.
1	3:42 - 3:43	Client	Appreciate that.

Given that the client's Intake Form stated: "Need attorney to be provided to me pro bono," this referral to the Legal Aid Society seems responsive. Nevertheless, one might question whether such referrals might be better deferred to the counseling session after conferring with a supervising attorney.

The student then references the client's concern with domestic violence and asks whether she has a "protective order." This was not a goal listed by the client, but an appropriate topic to explore in light of the Intake form having identified "domestic violence" as part of "what happened." Here again, however, it might have been better to allow a client narrative first rather than redefining the case as being about domestic violence and the need for a protective order. Over four minutes the law student, client and the client's sister explore the idea of a protective order. (See discussion below in Counseling).

The student, apparently referencing the Intake Form, then turns to ask about the divorce, beginning with whether papers have been filed and whether the husband has a lawyer, then turning to ask about assets and the home:

12	8:21 - 34	Law Student 1	Ok. And you would you would probably know. Um, And preservation of your home is a concern. What kind of assets do you guys have together? There's your home obviously. Cars?
3	8:34 - 37	Client	Yeah that, that's no big deal, I have my car.
7	8:37 - 8:44	Law Student 1	You both have your own cars? Retirement accounts? Bank accounts?
3	8:44 - 47	Client	I've already signed for him to have his and I have mine which is very limited.
3	8:47 - 50	Law Student 1	Is he going to agree to you having the home?
21	8:50 - 9:11	Client	Um no, he, I got word from my daughter that he sold it. He had somebody walk through it. I had my name taken off of the mortgage 8 years after we bought the home [mhm?] because my credit was bad and he wanted to refinance. I just felt that it was better if my name was off. //And he said he'd put it back on bu//

Given the student's question about the husband agreeing to the client "having the home," it appears he has forgotten the client's precise question on the Intake Form: "Do I need to file something to stop immediate sale of home by husband by end of next month?" Accordingly, the client inserts a short narrative about this problem. The student finally focuses on this primary goal and the client continues to volunteer short narratives about the threatened sale of the home.

2	9:11 - 12	Law Student 1	//So// what are you trying to preserve in the home?
16	9:12 9:28	Client	I wanted to see if what if he just out—it may just be hearsay— [mhm] he's really—says a lot but does very little. But um, when my daughter called me she said "Dad sold the house today." [okay] And he owed like \$70,000 left on the house. // And//
1	9:28 - 29	Law Student 1	//So// there was some equity?
8	9:29 - 9:37	Client	He he needs to put about \$40,000 of repairs into the house but it last appraised for \$175,000 so //[inaudible]//
5	9:37 - 9:42	Law Student 1	//Ok there's some equity// So you're interested in the equity that is or was in the house?
1	9:42 -	Client	Yeah!

	43		
1	9:43 - 44	Law Student 1	Okay and that, that makes sense.
6	9:44 - 50	Client	I would have liked the opportunity to stay keep the house [MmHm] if he don't want the darn thing. [<ha>] you know?

The sister interjects a question about the husband's right to sell the home and the student advises that it would depend upon whether the wife's name was on the deed. The rest (eight minutes) of the "interview" primarily involves the three exploring how to discover if the client's name is on the deed, and the student setting out a plan of action including going to Legal Aid for the protective order and the divorce.

This quest to find out about the deed led the conversation away from the client's interest in living in the home. The student doesn't question the client as to how she would be able to pay the mortgage or to determine whether she might be entitled to sufficient alimony to keep the home.

The student advises the client about seeking assistance from Legal Aid or using the court's website to file pro se, then asks "What questions do you have?" The client raises a new, related concern about the threatened sale of the house:

22	15:50 – 16:12	Client	It's just that my daughter called me two days ago, probably three days ago and said that he had somebody walk through and sold the house to him. And that I had 30 days to get anything I wanted out of the house, out. So there's no, I don't know if I can get all of my furniture and stuff. I mean //we've been in that house for years.//
20	16:10 16:30	Law Student1	//Well Depending on //what's happened, you know if he's actually sold the house, if they signed papers, the executory contracts and they haven't closed, maybe the courts can do something. If they have closed, I doubt the courts can do much. If they just said "yeah I'll take it" but they haven't signed anything, then the courts can do a whole lot. It all depends on what the actual status is um
25 *	16:30 16:55	Sister	That's why I brought her here. I says if that's happening you've got to get you in here and get paper rolling. Cause he, other than beating her to death half the time, he's just a big bag of wind [mhm], he talks and says a bunch of stuff. But this is serious enough [Yeah] that I finally got her out of the home. So it's like, you know what, we've got to move on. It's time to take your life in your hands and move and we're gonna protect the little bit you've got, which is //almost nothing//.
25	16:54	Law	//A protective// order, a protective order is really going to be

	17:19	Student1	helpful [Sister: mhm], um because it can give you peace of mind that the police are behind you if he comes around and you don't want him to. Okay? Um, uh so you may want to um go to the county, the county recorder's and find out what the title, what the status of the title is, whether you're on the title or not. [Client: mhm] Um //cuz there's a//
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Rather than grappling with the client's concern about losing her home and all her belongings, the student turns to counsel the client. Even after the sister interjects that "if that's happening" (appearing to allude to the sale of the home) "you've got to get you in here and get paper rolling" and "protect the little bit you've got," the student ignores the focus on the home and interrupts to assert that "a protective order will be helpful."

Moments later the student asks if there are "any other questions" and the sister again focuses on the house, leading the client to lament having "lost everything":

9	18:05 - 16	Sister	//We were// mostly concerned about, you know, having attorneys help her [Okay] you know, to proceed and get everything going faster, and what were his rights to be able to sell the house, you know.
4	18:16 - 18:20	Client	30 days—30 years of accumulation that I just lost everything, everything.

This lament from the client brings forth reassurance from the law student ("Well, you haven't lost it, you have a right to it and that's what the divorce will help you to, to do is to access that right"), but no concrete advice about filing a motion for temporary orders to address possession of the house and of the furniture.

After 17:46 of the "interview" segment -- mostly taken up by the student giving advice -- the 3L law student goes to get advice from an attorney.

This interview would have been improved had the student asked for a narrative at the outset and respected the client's focus upon retaining her home rather than the student's idea that a protective order should be sought.

D. Summary of Problems in Interview Segments

What is striking about these "interview" segments is how little interviewing goes on. The clients are rarely asked for a narrative or asked an open question. Most of the students' questions are leading questions seeking to confirm or pin down what the student thinks has been expressed. Nevertheless, each client works to insert her narratives and concerns when there is opportunity to do so.

A related characteristic is that the students are very focused on exploring various process issues and legal circumstances rather than the clients' lived facts. In the shortest interview the student focuses on when the Answer was filed and if the husband has an attorney, rather than exploring facts relevant to a custody dispute where the husband has "taken the children and won't give them back." Likewise, in the DV House Sale case a lot of time is spent exploring whether the client has a "protective order" and how to find out who is on the deed, rather than the client's desire to retain possession of the marital home and furniture and her financial needs to be able to do so. In the DV Visitation case almost the entire time is spent reading court documents to try to understand the current order, and very little time spent discussing the reasons for the children's fears about visiting with their father.

The third characteristic is how motivated the students continue to be to assume responsibility and provide guidance for the client. It is most extreme in the DV Sale of Home case where the student turns to giving advice almost immediately, sounding for all the world like an attorney rather than a supervised law student. In the DV Visitation case the student undertakes to read and analyze the Protective Order and the Divorce Decree, opining that the client's right to make final decisions wouldn't be relevant regarding visitation and that evidence about the grandparents "would be good to show them." (See further analysis below in Counseling section.)

V. A BETTER INTERVIEW -- "CHECKING FORMS FOR A DIVORCE"

While it is important to understand the patterns of errors and failures in student-conducted interviews, it is equally important to explore how students may be capable of better performances. The fourth consultation provides a better example in that the student elicits a narrative from the client, clarifies the clients' various concerns, and take notes. As a result, this student is able to accurately and completely convey the client's concerns and questions to a supervising attorney, and ultimately provide advice and information on all points

This client's matter is the least pressing, and yet this client receives the most thorough interview, in part due to the client's assertiveness in asking questions and in part due to the student's openness in allowing the client to define the topics of conversation.

This client has provided minimal information on her Intake Form. Nevertheless, the student begins by reading it. The student's first question, a leading or reflective question, references the client's written request for a review of a document given to her by her spouse. The client replies with the context.

8	Begin 0:27- 0:35	Law Student	Okay, so you've um come in for help understanding a document that you received from your um husband?
20	0:35 – 0:55	Client	Um Yes Um I just wanted to make sure, this is what he left me with. [okay] Um he's going through this firm. [okay] And um he's filled out as you can see [right] this part of the document. He's asked me to fill

			out the rest. Um . . . he's asked me to not get my own attorney because of the cost which I is no problem with me. Uh Don't mind that at all. But I did tell him that I would like to see um have an attorney go over the final document before I sign it. [okay] Just to be sure it's all cor, correct and I'll take that to my own independent counsel. [okay] Um and what I needed to know is, I'm planning on calling Jones & Jones to ask them about the document. But I what I needed to know is, he said that they're mainly serving as a mediation for us. Because we kind of both agree on what we want and what we don't want.
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The student then begins to review the document the husband has asked her to complete and notes that her husband has “checked the uncontested box” and asks another leading question “So there are no issues about over which the two of you disagree?” The client says “right” the student says “okay” and then the client goes forward to explain how they have resolved the issue of spousal support, ending with her first question -- how can she enforce the decree if necessary:

53	2:04 – 2:57	Client	No problem. I'm going to go with a property settlement rather than a monthly alimony. [okay] Because that way I'm free from having to pay income tax. [okay] Um uh . . . And I'm fine with that . .Uh my question is, I jotted these down. [Okay good.] Okay once the divorce is has been finalized and say he doesn't give me what, you know, in the settlement. [okay] How can I enforce, what process do I have to go through to enforce?. . What's the legal term of the other //party?//
2	2:57- 2:59	Law Student	//Enforcing// the divorce decree?
1	2:59	Client	Right.

This is the first instance of the client widening the scope of consultation, from simply wanting a form reviewed, to now wanting to know how she might handle a possible problem in the future where she will need to enforce the decree to obtain her property settlement.

The law student begins to provide some information about enforcement:

33	3:00 3:33	Law Student	Um Yeah well we can tell you. We'll talk a little bit more about the process of how that works. Essentially you would um talk to the court um and get them to, seek enforcement um through the court system. So There is a process for that. And I will speak with one of the attorneys and pass on additional information for you from that. Essentially it's, um well let me speak with one of our attorneys just to make sure all of my information is accurate. And then I'm allowed to pass that on to you
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			//okay so we'll take that question//
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It appears that the student is eager to help but underprepared to explain how the enforcement process works. He correctly mentions “seek[ing] enforcement through the court system” but confusingly suggests that she would “talk to the court.” In the end the student wisely decides to “speak with one of the attorneys . . . just to make sure all my information is accurate.” While providing clients “information” as opposed to personalized “legal advice” is not the unauthorized practice of law, the student’s inability to be precise underscores that it is wise to seek guidance before answering clients’ questions.

In response, the client asks if the court’s website would provide the information. The student first volunteers to “think” about what he knows of the site, then volunteers to “find out.”

At this point the student recalibrates the interview to be a collection of questions the client may have. This establishes the structure of the interview -- the client raising questions and providing context for the questions, and the student seeking to understand the questions so that he can take them to an attorney. Ultimately the client raises five separate questions she wants addressed: how to enforce the property settlement, if financial problems short of bankruptcy will void the settlement, whether her husband can be ordered to name their daughter as beneficiary of his life insurance, what is the process going forward, and if property values need to be listed on the form.

Once the client is invited to put forth her questions, she launches into her longest speech, giving both question as well as context:

1:45	4:24 – 6:08	Client	Also another question came out. Um Because there’s going to be a property settlement. [okay] Rather than a um monthly alimony. [okay] Um Thomas pointed out to me, he wasn’t sure whether if my ex-husband um say for instance files bankruptcy, [okay] the property settlement could be dismissed by the court. Because it’s a judgment against the estate. He wasn’t sure about that. Um he asked me about um in the past you know his financial status. It’s always been very good. I, unless you know something really, really bad happens, he would never file for bankruptcy [okay] or anything like that. Credit is very important to him so I don’t think that’s going to be an issue. But one thing that one of my relatives brought up is um say um for instance some kind of foreclosure is brought up, you know something against the house because of lack of employment or something like that. Can that property settlement be dismissed or tied as a lien? Or something like that? In other words, if . . .um say he remarries um because it’s an estate, it’s a judgment against his estate, the property settlement is, can my monthly property settlement be tied up in some way?
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The student follows the client’s inquiry with a request (“tell me about the property settlement. . .”) and the client clarifies her concerns is about financial difficulties other than bankruptcy, through three exchanges. Once the student has clarified the question to pass on to the attorney, the client raises a third question by referencing the form she had begun to complete - whether the decree could require her husband to name their son as beneficiary of his life insurance.

Next the client turns to inquire about the process of getting a divorce, referencing the clinic document that shows the divorce process and asking how the form she is completing fits in to the process. She wants to know exactly how the process of getting an uncontested divorce finalized will work, particularly where she is unrepresented and cooperating with her husband’s attorneys. Here again, the student begins to explain terms and processes with which he is familiar (although they may not be germane to her situation), but ultimately agrees to check with an attorney and provide a more precise, personalized answer:

17	9:44 – 10:01	Law Student	//This is // So, so presumably, this is a form from this, from this law firm, it’s not a court form. So presumably they’re going to take this information, they will write up some documents that will then be submitted to the court.
12	10:01-12	Client	And then when that’s submitted to the court, um it’s reviewed by a judge to make sure that it’s legal and it uh?
1:06	10:13-11:18	Law Student	Right, so the court receives, typically the court is going to receive the divorce petition from whoever’s filing the divorce. That person is called a petitioner. And then the other person has um I believe it’s 20 days to respond to the divorce. So that would be if you were contesting anything in the divorce. Um if that’s, if that so typically at that point, a person would submit their own papers to the court contesting whatever issues. And then the court would order mediation. In a case like yours where you’re filing, the two of you are filing and you’re not disagreeing over any of these issues (and I’m assuming here that things you’ve added are things that ultimately he will agree to) if that’s the case, again this would be entirely uncontested. Um, then I’ll find out about the specifics of how that process works differently. My understanding is that the two of you can go to the court together, file it together and that may simplify the process somewhat. So let me find out the process for uncontested.
5	11:19 – 23	Client	Okay so this firm would draw up the um //legal papers.//
3	11:22 – 11:24	Law Student	//The divorce petition, // Um hm
9	11:25-11:33	Client	And then we would go to the court together and file it together? Or they could just do it for us and then he just gives me the final—I see, I see.

4	11:34-37	Law Student	That, that's my understanding. I will double-check with one of our attorneys just to make sure that's accurate.
10	11:38-47	Client	I wasn't quite sure on the whole process. I'm assuming that this is me right here and
4	11:38-52	Law Student	Well the petition—whoever is filing for the divorce is called the petitioner so
3	11:52-54	Client	Yeah so that's basically what //that is.//
54	11:54 12:48	Law Student	//Yeah,// in that case it's him . Now, if um your situation is unique in that, not, not entirely unique, 'cause there are other couples who um have uncontested divorces, but by and large, the majority of them are contested. So in a typical case where there's a contested situation, somebody's filing for divorce that's this person here, the petitioner. They serve the other person, um the respondent, you have an answer in 20 days. That's where the answer comes in. Um And then this is, this process is what happens later. So you've crossed out some of these that you feel like won't matter for your situation. But really, you are um, it may be that for an uncontested divorce, these several steps here particularly at the beginning um are going to be somewhat different. So I'll ask one of our attorneys about the specifics of that. Ok.
3	12:48-51	Client	I want my my particular circumstances, yeah.
2	12:51 - 53	Law Student	Right. Okay.
3	12:53 - 56	Client	And that's, that's about all that I have um

The student does most of the talking in this exchange, initially to help the client understand the paperwork (a form from the law firm, not the actual papers to be filed in court). He then twice explains service of process and the time to answer in a contested divorce, but admits he does not know how an uncontested divorce would proceed differently. He might have saved time by simply conveying her inquiry to the attorney and being able to give personalized advice. This is another example of a student desiring to show his knowledge.

Here, after about twelve and a half minutes, the client indicates that she has raised all her questions. At this point the student references the form and notes that the client is working on a list of values for items of property. The client obliquely wonders whether this is necessary. The student returns to the question of whether all the issues will be settled and it will be an uncontested case, or not. The client again concludes the interview by saying “and that’s basically all I had then” after slightly over fourteen minutes.

Although it appears that they have concluded the interview segment of the consultation, the client begins talking again saying “This is a question that I have for Jones and Jones when I call them. You know, I’m going to ask them and tell them that I’m going to show” and the student

interjects that she “certainly” has “the right to take the documents to an attorney.” The student references the introductory lecture that typically covers unbundled services (“you hire them just for a small portion of the process. Just to look at those documents before you file”) as an option for getting an attorney to review the final documents. He again encourages her to understand the documents and only agree with them if they do represent the agreement they have struck. After 18 minutes of conversation, the student turns to consult with a supervising attorney.

The student has taken careful note of each of the issues the client raised. At times he has begun to provide information about court processes, illustrating the strong desire of student volunteers to be helpful and appear knowledgeable. However, on each occasion he has concluded that he will cover that with the attorney advisor and get back to her with more precise or more personalized advice. Because the student has listened, clarified and taken notes, he is well positioned to seek direction from an attorney. The one criticism that could be levied at this performance was its length. In my view the best way to shorten this interview would have been for the student to defer all counseling until the second meeting.

VI. CONSULTING WITH THE ATTORNEY

We now consider the consultations between the students and their supervisors. Here again, there are three that present challenges and one that can serve as a model.

A. Spouse Won’t Return Children -- Missing the Point and Getting TMI

The student begins the conference with an attorney as follows:

0:00 - 0:14	14	Law Student So we’re in the middle of a divorce. [okay] Tanya filed the divorce, her spouse, answered. Um She’s not sure what to do next.
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Amazingly, inexplicably, the student doesn’t mention that the husband has “taken the children & won’t give them back” the written description on the Intake Form and the bulk of the client’s and her friend’s narrative. She asks only about “what to do next” after having gotten his Answer.

The attorney asks if the husband is represented, and after six exchanges on that topic begins to advise:

0:24 - 0:36	12	Advisor A	Well the first question I always ask is, is there a counter-claim he attached to his Answer? [okay] Because if there’s a counter-claim, then she needs to Answer herself within 20 days. [right] It’s rare to see a counter-claim if there isn’t another attorney involved but it’s always something to check.
0:36 -	1	Law	Okay.

0:37		Student	
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The attorney studiously lectures on a range of next steps, beginning with answering a counterclaim, if necessary, but continuing to cover the benefit of temporary orders, what issues to include in a motion for temporary orders, and the process for mediation.

0:37 - 1:48	1:11	Advisor A	And then second, haha, um [sorry] Basically there's two things to do after this that you want to ask her about. [okay] One is, what's temporary orders. So if there's something she wants immediately, something she needs during the course of the litigation, 'cause it can take a while, can she get that assistance. [okay] Temporary orders. I usually ask is there a custody issue? 'Cause that's usually pretty important, so she's probably going to want temporary orders for custody. [Mnhm] And then that all comes with the child support and likewise, you know like the medical care, all that stuff that comes with. And then they've got those packets for us. [okay] And then you know, alimony is another possibility for temporary um orders. Those are usually the big ones, y'know. [okay] Sometimes taxes and stuff, and trying to figure out what to do with taxes for last year. Anything that needs to be handled on a temporary basis. [right] Like you need to know who's where the kids are going to stay from here on out and how visitation's are going to work so [right]— that they call parent time. And then the third one to think about, if you don't have any temporary orders, or even if you do, the court's going to order you to go to mediation, [okay] so explain what mediation is and how to set it up. And the administrative offices of the court has a program I think, as well as Utah Disputes Resolutions, it's a non-profit. [okay] And they both go and try to work everything out.
1:48 - 1:50	2	Law Student	Okay. Do we have paperwork for that //if the // ?
1:50 - 2:03	13	Advisor A	//Mediation?// I don't think, Well they might have some pamphlets on mediation down [okay] there, And then, you know, the temporary orders is kind of the biggest question with the counter-claim. Counter-claim's the first check. I don't expect one. But it's easy to Answer if she has to, but- Okay, anything else?
2:03 - 2:08	5	Law Student	Um, I think, let me do this and see if she has additional questions.

Despite the attorney's minute-long lecture covering temporary orders, the student says nothing about the the client's husband having "taken the children and won't give them back." Instead,

the student remembers the friend’s question about whether the client needs an attorney. This results in another lecture about what cases are most amenable to pro se representation:

2:25 - 3:09	44	Advisor A	So, ok. There you go then. Well, shoul- Will will will it help you? Will representation help you? Oh yeah. [Mnhm] But do you need it? No, you can proceed, but you know, if it’s a simple custody issue, um and you don’t have any weird custody stuff going on. Like weird accusations of abuse and neglect or other things, you know, you can probably handle it on your own. You just want to get those temporary orders and you know mediation especially, y’know. [okay] Obviously, should she have representation? Oh yeah. But if she can’t afford it, if she’s asking how dire do I need it, and that depends on a couple of factors that you probably want to talk to her about. [okay] . So. How contested is the custody? Is there weird issues in play? Difficult stuff. She might not know what those are. So.
3:09 - 3:11	2	Law Student	Okay, sounds good.

The attorney then suggests questions to ask regarding custody, but without telling the student how the answers might relate to advice the client should be given:

3:11 - 3:30	19	Advisor A	Just kind of good questions to ask, who’s been the primary caretaker of the children? If it’s her, well like what’s your job status, who’s worked, who’s taken care of the kids? How old are the kids? Do they go to school or are they home-schooled? You know if you see any weird red flags there, [okay] that’s like ‘wow, that might be an interesting thing’ rather than the standard family,
3:28 - 3:35	7	Law Student	Okay, should I go get temporary order paperwork before I go back to see her //is that [inaudible]//?
3:35 - 3:45	10	Advisor A	//No,// just talk to her now. What I imagine happens is, she’ll probably need the temporary orders. You’ll talk to her about this talk to her about mediation and then you’ll take her down there [//and get//] and let her go and say here’s the temporary order.

Despite the fact that the student has not shared the fact that the husband “has taken the children and won’t give them back,” the attorney’s kitchen sink approach has resulted in the attorney advising the client to “probably” seek temporary orders. (This would be what the client needs to do to regain custody of her children.)

This is just the first of four student-attorney consultations, because this student ping-pongs back and forth between client and advisors.

Her next meeting with the client lasts under a minute and consists of her trying to determine if the husband filed a counterclaim. (See discussion in Counseling below.) Unable to decide, she brings the Answer document for the same attorney to review. This time she and the attorney speak for only 38 seconds. The attorney looks at the document and tells her that it is a “straight-up Answer,” adding an explanation that a party would have to pay for a counterclaim. The attorney concludes, “You’re in the realm of temporary orders and mediation,” without providing any further direction about what to say about temporary orders.

The student returns to counsel the client about temporary orders and mediation (see discussion in Counseling below) and is faced with two new inquiries. The friend asks if Legal Aid could represent the client despite the fact that the husband “is got an attorney through Legal Aid for SSI to get SSI.”²²

The student volunteers to go find the answer to that question and approaches a different attorney for advice. The student shares that the opposing party has a legal aid attorney “for a different action” but does not say “for SSI.” Why not? Perhaps the student didn’t know what “SSI” is and failed to ask the client’s friend. The advisor explains that Legal Aid can’t represent parties with a “potential conflict of interest” (although this is an actual concurrent conflict), but adds that Legal Aid “only does domestic relations types of cases.” The student appears not to take this in, and twice protests. The advisor does not consider the possibility that the opposing party is represented by another agency and the term “legal aid” was used in the generic sense. The advisor does suggest that the client contact Legal Aid and see if there is a conflict.

The client could have gotten accurate information -- your husband is NOT represented by the Legal Aid Society because they do not handle SSI cases -- had the student shared what the client’s friend had said -- the husband had “an attorney through Legal Aid for SSI.”

After the student has counselled the client on this issue of Legal Aid and conflicts of interests, the client’s friend asks a new question and the student takes this question to yet another (third) advisor: “They want to make sure they have 120 days from the date the Answer is filed to get, whatever next action they’re going to take before their divorce is dismissed.” The advisor asks when they started the divorce and learns that the Answer was filed only days ago, and comments that “there doesn’t seem like there’s a real danger yet” and advises “Just, you know, file, file something!” At this point the student shares that “they have a court date on the 28th so they should be fine.”

²² The student assumes the client is speaking of the agency named The Legal Aid Society of Salt Lake. However, this agency only handles domestic relations matters and thus would not be handling an SSI/SSDI disability matter. The clients were probably speaking of “legal aid” in the generic sense, as a second agency, Utah Legal Services, handles SSI/SSDI cases and might represent the husband.

This student minimizes the factual information conveyed rather than providing sufficient context for the attorneys. Initially she forgets the client’s central concern -- getting her children back from her estranged husband. She also fails to provide the first attorney with either the Intake Form or the Answer. As a result, they spend unnecessary time exploring whether the client needs to answer a counterclaim. In asking about conflicts of interest she shares only that Legal Aid represents the client’s husband “for a different action” rather than “for SSI.” In reporting the client’s concern that her case not be dismissed in 120 days, the student fails to mention that the client has a hearing date. The student also seeks direction from three different attorney advisors, a circumstance that fails to capitalize on what the attorney has already been told.

These attorneys sometimes do not ask sufficient questions to allow the advice to be tailored for the client, preferring instead to hold forth. Attorney A provided a flood of information about all the steps that might be taken in a divorce case. It is doubtful that the student absorbed much of this lecture. Because the advisor never learned that the husband was withholding the children, the advisor was not able to provide targeted advice about how to file a motion for temporary custody and what to argue at the hearing. In advising about conflicts of interest, the second attorney shared that Legal Aid only handled domestic cases, but didn’t learn that the case at issue was for “SSI” and thus clearly not a conflicting case at Legal Aid. It was only after the third attorney shared the advice to “file something” that the student helpfully shared the information that something had already been filed. It seems that these attorneys, like this student, would do well to ask more questions and understand more context before turning to advise.

B. DV and Visitation

This student makes a crucial error -- she turns to another, more experienced law student for direction. The more experienced law student, similarly, errs by not insisting the interviewing student consult with an attorney.

In conferring with the experienced law student advisor (hereinafter “advisor”), the law student interviewer does raise three of the four issues she and the client identified: whether the protective order provisions for limited visitation remain valid, whether the client needs to pursue mediation before seeking to amend the divorce decree, and what step the client can take because her children are afraid to visit with their father. (She leaves out any mention of the paternal grandparents’ threats to seek visitation.)

The student and advisor discuss the validity of the protective order provisions for visitation for about a minute and a half. The student presents this question including much of the detail and context the client had included:

0:00 - 0:25	25	Law Student	She’s got a couple different questions. First she has this protective order [//oooh wow//] that modifies the parent time [Mmhm] that was stipulated in the divorce agreement, [okay] And her first concern is
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			whether it's still valid. It was done in May and she had someone tell her she- they weren't sure it was, but on the back it says um the it says two years the petitioner can ask for modification. So is it valid for two years?
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The advisor answers confidently and immediately:

0:25 - 0:27	2	Advisor	That's valid for eternity.
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Then over 45 seconds and nine turns of talk the advisors and student try to clarify which party -- protected person or respondent -- is asking the question. Ultimately the advisor concludes:

1:13 - 1:37	24	Advisor	Okay easy answer then um - it goes until somebody somebody gets rid of it. So if nobody ever tries to get rid of it, it's always there. [Okay] It doesn't just "expire" [Right]. So in two years on, two years on the day, he can go in there and he do a motion to dismiss, um, motion to dismiss protective order. [right] Motion to dismiss, // okay? //
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Unfortunately, this advice is wrong. The Utah statute expressly provides that the custody and visitation portions of any protective order last for only 150 days.²³ The form Orders themselves include this information (that certain paragraphs -- those dealing with custody and visitation -- are valid for only 150 days).²⁴ However, this provision is not obvious and the law student clearly did not find it when reading the document with the client. It would appear that the student did not take the Order to the advisor so he could review it. It may also be that the advisor failed to focus on the precise question -- how long the visitation part of the order lasts -- rather than the more general question of how long the Protective Order itself would last.

The law student turns to raise the next question -- what should the client do about the children not wanting to go to visit their father?

1:37- 1:59	22	Law Student	//And// the next question is um, the kids, one of them is 12 and one of them is younger than that, but they don't want to go see their dad. In fact last week when she took them to see the dad, um like they refused to get out of the car. He called the cops, cops told him they weren't forcing the kids to get out of the car. [//that's//] What steps can she take? Um because the kids are afraid of him. What steps can she take?
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The student includes some of the narrative the client had shared, and indicates the kids are "afraid" of their father, but does not include some of the upsetting details ("10-year-old literally vomiting on herself. . . 12-year-old crying . . . 10-year-old . . . curled up in a ball") or the client's

²³ Utah Code Ann. § 78B-7-106(6).

²⁴ Utah Code Ann. § 78B-7-105(b)(v).

characterizations (“petrified. . . absolutely scared out of their wits . . . so scared.”) She fails to provide the context that the father is being criminally prosecuted for violation of a protective order, and his request for visitation arose after this prosecution began, information contained in the Intake Form. The student also asks generally about “what steps” the client could take rather than conveying the goals set forth on the Intake Form that the client wants to “change visitation” to request “a reduction or supervised” so her children will “feel safe.”

The advisor, appropriately, wants more details, illustrating why a more thorough interview would have been advisable and why sharing the Intake Form with the advisor could have been useful:

1:59 - 2:04	5	Advisor	Why are the kids afraid of him? [um] Is there abuse?
2:04 - 2:18	14	Law Student	I don't know physical-wise, I know he's—a lot of verbal abuse and things like that. [//Um]//, Well she did say last week in a restaurant, like, her 13-year-old had the phone out and he like wrestled to the ground to take the phone from her, so
2:18 - 3:02	44	Advisor	Um that may just be considered discipline. Abuse is going to be, um, it's gonna be something—you, you know what abuse is. [correct] You know when you see it for the most part. Um, if it's abuse then, she can call DCFS and have them go and do an evaluation. [right] They'll go into the home and when the kids are there and see if, if there's something to be concerned about. If there is something to be concerned about, then all sorts of stuff will happen and, and, basically he'll get, let's see, he can file a petition and modify and he'll get the custody arrangement changed [right] If it hasn't been abuse, then it's a little bit more difficult, and do you know if he has joint custody or sole custody? or she?

The law student again shares a few details (the father “wrestled her to the ground” to take her cell phone away), but leaves out other details (“pinned her down . . . ‘give me you effin cell phone,’ started cussing her . . . threatened to leave her in the restaurant”) and the client’s characterization (“very, very verbally abusive to them.”)

The advisor imagines that there may be child abuse involved, and tells the law student that if there is the client should contact the Department of Child and Family Services, the agency that investigates child abuse. (The advisor is overly optimistic that such a move will resolve the issue.) The advisor provides an imprecise description of this option, telling the student that she knows “what abuse is . . . you know it when you see it” and that “all sort of stuff will happen” if DCFS concludes “there’s something to be concerned about.” The advisor has again confused who the client is and imagines a change in custody rather than a change in visitation is at issue.

There are seven short turns in which the student clarifies the client has sole custody and the father has limited visitation, including no over-nights. This allows the advisor to conclude that the client is doing the right thing in involving the police:

3:31 - 3:57	26	Advisor	Um . . . So basically um, the cops had it right and they'll say it every time: We can't force um the kids to go, to get out of the car. [Right] She is not required to, he is not required to force the kids to get out of the car. [Right] He can't—make it hard for them to get out, but he can—doesn't have to get them out.
3:57 - 4:00	3	Law Student	Right. Well she's the one here and he's the one that—
4:00 - 4:04	4	Advisor	Oh . . I have no idea how this is working out //haha//.
4:04 - 4:06	2	Law Student	// I, I've got// it straight, I know what you're //saying.//
4:05 - 4:06	1	Advisor	//Are you okay?//
4:06 - 4:07	1	Law Student	//Yes,// I've got it straight.
4:07 - 4:43	36	Advisor	So um, they can't force the kids to get out of the car. And so what they're going, what um what ūzh—what should happen is um um she— just let 'em sit there and if it starts to get even a little bit, you know, aggressive, call the police just like they did. [right] The police will not do anything. No matter how many times they call, the police will not do anything. [right] Every time they call the police, whoever it is, get a copy of the custody, or a copy of of the case number.
4:43 - 4:47	4	Law Student	Right. She has a police report in there from this last week.
4:47 - 4:49	2	Advisor	One is good, a bunch is better.
4:49 - 4:51	2	Law Student	Right. And I'll tell her [Mmhm] to keep collecting them.
4:51 - 5:08	17	Advisor	After a while um, she can, after she has four or five of these, spanning over a few months or six or seven months um, she may be able to petition the court to, to modify. Um So why is, why is it, why are the kids involved? What happened?

The client has come in during a domestic violence criminal prosecution, after two weeks of traumatic visitation encounters, asking how she can change, reduce or get supervised this visitation. Yet the advisor is blithely suggesting that she continue to expose her children to these dysfunctional interactions for another five or six months in order to continue to collect police reports about her children refusing to visit. How did this disconnect occur? First, the student has not shared all the relevant facts, Intake Form, or court documents with the advisor. Secondly, the advisor is a student with little exposure to and ability to make judgments about domestic violence situations and strategies for this client.

However, the advisor does conclude with a good question -- why are the kids involved? What happened? -- pointing out the need for a more complete interview. The law student admits:

“Um, you know, that’s a good question. I probably should have asked why they got the protective order.” They spend another half minute clarifying that the protective order is against the father who is insisting upon visitation, and the client is the mother with custody. This results in the advisor concluding that no modification is needed, and reiterating his advice about involving the police for visitation:

5:38 - 6:02	24	Advisor	Oh. Well she’s not going to modify anything. She’s already got sole custody. Um, mmm, just get the police to, to do it every, you know, when don’t force them out and don’t help them to not get out. [right] Just be neutral. Get the case numbers and after a while come back here and ask what she needs to do. [Okay] Ask if there’s anything she can do.
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The advisor and student conclude with the plan of continuing this pattern while calling DCFS:

6:40 - 6:52	12	Law Student	Okay, and so I’m going to go in and tell her she needs to contact the Department of Family, Child and Family Services for the abuse and then they’ll go do the visit. And then just to keep doing what she’s did, [mmhm] what she did.
6:52 - 6:56	4	Advisor	Tell her to remain completely neutral with the kids. Don’t help them, don’t hinder them.
6:56 - 6:58	2	Law Student	Right. And get police support.
6:58 - 7:10	12	Advisor	And as soon as it looks like there might be something other than just talking, um [Okay] because if he does try to grab them out of the car, that could be pretty bad. And you want the police there.
7:10 - 7:14	4	Law Student	Right, and then once she has the documentation, come back here?
7:14 - 7:17	3	Advisor	Come back af- after she has [//but obviously if um//] two or three times over a few months.
7:17 - 7:21	4	Law Student	if DCFS finds something //she might not have to come back here//
7:19 - 7:24	5	Advisor	//[inaudible]That’s going to// nuke all the other stuff and that’s going to take front and center. [okay] All right?
7:24 - 7:26	2	Law Student	Okay, awesome. Thank you.

The student wisely begins these final turns by repeating what she understands she should convey to the client. The advisor agrees, but shortens the time to “a few months” of dysfunctional, police-overseen visitation and agrees that if DCFS intervenes that will “nuke all the other stuff” and “take front and center.” Here again, the advisor is imprecise on exactly how DCFS’s involvement will change anything.²⁵ Sadly, the client will be told only to come back

²⁵ While DCFS could “support” child abuse (see Utah Code Ann. § 62A-4a-409(3)), it will not file a child abuse/neglect case in a situation such as this but look to the custodial parent to seek

to the clinic, not what steps she will be able to take to address the current problem once these months pass, and she will not be referred to other resources such as mental health services for herself and the children.

One weakness in this consultation is that the student fails to include all the relevant contextual details and fails to convey the client’s goals of changing and limiting visitation. This could be partially corrected by allowing the advisor to read the client’s Intake Form. In addition, this difficult case is being handled without any attorney involvement, highlighting these students’ strong confidence in themselves and desire to be independent in giving the client guidance. Unfortunately, the student advisor is simply wrong about the continued validity of the visitation provisions in the Protective Order. As a result, the advice to keep exposing the children to these encounters is not only poor judgment, but creates legal risk because the father’s visitation rights are more extensive than the client and student realize. The client could well be charged with violating the divorce decree by continuing to follow the out-of-date order. The client needs to seek a modification of the visitation provisions in the divorce at this time, not wait for further encounters or for DCFS to take some action.

C. Divorce, DV and Sale of Home

This student has already provided referrals and recommendations to the client. He approaches a lawyer and provides this short summary of the client’s situation and his advice to date:

60*	0:00 - 1:00	Law Student 1	I just need to make sure I gave them all the right advice. [Ha ha okay] She’s been married for awhile, but she doesn’t want to be married anymore. [okay] Um so he’s been abusive, several times in the past. She says there’s some type of order but she doesn’t think it’s a protective order and it doesn’t sound like one. I have no idea what it is. [Hm] So I told her to go to the W17, tell them what happened and they can help her figure out if she needs to file a protective order. Um, part two, um, she hasn’t, there’s a marital home but they’ve divvyed up everything else but the home for the most part. She thinks she had her name taken off the title but she’s not sure. Um I told her that even if her name has been taken off it’s still marital property and that the courts can still equitably divide it. She’s worried that’s he’s already sold it. She wants to know if she can stop him. I said if he hasn’t sold it then maybe the courts may be able to, to order / /a not to.//
2	1:00 - 1:02	Attorney	//Not to,// yeah. Sounds right.

orders in the divorce case or seek a child protective order consistent with its mission of stabilizing the family. See §62A-4a-201 and -202.

The student is able to summarize both the most salient facts and his advice in just one minute. Unfortunately, the student does not mention that the client would like to be awarded the home and entirely forgets that the client is worried about gaining possession of the furniture inside the home (“they’ve divvied up everything else”) and that the husband has ordered her to take anything she wants within 30 days. As a result, these concerns never get adequately addressed. Similarly, the student does not mention the husband’s recent criminal conviction. This may explain why the attorney does not suggest that the orders that are in place are part of the criminal case and sentence.

The student goes on recounting to the attorney the advice he has given:

19	1:02 - 1:21	Law Student 1	If he already has then um it was just depends on whether her name’s on the title or not and she needs to find that out. Um so I told her um, end result, step 1: talk to W17 about the protective orders, step 2: talk to Legal Aid about getting representation, step 3: go on OCAP if Legal Aid isn’t able to help her.
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At this point the attorney and student engage in a pragmatic discussion about waiting lists at Legal Aid and whether the domestic violence will bump this client up for a quicker divorce. (The attorney thinks no; Legal Aid would seek a protective order right away but would not give the divorce priority due to abuse.) They also discuss ways for the client to determine whether she is still on the deed.

They next turn to the viability of an *ex parte* protective order. The attorney asks how recently there has been violence, and the student indicates over six months. The attorney opines that Legal Aid is unlikely to seek an *ex parte* order for an incident so far in the past, and asks if there have been more recent threats that would justify an *ex parte* order. The attorney is focused not just on how to do something, but trying to make strategic decisions about what to do. The attorney also explains the client’s entitlement to a protective order that is not *ex parte*, but suggests “Why not just do the divorce?”

22	3:37 - 59	Attorney	//You know //But sounds like she needs to, if she’s got this house issue, sounds like she needs to get it sorted out, does she own it and get into court. ‘Cause they’re not, I mean they could in a protective order, order him not to sell property, but that would be really unusual. They mostly just order I think possession [yeah] not ownership so [yeah] I think she needs the divorce
2	3:59 - 4:01	Law Student 1	Oh she definitely does, I I agree.
2	4:01 - 03	Attorney	I mean I think divorce is the only procedure // that’s really gonna//.
10	4:03 - 13	Law Student 1	//I I’m// just a little worried that, you know her sister is here with her and her sister is talking about how she’s really taken a beating in

			the past. [yeah] And I'm worried that that might happen. [yeah] That's what I'm worried about.
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Here the attorney is focused on helping to make strategic decisions -- the client needs to file for divorce in order to try to stop the sale of the home -- but the student interrupts with his concern about domestic violence. This is perhaps the most extreme example of student desire to own and control the consultation. The student never shares what appeared to be the client's resistance to or ambivalence about the protective order (see discussion, *infra*), so student and attorney do not have a strategic discussion of the pros and cons of a civil protective order at this juncture. Instead the attorney concludes by advising the student to discuss "the most recent bad thing" that's happened between husband and wife so that the client will be able to present the most compelling case to Legal Aid.

This short (4:30) encounter did not result in explicit instruction about the need to file a divorce and a motion for temporary orders and to do so promptly in order to get a court date in time to stop the house sale. Although this was the client's express concern and goal, it got very short shrift. While this experienced student was able to summarize salient matters quite succinctly, the student and attorney did not maximize the effectiveness of the consultation where the student totally forgot the matter of the client's furniture, did not report the client's ambivalence about the protective order, and neglected to mention the criminal charges that were brought against the husband.

Even with an experienced student, the Clinic has the best chance of providing high quality service when the first conversation is entirely an interview, when all the salient information is conveyed to the advisor, and when the student and attorney together strategize about the best information and advice to convey to the client.

VII. A BETTER CONSULTATION -- CHECKING FORMS FOR A DIVORCE

The student has taken written notes about the client's questions and accurately conveys them all to the attorney. The student begins with the broadest topic -- wanting to understand how the divorce will proceed. He provides the context (client completing a form for the husband's lawyer), names the topic (the process) and asks an open question about what will happen once the petition is drafted.

30	0:09 – 0:38	Law Student	Her situation is that she and her husband are mostly agreeing on everything. She's got a different provision or two that she'll talk to him about but they are expecting that they are going to file uncontested. So one question is about the process of that, how that works. He's got, she has some forms from his attorney, and he has filled those out. He's asking her to fill out the remainder and then those attorneys are going to write up the divorce petition, and then what happens at that point?
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The attorney succinctly answers this question by naming the form that is used and explaining what the form does:

15	0:39–0:53	Attorney	Well, if she agrees with all the terms in the, the petition then she can just file an Acceptance, Consent & Waiver. [Okay] That that means that you accept service, you consent to what’s being asked for and waive further notice.
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The attorney emphasizes that the client should sign this document only if she agrees with everything. He also addresses how the client should respond if she does not agree with what is in the petition, using imagined dialogue (“no I don’t agree” and “no that’s not what I agreed to”) to illustrate what should occur:

The student presses on to understand how service of process works (or does not occur) in a case of this sort:

5	2:43 – 2:48	Law Student	. . . Now what about, they still serve her? How does that work different //than//
40	2:48 – 3:27	Attorney	//Well it//, you can either be served, you can accept service and in the, in this scenario that you’re describing is if, if they’re working everything out, they’re agreeing to it that’s that’s—There are three things that the Acceptance, Consent & Waiver does again: You accept service [right] so you don’t have to be served by a constable or sheriff or somebody else; you consent to the terms of the petition so you agree to everything [right]; and the waiver part is you don’t, you you waive further notice of anything [Okay] any other further legal notices which is no longer necessary since you already consented to [right] the the entry of the decree.
6	3:28 – 3:33	Law Student	I guess what I wasn’t clear about is that that, does that get filed along with the-
1	3:34	Attorney	Yes
1	3:34 – 3:35	Law Student	Okay. Filed together with the petition.
5	3:35 – 3:39	Attorney	She signs it and then gets back with the attorney and then he usually files it along with the petition.
1	3:40 – 3:41	Law Student	Okay got it.

Following this exchange the attorney reiterates that he cannot “emphasize enough” that she sign the Acceptance, Consent and Waiver form only if she agrees with everything, and recommends she have an attorney review it with her.

The student raises the next topic -- getting a property settlement rather than alimony - and the client's questions about financial risks. (As it happens, the student consults with the attorney who had previously advised this client, and he remembers much of his prior consultation):

28	4:09 - 4:37	Law Student	Okay now you, I think, talked to her last time about a property settlement rather than an alimony plan? [Mmm Hmm] But this property settlement is happening over time, this much per month. [MnnHmm] For this many months. I have never seen anything like that so I am not sure quite how that works. Um she had some questions about if he goes into bankruptcy, how does that affect this settlement? She doesn't think that's likely but wonders about what about any //other current financial set backs//
8	4:34 - 4:41	Attorney	//well, I, I,// talked to her about this. Property settlement can be vitiated by a bankruptcy.
2	4:42 - 4:43	Law Student	Okay. .
4	4:44 - 4:47	Attorney	Alimony cannot be voided in bankruptcy.
5	4:48 - 4:52	Law Student	Maybe that is why the firm is encouraging him to do it that way.
38	4:53 - 5:30	Attorney	Well, she, she, again, my memory is so poor but she indicated that, you know, he would have every disadvantage in the world to file bankruptcy. He doesn't he has nothing to file bankruptcy on except this, [sure] so if she, she, but again, that is why she would need to talk to an attorney, but I have already told her that a property settlement can be voided by a bankruptcy. He can just list her as a creditor with the bankruptcy then she's out without anything. [okay] Alimony on the other hand cannot uh be discharged in a bankruptcy but it's income that is taxable to her, tax deductible to him.

Interestingly, the client had recalled that this same lawyer was unsure about the effect of bankruptcy on a property settlement,²⁶ but the attorney expressed no uncertainty and recalled telling her bankruptcy *would* void her rights to the property. Although the student had confirmed that the client "wasn't really concerned about bankruptcy"²⁷ but about other financial problems, fortunately he raises the bankruptcy question and gets it clarified.

The student moves on and succinctly asks the client's question whether any other financial setback could have an effect on the settlement:

²⁶ At 4:24-6:08 the client said: "Thomas pointed out to me, he wasn't sure whether if my ex-husband um say for instance files bankruptcy, the property settlement could be dismissed by the court. Because it's a judgment against the estate. He wasn't sure about that."

²⁷ At 7:32-47.

14	5:31 – 5:44	Law Student	. . Okay, now she is also asking about, what about foreclosure, or any other kind of financial setback short of bankruptcy. Would that have an effect on, on settlement?
6	5:45 – 5:50	Attorney	. . Mm, nooo. Foreclosure on the house?
1	5:51	Law Student	Yeah.
7	5:52 – 5:59	Attorney	Well //there's there's //
8	5:56 – 6:04	Law Student	//So he has some major// financial setbacks but he is not filing bankruptcy, then, I mean legally that shouldn't affect the settlement at all—
1	6:04	Attorney	No—
2	6:05 – 6:06	Law Student	As a practical matter maybe?
9	6:07 – 6:15	Attorney	If if there is a foreclosure on the house then you get a deal with whatever the ramifications of losing whatever equity might be in the house.
2	6:16 – 6:18	Law Student	But that's his thing to work around and not //hers right?//
4	6:18 – 6:21	Attorney	//Right, right// if there is a property settlement then he is asked to still honor the property settlement.

The student then turns to his next question -- how to enforce the decree:

12	6:22 – 6:34	Law Student	Okay. Okay, um, she had another question about enforcing a divorce decree once it's, once it's in place, say he doesn't live up to //his part of the bargain.//
2	6:34 – 6:35	Attorney	//Then you go back to court// on an order to show cause.
1	6:36 – 6:37	Law Student	Order to show cause, okay.
7	6:37 – 6:44	Attorney	Or a motion to enforce. They're the same thing. The forms on OCAP are now "motion to enforce."
5	6:44 – 6:49	Law Student	Okay, how is that different from, um filing for contempt, is that?
1	6:49 – 6:50	Attorney	It's the same thing.
4	6:50 – 6:54	Law Student	Ok. Motion to //enforce//
7	6:53 – 6:59	Attorney	//The forms// allow you to ask for whatever you want: contempt, enforcement [Okay] and just check, check, check, check when you file the motion.
3	7:00 – 7:02	Law Student	Okay. Last question here. She would like—
5	7:03 –	Attorney	Contempt doesn't give you anything but a warm fuzzy feeling in your

	7:08		heart . . .
4	7:08 – 7:11	Law Student	Because they, I mean, they, they fine the other person but they're not-
7	7:12 – 7:18	Attorney	They find them in contempt but unless there's something to go along with it [Okay] it's just a warm fuzzy feeling in your bosom.
1	7:19	Law Student	<chuckles> I win.
2	7:20	Attorney	Yeah right.

The attorney first names the proceeding using an out-of-date term and then corrects the language to comport with the form on the court's website, explaining "they're the same thing." The student raises a question he, rather than the client, has, asking how this proceeding is different from "filing for contempt." The attorney, again referencing the form on the court's website, explains that contempt is one of the remedies you can ask for, but is not as valuable as enforcement. He cuts off the student's attempt to ask the next question to clarify this point for the student. This attorney's assistance is very useful for a pro se clinic, because he is very familiar with the website that the pro se parties use.

The student then turns to the final question the client had regarding the husband's life insurance, usefully including the detail that the parties' child is 24 years old:

15	7:22 – 7:37	Law Student	. . . so last issue then is that she wants a provision added that would make their, their only son, their 24-year-old daughter, the sole beneficiary of his life insurance. I should have found that, who the current beneficiaries are. [okay] She's asking can she // do that?//
1	7:37	Attorney	//Sure yeah!//
1	7:38	Law Student	I didn't see any reason why she couldn't.
8	7:39 – 7:46	Attorney	That the court will enforce anything that the parties have agreed to put in it, [okay] and life insurance provisions are very common in divorce decrees.
4	7:47 – 7:50	Law Student	Okay, um I guess one other thing, the
21	7:51 - 8:11	Attorney	One of the things that, I mean, they can have that as a permanent thing. Generally the the life insurance provisions are only to provide for the child during the child's minority , but if they want to just have it permanent that he maintains a life insurance policy for the child forever, well, if they both agree to it the court'll enforce it.

The attorney answers the narrow question posed -- that the parties can agree to such an order and it would be enforceable -- but then, because the student mentioned the son's age, goes on to explain that provisions about life insurance are usually for minor dependents. Here, as with the contempt issue, the attorney provides more background explanation than is strictly

necessary to answer the question, but will prove useful to the student's and the client's understanding.

The student then adds one additional question the client had hinted at -- does she have to complete the form giving values for each item of property, given that they are settling the case. The attorney explains that it is not typical to include values of property in the pleadings.

This nine-minute exchange between student and attorney was characterized by the student completely and accurately conveying the client's questions and concerns to the attorney. In doing so, the student not only posed the question, but helpfully gave the context for the question. In response, the attorney consistently shared the proper legal terminology, modeling how the student might respond to the client. Often the attorney would provide a short answer and then elaborate on it so the student would gain the best understanding. In discussing the process the attorney also illustrated what issues might come up and how the client might respond using active voice of the client.

Because the student was thorough and accurate, and because the attorney was succinct and provided both technical terminology and illustrations, the student is well situated to be able to convey accurate and thorough advice to this client.

This good consultation did last longer than the others (9:16 minutes as compared to 4:30, 7:31 and 6:28), but covered many issues and fully prepared the student to advise this client.

IX. COUNSELING THE CLIENT

A. Spouse Won't Return the Children

The student begins the counseling conversation with the first issue the attorney identified -- whether the husband had filed a counterclaim that the client would need to answer. Rather than simply studying the document (or better yet, taking the document to the attorney) the student explains the inquiry and student and client spend almost two minutes discussing what a counterclaim²⁸ is and whether the papers include one.

Ultimately the student makes the wise decision to have the attorney review the document, again using informal expressions ("let me steal" the documents) in doing so. After the second consultation with the attorney, the student returns to counsel the client and advises that the husband did not counterclaim, but only "defined his answers." The client and friend accept this, but want to know what to do next, mentioning that the "divorce would be in default after 20 days, but where he put this Answer in, does that mean it's not in default?" The student explains that as long as he did that "you're still on."

²⁸ It really is difficult to explain how an answer and a counterclaim are different in a divorce case. The primary reason for the respondent to file a counterclaim is to be able to go move the case forward in the event that the petitioner fails to do so.

Finally, in accordance with the attorney's laundry list of topics, the student turns to mention temporary orders:

2:03 - 2:09	6	Law Student	//The next// thing. There, [//I mean//] there are two steps. [okay] The first is temporary orders—this, you know.
2:09 - 2:10	1	Friend	Which //she's got.//
2:09 - 2:12	3	Law Student	//This process takes// a while, so
2:12 - 2:14	2	Friend	Sss she's got the paper for the temporary orders,
2:14 - 2:15	1	Law Student	Cool
2:15 - 2:16	1	Client	No where's that paper for the temporary //custody [inaudible]//
2:16 - 2:17	1	Law Student	//Did I// take it? Is it in the packet here?
2:17 - 2:22	5	Client	No, it's right here. [//ok so you have//] So this is my thing for temporary custody. [okay] I have to go the 20th.

Halleluia! The client had already figured out that she needed to file a motion for temporary orders in order to get her children returned to her care. And she filed such a motion. And it is scheduled for hearing. So even though the student has not focused on how to get the children returned, the client's needs will be served. Why didn't the client mention the scheduled hearing before?

It is interesting the way some clients approach the interview. Perhaps they are trying not to impose too much information on the student. Perhaps they conceive of this as a Q & A session rather than a time to tell a narrative. However, knowing that some clients minimize the information they immediately convey, underscores the importance of the student conducting a throughout interview. Asking the client to complete her narrative, and to share what she did after the husband refused to return the children, should have uncovered this information.

At this point the student congratulates the client and confirms that the client is in good procedural shape for the custody issue:

2:22 - 2:33	11	Law Student	Okay great. So you figured that out, which is awesome. [Client: yeah] And this is the custody, is this the only thing you're worried about in terms of, [mostly] before it?
2:33 - 2:37	4	Client	I could care less if he gets or wants or whatever, I want my kids.
2:37 - 2:47	10	Law Student	Okay, so this is the only temporary order you're worried about. And it looks like you've figured out how to do that, [yeah] And have you have a , have you set a, do you have a date yet?

2:47 - 2:48	1	Client	The //20 th //.
2:47- 2:48	1	Client's Friend	//The 20th.//
2:48 - 2:52	4	Law Student	Okay, oh this is, [//at 10 am//] nice. So you've served, you've done all your
2:52 - 2:53	1	Client	Yes.
2:53 - 3:02	9	Law Student	Coolness. OK. The other thing, you're going to do this separately, what you want to do next is mediation. [//right and//] Go ahead.

Finally the student recognizes that “custody” and the “temporary order” are the things the client is “worried about.” Unfortunately, the student has not been prepared to advise the client how to handle the hearing for temporary orders, and so she conveys no advice about this rather crucial step in the process. Had they not spent so much time with back and forth about answers and counterclaims she might have thought to seek advice from the attorney on this point. She might have taken him the papers so that he could see what the client had written and advised what arguments to make. Instead she moves on to naming the procedures that the attorney has told her to discuss.

Mediation was the second topic the advisor suggested they cover. The student, client and friend spend over two minutes discussing who should have to pay for the mediation (given the husband is disabled and she has a job) and what the purpose of mediation is. However, the attorney has not given the student any talking points about mediation, so it does not seem her discussion of this topic adds value:

3:35 - 3:40	5	Client's Friend	Now as far as mediation goes, what is the point and purpose of mediation?
3:40 - 3:47	7	Law Student	So the purpose of mediation is to hopefully come to an agreement so you don't have to end up to court with a big //expensive mess//.
3:46 - 3:49	3	Client	//It's going to court,// I can tell you right now[//but//] it's going to court.
3:49 - 3:56	7	Law Student	And even if you know that, a judge is going to require you to at least try the mediation first, it's just the way they do the process here,
3:56 - 4:10	14	Friend	Mediation is just, in my o-, is, this is my opinion, the idea I get from it. Mediation is just where two people go and they sit down and they discuss who's going to get what, and how it's you know bills are going to be split and stuff like that.
4:16 - 4:22	6	Law Student	And the- the difference between mediation and you just sitting down at the dinner table is that you have a third party there.
4:22 - 4:23	1	Friend	Right. That's mediating.
4:23 -	5	Law	Exactly. It it's there to prevent any weirdnesses from happening

4:28		Student	[right] or whatever.
4:28 - 4:32	4	Client	Right. Like me climbing over the table and beating him up no, // ha, I'm just kidding ha ha//
4:32 - 5:15	43	Law Student	//Or him// like doing the same thing to you, or, [yeah] saying later that you agreed to something that you didn't, [right, okay] All those sorts of things. And unfortunately, there's really no way to avoid it, but . . it's very, everything is fact-specific in these sorts of things. But it's highly unlikely that if you both you know have relatively the same amount of income, that he's just that the judge is going to say "you pay for it," because he said you should. [right] I wouldn't worry too much about that . . Judges are human, but in general try to be fair and equitable and the majority of 'em actually are or accomplish that most of the time. So,

The fact that the client is able to joke about the mediator serving a refereeing function probably indicates the client is comfortable with the consultation. However, the student's allusion to litigation being "a big expensive mess" does not make a lot of sense with these two pro se parties. In any event, the client is clear that going to court is necessary here, given her husband's withholding the children from her, so calling litigation a "mess" is not helpful. The idea that the mediator prevents "any wierdnesses from happening" is not terribly informative and another example of this student's informality. Finally, the fact that the student opines that "unfortunately, there's really no way to avoid it" and characterizes judges as "human" but trying to be "fair and equitable" and that "the majority of them actually are . . .most of the time" is an interesting essay on the justice system by an inexperienced student with no charge from a supervisor to convey this information. Perhaps this is borne from the student's desire to seem knowledgeable and to be helpful.

At this juncture the friend interjects with a question about whether the husband's "legal aid" lawyer who is handling his SSI disability case would prevent the client from getting an attorney from "legal aid." The student guesses about an answer before committing to consult an attorney:

6:23 - 6:38	15	Law Student	Right. I will go find out about Legal Aid. The general rule with attorneys is that they're pretty practice specific. So we have somebody here who does juvenile stuff, Guardian ad litem, divorce, he wouldn't go try to write somebody's will. [right] You know? //So//
6:38 - 6:43	5	Friend	//That's// what I was thinking, was if this guy is just fighting for his SSI, then he probably isn't.
6:43 - 6:50	7	Law Student	My instinct is to say no, but let me go check and find out if you would still be, if //you would qualify,//

6:57 - 7:14	17	Law Student Okay, let me go find out about the Legal Aid funness. Uuuuuuhhh You can have your [inaudible] thing back. And I will return. Thank you.
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Here the student is flying blind in talking about attorneys' specializations, which has nothing to do with the conflicts of interest that would govern this question. This is another example of the student wishing to appear knowledgeable, followed by the ultimate decision to seek advice. After the third student-attorney consultation the student conveys this practical suggestion:

0:00 - 0:22	22	Law Student	All right. Um, my attorney, your attorney, whoever's attorney, recommends that you call Legal Aid and have them do a conflicts check. Like call them in the morning, tell them who you are and what you're doing, and have them check and, that's the best way to know, and then you'll know for sure, [okay] whether we, [//isn't//] I mean we can guess, but the best thing is just to find out.
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At this juncture the client's friend raises yet another issue -- what happens after 120 days? Is the case dismissed? Is the 120 days after the date the Petition was filed or the Answer was filed? The student characterizes this as technical stuff and promises to get the answer:

0:46 - 0:52	6	Law Student	//Here's the// here's the tricky part. Even if I know the answer, I have to go ask, because technically, [//that's//] I'm a student. So I'll be back, I'm sorry.
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In this case the student doesn't know the answer. Why does the student feel embarrassed or apologetic about getting guidance from an attorney before responding to clients?

Although this fourth consultation with an advisor is very brief, the student is able to thoroughly explain the situation to the client and her friend, and it is clear that they understand it. This is probably the best counseling by this student as she is able to be concrete:

1:14 - 1:32	18	Law Student	Okay. The answer to your question is if there's no action for 120 days after the Answer is filed, it gets, basically, it gets tossed. But you guys have a court date for the 28th, so you don't have to worry about it, because //you have a motion started.//
1:31 - 1:35	4	Client	//But that's for// that's just for the //temporary custody?//
1:35 - 1:45	10	Law Student	//The temporary custody.// But that's an action on your divorce, so it counts. Yeah. [okay] And so will all of the mediation, and I mean, any action you take. It doesn't have to be finished within //120 days.//
		

2:12 - 2:20	8	Law Student	Right. But, is any time you file a temporary order, appear in court, any of that, that resets everything. [oh] So you're not going to get dismissed.
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This is the end of the consultation, which was comprised of five different visits with the client over 15:21 minutes and four visits with three different advisors over 6:28 minutes. The client and her friend got a range of questions addressed: whether a counterclaim was filed, whether she needs representation, what is a default, what is mediation, who should pay for mediation, whether Legal Aid would have a conflict of interest in representing the client if it was representing the husband in an SSI case, and how to avoid a case being dismissed for lack of prosecution.

However, the client's primary concern -- getting her children back from her estranged husband who has withheld them from her for weeks -- was barely addressed. Once the student began to give the client general information about temporary orders, the client volunteered that she had already filed a motion for temporary orders and had a hearing date. But that was the end of the conversation. So the client is taking the correct procedural steps to get her children back. But no attorney reviewed what she had filed and the client was not given any guidance about what to argue at the hearing. In this way, the client's primary legal need and concern went basically unaddressed.

B. Domestic Violence and Visitation

The student begins by (mistakenly) reassuring the client that the protective order is valid. The client's response is to specifically question whether the visitation provision is also permanent. The student responds and then poses a further question regarding abuse suggested by the advisor. In response, the client provides her longest narrative (1:23):

0:21 - 0:23	2	Client	Including that visitation schedule?
0:23 - 0:51	28	Law Student	Including the visitation schedule until the two years is up and then he can um ask the Court to dismiss the orders [okay] so. That's Question #1 answered //that// [//perfect//] this is valid un-unless he, like and you don't even have to remind him that he can dismiss it in two years, this is valid until he asks the Court [okay] and the Court says not to. And for the kids not wanting to see the dad [Mm] Um, you said there were verbal abuse and stuff. Is there any physical abuse or anything?
0:51 - 2:14	1:23	Client	There um, they were in therapy they're not currently in therapy because I can't afford it right now, um. Theyyyy, there was one time when the therapist—my daughter, my—it's always my oldest one who was 11 at the time she's 12 now, where he got angry with her because she wouldn't talk to her dad on the phone. You know public parking lot, kicked her so hard in the behind that she fell down [right] Um. When

			<p>they got back to the house my two daughters were arguing and in order to stop them from arguing he actually physically sat on my older daughter who's asthmatic until she was hysterical and my little one had to beat him off, like knock him [right] off by punching him. So that was reported to CPS, CPS didn't come out for almost three months. I didn't bring it up to my kids again so when they came out at 7:30 in the morning they sat down with my girls and said tell me about your last visit with your dad they're like "Uhm, uhm, uhm," [right] so they dismissed that.</p> <p>Um, nothing that's documented other than like I said he literally and physically wrestled a cell phone out of her hand the other day. [right] He's very verbally um abusive with them you know and curses them out, sends them nasty text messages. But really one of the biggest issues they're having is that he's constantly telling them he's going to kill me. [right] And it's even this, in this police report he's always telling them I wish your mother was dead, if I could get away with killing her you know and not get caught. He'll post even on his Twitter [right] "If domestic violence was legal my ex-wife would be dead" and my 13-year-old who's computer savvy finds this stuff—I beg him just block all your on-line stuff. So it's more that he's just really, really verbally abusive to them.</p>
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Thus, the student now learns that the crux of the matter is that the father tells his daughters that he wants to kill their mother, and would if he could get away with it, also posting these threats on-line. The student does not take these details back to the advisor for further assessment, but conveys the already determined advice:

2:14 - 2:23	9	Law Student	Right. Um. Stuff like that um document, document everything. But um do you know how to contact the Department of Child and Family Services?
2:23 - 2:25	2	Client	I'm sure I could figure it out [okay], I could just Google it right?
2:25 - 3:12	47	Law Student	Right. Um So contact them about the abuse situation, they'll um set up a visit to, with him and the kids to see how he is [okay] and stuff and they'll um do an investigation sort of thing [okay] and then that'll go from there and, if they find that nothing's wrong and leave everything the way it is—Um, do exactly what happened last time when you took the kids to see their dad and they wouldn't get out of the car? [yeah] Uhm, he, um, call the cops again each time if the kids won't get out of the car, don't encourage 'em or discourage them. [oh no no no] Right, you have to stay completely neutral, and this has to be all the kids' choice, [yeah] uh so if they won't get out of the car He can't force them to get out of the car, call the cops they'll do exactly what they did //last time//

The student succinctly and accurately includes all the advice the student-advisor told her to convey. Despite the fact that the client's last interaction with DCFS (aka CPS) provided no remedy, the student forges forward with the advice to call them and the promise that they will "do an investigation sort of thing and that'll go from there." The student then conveys the advice to continue to "call the cops again each time if the kids won't get out of the car." The client wants further assurance about this plan:

3:11 - 3:14	3	Client	//and so this states// he cannot force them to get out of the car right?
3:14 - 3:21	7	Law Student	Well he, this doesn't say that but, he can't. Um just as the cops told you last time //they said//
3:20 - 3:22	2	Client	//Yeah they just// said we're not going to physically move them to get out of the car
3:22 - 3:39	17	Law Student	So you, when they go to visit their dad um if they won't get out, call the cops, have it documented and when you have four or five of these, come back here um show us the documentation and we'll show you where to go from there but we gotta build up some documentation [okay] to go off of.

The student concludes with the plan that the client needs to have several documented incidents of the children refusing to visit with their father, and then come back to the clinic. The student does not say (because she does not know) what the advice will be after these four or five documented incidents. The client responds by providing the history of the most recent visitation difficulty:

3:39 - 3:51	12	Client	Okay. And that's the thing—I mean—if they'll go great but like I said I finally forced, I literally physically had my dad force them to go yesterday and they came back in tears again. [right] So. Fantastic, //we'll keep up with this therapy.//
3:50 - 3:52	2	Law Student	//You don't have to force// them to get //out of the car.//
3:51 - 3:54	3	Client	//I do not.// Okay that's what I was //wondering legally//
3:53 - 3:56	3	Law Student	//But you can't// tell them <i>not</i> to get out //of the car.//
3:55 - 4:15	20	Client	//Oh yeah// absolutely. No I don't want—I mean—I'm just trying to make my life as easy as possible for their—you know, for these kids. Just status quo for them. And he, he weaves in and out. But he's upset because he's got a violation of his protective order and he's just going to do whatever he can to take control again and my kids are in the middle of it [right], and I feel like I'm ridiculously protected—I've got two orders protecting me!

The client appears relieved to learn that she need not force the children out of her car to visit with their father, but still unsettled with no permanent solution for her children. She provides more context -- that the father's actions are motivated by his having been charged with violating the protective order and he is using the children as pawns to assert control. Here the student again takes up the question the advisor had suggested -- why was there a protective order issued?

4:15 - 4:19	4	Law Student	Right. And what was this order given because of?
4:19 - 5:27	1:08	Client	This was one he had a uh in 2007, he was in my home and he physically assaulted me so um there was a bench warrant out for him from 07. In 11 he—very short version of the story—followed me home to my sister's house, blocked in my car, tried to pull me out of the window of my car [right] and then starting sending really really vicious text messages of how he was going to come back and kill me, so they actually arrested him on that and the bench warrant [right] so he has, um, so after they took him to jail for this he looked the judge in the eye and he said Yes I'm gonna kill 'er [<inhales>]. I mean just straight up he just said, you know, and literally directly they called, the officers called and said I need you to go down to the, whatever the W-19 and whatever, and go do a protective order today [right]. And then in the midst of this going on he was in court and told the judge again he was going to kill me and so then the judge issued this [okay] on my behalf. So, direct result of domestic violence on both [right]of these. He violated twice and the one that they're getting him on in is in December [right]. So he's going back to court but he's got a really good lawyer his friends are financing it so it's just a revolving door out of the, the police station. Each time he goes in, he's out before he's there for more than a few minutes.

The law student does not endeavor to take this additional disturbing information back to the advisor, but reiterates the advice to call DCFS. The client confirms that once she has collected sufficient police reports she may be able to take some affirmative action, then adds a concern about the ex-husband's mental health:

5:41 - 5:44	3	Client	Ok. So once I have several of these then we may be do something to protect //the children?//
5:44 - 5:46	2	Law Student	//Right,// uh, come back here
5:46 - 5:55	9	Client	—And you know and hopefully we don't get any more, hopefully he realizes that this is serious but I just don't see—he's spiraling down—he suffers from a mental illness that's untreated and my kids are just in the very center of it.

The client expresses gratitude to know that she need not force the children to visit, but a few turns later she again asks whether there isn't something that could be done now:

6:50 - 6:54	4	Client	And this one I have right now probably don't have enough to, to start a, stopping his visitation
6:54 - 7:01	7	Law Student	Right with just this um one piece of documentation and a protective order um but
7:01 - 7:04	3	Client	Fantastic, but we are moving in the right direction
7:04 - 7:05	1	Law Student	—We are moving in the right direction

At the end of the consultation the client returns to her primary question -- what can she to protect her children now? The client's question is posed presuming a negative answer, and the student quickly agrees that "just this one piece of documentation and a protective order" will not be enough to try to change visitation.

Throughout the counseling session this client has continued to share more and more disturbing facts including: that the children had been in therapy but are no longer due to the expense, the father kicked the older child down in a parking lot, sat on her until she "was hysterical" and her younger sister "beat him off . . . by punching him," CPS had previously been called but responded months later and the children did not tell them of the abuse, the father is "constantly" telling his children that "he's going to kill" there mother, sends them "nasty text messages" and "cusses them out," that the children were forced to go visit last week and "came back in tears," that the father is upset "because he's got a violation of his protective order," that he physically assaulted the client and blocked her car, tried to pull her out of the car window and sent her "really vicious text messages about how he was going to come back and kill" her, he told the judge twice that "Yes, I'm gonna kill her," and "suffers from a mental illness that's untreated." Why did the interviewing student not go back to an advisor with this additional information, to seek further guidance?

It is possible the law student may have the idea that she should obtain sufficient guidance from one consultation. While it is ideal for the initial interview to be thorough, when the client shares important additional facts during the counseling session, it would be the better practice for the student to check with an attorney advisor to see if these additional facts would alter the advice. It is also possible that the student, overly focused on procedural technicalities, simply does not realize the saliency of facts in determining the advice that should be conveyed. Finally, here, the forcefulness of the student advisor's initial advice that the client will need to continue to collect examples of the children's refusal to visit may have overwhelmed the student's ability to assess any additional information.

A second issue to contemplate is why the client shared these upsetting pieces of information, gradually, as the consultation progressed. Perhaps the client was saving face by not laying bare

all the disturbing details from the outset, and she was only motivated to share more as she was dissatisfied with the solution. Perhaps the client was attempting to focus on only the most recent events in order to save time in this brief advice clinic. Perhaps the client -- an apparent victim of domestic violence for an extended period of time -- did not have the confidence to present her best case at the outset and demand answers.

A related issue is why the client did not press to understand what will happened when she returns to the clinic after a few months of collecting of additional police reports. Then what will she be able to do to address the situation?

In the end the client expresses thanks that is less than well deserved.

C. Divorce, DV and Sale of Home

This student has provided extensive counseling during the “interview” segment and before checking with an attorney advisor. Within two minutes of the interview beginning the student turns to explore whether the client has a “protective order.” This was not a goal listed by the client, but an appropriate topic to explore in light of the information that she has given on the Intake form.

Over three minutes and 26 turns the law student, client and sister explore the idea of a protective order. The sister shares that there is some sort of order; the client states that the court has ordered her husband to go to counseling “through the assault that’s happened” and the order “is good for a year.” The student continues to explore whether there is a civil protective order with the client and sister talking at the same time to explain her actions and her concerns, and the law student concluding by strongly recommending the client go to Legal Aid to seek a protective order:

3	4:13 – 4:16	Law Student 1	//And he hasn’t// been ordered not to contact you or anything?
5	4:16- 4:21	Client	No. [Really?] I just told him, I did not want to // speak to// him.
5	4:18 – 4:23	Sister	//When she// // I don’t have any of the papers so I don’t know exactly what transpired there.//
13	4:22 – 4:35	Client	//He could talk to me by mail. I told him to tell my children and they could call me, [ok] but he’s been harassing and slandering my family// and stuff while I was with him, [//LS: If there//] so I’m staying with my mother. I don’t need him slandering my mom or abusing her. [ok]
1:1 4	4:35 - 5:49	Law Student 1	um, usually where there’s domestic violence, um, the um the courts will order will enter what is called a protective order. Where he’s ordered not to contact you or come close to you, not to come

			close to your residence, something like that. So it's not just you telling him, but it's the courts telling him. And if he does it, then you could call the police. Um, if this, if there isn't a protective order, and it's usually pretty clear if you look at your paperwork, it says, uh, um [. . interruption by third parties . .] Um, protective order. So it says protective order pretty clear. If you don't have one of those, then in room W17 here, they will help you fill one out. And they may help you go and talk to a judge [Hm] about it, okay? They may send a lawyer with you, um, depending on what you put in your protective order. Um, so I would very strongly recommend that you do that. Um, if there's not a protective order already in place.
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After the student's clear recommendation that the client seek a protective order, the law student and sister explore how the client might get the papers to see whether she already has one, until the client interjects that she "turned him in for abuse in July." This leads to a second student speech describing the protective order process. The client responds by asserting that she did not think a protective order was necessary, and the student (with the sister's support) encourages her to consider it:

9	7:25 – 7:34	Client	//I just // didn't feel that it was necessary because I stayed with him until October. Because we had hunting permits [Mm hm] and I didn't feel that he was that big of a threat—you know.
6	7:34 – 7:40	Law Student 1	Um, you know, I would uh, um, if it's happened before, you know, it could happen again, //it's not//
5	7:39 – 7:44	Sister	//It's been // happening her whole life. She's just been in denial. [Ok] Do you know what I mean basically?
14	7:44 – 7:58	Law Student 1	Um, go to W17. They know what to look for and if you talk with them, they'll be able to give you straight advice. Okay? [Thanks] They know more than I do, that's for sure. . . .

One might argue that the student did an excellent job of identifying this issue, encouraging this long-standing victim of domestic violence to take this situation seriously and consider getting protection, and encouraging her to go to the Legal Aid office where she would get thorough advice. However, one could also be critical of this interaction. The student relies upon his own judgment -- not advice from a lawyer -- in urging this action, and the student does not clearly explore the pros and cons or a protective order at this juncture.

After over seventeen minutes of interviewing and counseling in this vein, the law student checks with an attorney. Thereafter the final counseling session with the client is short, just over two minutes. The student begins by stating "so everything's fine" implying that all prior advice stands.

Then, in light of the attorney’s suggestion that the domestic violence may not be sufficiently recent for the Legal Aid Society to seek an *ex parte* protective order, the student interviews about this. He learns that the husband has said “he knows better than to strike” the client any more, and that the sister believes that this is “because he’s under the court’s . . . jurisdiction right now.” The student passes on the assessment that the recency of the violence may affect how the judge feels about a protective order (although the attorney opined about the likelihood of the Legal Aid Society accepting the case), but concludes with his own advice that the client will be best served by going to Legal Aid tomorrow to seek a protective order. The student concludes by reiterating his prior advice:

15	6:21 - 36	Law Student1	But everything else um stands. Um Go to the Legal Aid first and get that protective order. If Legal Aid can’t help you or it’s going to take too long, then go to OCAP. You’ll have to fill out all the stuff and bring it back here for somebody to look at it and then you’ll file it, okay?
1	6:36 - 37	Client1	Okay.
4	6:37 - 41	Law Student1	All right, [all right] well I wish you the best of luck.

Advising the client to come back in two weeks, when she needs a court hearing within the month in order to stop the threatened sale of the home, was a significant error in this independent counseling by a student. Throughout this consultation the student remained focused on the domestic violence and the client obtaining a protective order, although the client did not seek one, and provided too little advice about what steps to take to stop the sale of the marital home and obtain possession of the furnishings.

X. BETTER COUNSELING -- CHECKING FORMS FOR DIVORCE

As this student had been complete and accurate in conveying the client’s situation and questions to the attorney, the student was similarly complete and accurate in conveying the attorney’s answers to the client.

The student begins by addressing the client’s first question -- how to enforce her right to the property settlement:

30	9:25 – 10:55	Law Student	Alright so I spoke with uh Thomas, he remembers your situation a little bit, so let’s talk about the things that he mentioned. Um, and this may be some things that we might wanna jot down some notes about. [Okay] You asked about how to enforce a divorce decree, and I can’t remember whether I mentioned the idea of contempt to you or not, but there are a couple of things to do in order to get the divorce decree enforced. It is called either , well I’ll give you the name that is on the online form right now. It’s a called a Motion to
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			Enforce currently on the utcourts website. It may also be referred to as an Order to Show Cause. Those are the same thing. [Okay] . . . Essentially, an order, an Order to Show Cause or a Motion to Enforce is asking um the court to enforce the, the decree. You can all, I asked him about how contempt comes into play and he says well that is one of the things you could ask for. So your petition, your motion to the court might say, you know, 'this person needs this penalty,' but what he mentioned was that contempt by itself doesn't get you anything other than a warm fuzzy feeling about winning, so, short of some kind of order for the court, for him to fulfill the terms of the agreement or some penalty with the court with that regard, that it doesn't <i>get</i> you what you are asking for.
5	10:55 – 10:59	Client 1	Not necessarily [not necessarily], but it just, it just kind of rattles.
20	11:00 – 11:19	Law Student	Right, so um I believe that our divorce petitions down the hall have a form, sort of a blank template for this kind of form. Um I'm not certain that that's the case but he mentioned that they're on the utcourts.gov website that Professor Smith was showing everybody at the beginning.

In addressing enforcement, the student conveys the correct terms for the papers to file, and shares the lesson he got from the attorney (but the client hadn't been confused about) regarding a holding in "contempt" being less relevant than the enforcement. He also answers the client's subsidiary question that the court's website has the necessary forms.

The client then problematizes this advice by imagining both the scenario where she doesn't get paid and the scenario where she has failed to include something she wants in the decree. The student stops to clarify the difference:

21	11:20 – 11:40	Client	The reason I'm asking this is I want to make sure that everything is, done as I want it. [sure] And if I leave anything out or it's . . he just doesn't do it, how complicated is this going to be for me. [Okay] How rigid does this have to be?
1	11:41	Law Student	//Well//—
7	11:41 – 11:48	Client	//Is this// going to be like pulling teeth to get this enforced um yeah that's my concern.
20	11:48 12:07	Law Student	Right, and that, that's going to vary a lot. But you bring up two different, two important and distinct issues. One of them is, 'Gosh, I forgot something, I left something out and now the decree is in place and I want something changed.' Um that's a different situation than, 'I got everything in there that I wanted, and he is not fulfilling his part of the bargain.'
1	12:08	Client	I //understand//

3	12:08 – 12:11	Law Student	//So// what we are talking about is the second of the scenarios. //Not the first.//
11	12:11 – 12:22	Client	//Yeah and I,// the second one is. If I fail to put anything in there that's my, my mistake. My big concern is enforcement of //[inaudible].//
7	12:22 – 12:28	Law Student	//Okay, okay.// So that is the process for enforcement. . . .

Here the student is independent and effective in ensuring the client understands that the enforcement mechanisms only work if the desired provisions are in the decree.

The student segues to the second topic the client raised -- what happens if her ex faces financial difficulties:

21	12:40 – 13:01	Law Student	Now you mentioned settlement and bankruptcy . . . Um, he talked to you last time how bankruptcy can, can void the settlement. I asked him about the other question you had, what about foreclosure or some other financial settlement or setback short of bankruptcy? Those do not void the settlement, so anything there, he would still be liable for whatever agreement is put in place with the settlement.
1	13:01– 13:02	Client	Good, good to know.
13	13:02– 13:14	Law Student	Now he would have to obviously work around that and pragmatically speaking, that may throw a wrench in the things but legally, that's that's his concern. He would still be subject to the decree.
1	13:15	Client	Okay

The client believed that the attorney had told her he was unsure if bankruptcy could void the settlement, although the attorney believed he had told her it would. Here the student repeats that the attorney had told her “bankruptcy can void the settlement.” Although the student doesn't remind the client of her prior confusion and emphasize that he is correcting it, one may hope that the client now understands. The student then clarifies that no other financial downturn would affect the ex's legal obligation to pay her the settlement.

The student turns to the client's fourth topic (which the student had prioritized in speaking with the attorney) -- how the process works. The student follows closely the ways in which the attorney explained the process, emphasizing the name of the form to sign if she agrees -- Acceptance, Consent and Waiver -- and explaining what each of the words references. The student similarly copies the attorney in describing two scenarios -- you agree with everything or you don't -- and emphasizing not to sign the form unless the client, indeed, does agree with everything.

40	13:16 - 13:55	Law Student	Um, The process for uncontested divorce, so what will happen is that you're filling these papers out, he is going to give them to his attorney, his attorney will create the petition for divorce that is going to go to the court. Now as I mentioned before, he reiterated that you must make sure everything in that form is exactly what you want. Because um that's final. So, if there is anything that you disagree with, you have got to catch it then. So he recommended as you talked about before, getting an attorney to look over that with you. He said at the very least bring it back to the clinic here.
2	13:56 - 13:58	Client 1	And I have 20 days to respond //[right] right?//
1:24	13:58 - 15:22	Law Student	//Right.// So um they're probably going to have you look over that before they file it actually. So [oh!] so let's talk about two different scenarios. One scenario is they get the documents back to you, you look over those with an attorney and you do, uh you actually agree to everything in there. So you and your husband, it truly is uncontested. Then in that case, then what you are going to need to file, what you'll be filing along with the petition that he files, is called an Acceptance, Consent & Waiver. So let's jot that down in your notes here. So scenario one is truly uncontested, the forms that the, his firm creates are exactly what you've agreed to on this paperwork here. It's called Acceptance, Consent & Waiver form. So, what that means is you're accepting service which is part of this, the process that's required of him with regard to to filing these documents. You're, um so acceptance has to do with service, consent has to do with the terms of the actual petition that is going to come from this—[okay] Then waiver has to do with um you're waiving further notice which wouldn't be relevant if every, if //um //
2	15:22 - 15:23	Client	//Signed,// sealed and delivered.
1	15:24	Law Student	//Exactly.//
1	15:24	Client	Right.
14	15:25- 16:38	Law Student	Okay so this form is a form that will be turned in at the same time as the divorce petition—that means this won't need to happen, this won't be happening and so on. Everything is just as it is in your form. So that is scenario A, that is the best case scenario if you two agree to everything. Now, if for, on the other hand, um you go through this process, his attorney comes up with these forms and you don't agree, so you take the forms to your attorney, you don't agree with those provisions, then it's a contested divorce and then you'd be going through this process. So you would say, 'No I don't agree with those provisions,' either they

			would need to fix them and then it would be an uncontested divorce. Or if they don't fix them then they would ultimately file this petition regardless of your opinion and then they would serve you, you would have the 20 days to answer. So the bottom line is you have, you can't underscore enough how important it is for you to make sure you truly agree with everything that is in the petition once they write that up. Okay? If you do, this Acceptance, Consent & Waiver form will be filed along with the petition. If not then it's a contested situation, you will be following this process to that you have here.
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The student turns to the client's third question about insurance beneficiaries. He first interviews about the status of any agreement the parties have reached on that point and then shares all the information gleaned from the attorney:

9	16:58 – 17:06	Law Student	Okay. Um you asked about your daughter being um the //sole beneficiary for his life insurance policy//
1	17:05 - 17:06	Client 1	//Sole beneficiary.//
2	17:06 - 17:08	Law Student	Have you spoken to him at all about that yet?
2	17:08 – 17:09	Client 1	To my husband? [Uh-huh] No.
43	17:10- 17:52	Law Student	Ok. What Thomas mentioned was that can the two of you include that provision? Absolutely. The two of you can include any provision you want, and anything that the two of you have agreed to, the divorce or the court is happy to include that in the decree. So you and he agree, the court's fine with whatever it is you are agreeing to. Now he did mention that um, that generally those kinds of provisions are included for people only until the child comes of age, so only while they're a minor. But if you and your husband both agree to that provision um, it's, you certainly have the right to include that [okay] in your petition if you'd like to.
1	17:53	Client 1	Okay, good to know.

Last the student takes up the final question they had identified about whether she needing to write values for all the property on the forms, explaining that the court documents “don't have those values” and they are “for the benefit of perhaps the parties and the firm.”

The student then confirms that they have covered all the questions the client had, and asks if there are any other questions. He also invites the client to return to the clinic with the final documents once she receives them.

The counseling here was successful because the interviewing and attorney consultation were successful. The student accurately conveyed all the answers to the client, possibly correcting a

misunderstanding she had about bankruptcy. The student independently and appropriately informed the client about unbundled legal services so she could obtain a review of the final documents. While the case was low-risk and uncomplicated, it appears to have been well handled in this brief advice clinic.

XI. CONCLUSION

These four consultations were selected for analysis because they presented an illustrative range of cases that were presented to the brief advice Clinic and a range of effectiveness in students interviewing and counseling clients and in attorneys supervising and instructing them. We can learn much from both the successes and failures in these consultations.

The most successful consultation -- both by the student and by the attorney supervisor -- was the "Checking Forms for Divorce" case. The initial interview was thorough and organized. The client was permitted to give a narrative and to pose questions she wanted answered. The student carefully noted down the questions and the factual context. The student then faithfully conveyed both the clients' questions and the relevant factual situation to the attorney supervisor. The attorney answered each question in turn, both explaining the law and procedure to the student and modeling how the student might counsel the client. The attorney used the facts conveyed (e.g. the son was 22) to personalize the advice for the client (e.g. the parties can agree to life insurance with the son, but that is typically done for minor children). The student accurately and comprehensively passed on the advice to the client, often using the same words the lawyer had given him. While this client's circumstance was not an emergency in any way, the client was able to raise five separate questions and obtain advice and direction about each of them. The one critique that could be levied against this consultation is that neither the student nor the lawyer sought to assess and advise about the nature of the settlement the client had agreed to. However, because this was a second visit to the clinic, it may be that the prior consultation covered what a fair alimony or property order would be in her situation.

The other three consultations had identifiable weaknesses. What similarities exist among them and how can we learn from our mistakes?

Interviewing -- Listen Up and Focus on Facts: In all three cases the student did not interview sufficiently about the client's factual situation to provide optimal personalized legal advice. The students were often caught up in figuring out court documents or procedural facts -- which may have seemed more important or more challenging to the law students than the "lived" facts of the clients' lives -- and did not pursue facts about the client's situation. In the "Husband Won't Return the Children" case the student did not inquire about any facts that would be relevant to a custody dispute and even forgot the client's situation when consulting with the attorney. She did not ask what happened after the husband refused to return the children and thus did not learn that the client had already filed a motion for temporary orders. In the "DV and Visitation" case the student heard and remembered the facts the client shared at the outset, but did not ask for the client to conclude her narrative and did not ask for any further detail. During the

counseling session, this client shared many additional relevant, troubling facts, but these were never taken back to the advisor and thus were not considered in fashioning the advice for the client. In the “Divorce, DV and Sale of Home” case the student’s prompt segue to giving advice and his focus on his desire for the client to obtain a protective order took precedence over the client’s concern that her husband would sell the marital home, she would be unable to obtain it in the divorce, and she would lose all her furnishing and possessions. The student never interviewed about the parties’ financial circumstances to advise about whether she could be entitled to alimony and able to keep the home, and totally forgot about the husband’s threat that she needed to remove any furniture she wanted within 30 days. In all three cases the initial interview would be improved if the student would solicit a narrative, ensure the client’s narrative had been brought up-to-date, ask relevant follow-up questions, and make note of the facts the client conveys.

Interviewing -- Identify All the Questions/Issues: Client who come to this brief advice clinic often have more than one legal issue or question.²⁹ One strength of the best interview was that the student asked the client to tell him all her questions during the interview phase of the consultations, and she did. However, in the other cases this did not occur. In the “Husband Won’t Return the Children” case, the client and her friend raised new questions during the counseling phase and as a result there were five separate consultations with the client and four with a supervisor. In most instances the student went to get further guidance from an attorney when a new question was raised, but on a few occasions the student simply made up her own answer (costs of mediation will be evenly split). It is ideal if all of the client’s legal questions or issues can be identified during the interviewing session and then conveyed to one attorney advisor. In this way, the attorney can help the student prioritize what is most important for the client to understand.

Social science studies of medical interviewing show that patients often raise additional concerns late in the consultation.³⁰ Doctors are advised to use general open questions and attentive listening,³¹ and to ask if the patient has “*some* other concerns” early in the consultation to surface all the issues promptly.³²

Interviewing -- Overwhelmed about Process: In all three weaker cases the students seemed to spend an inordinate time exploring procedural questions -- poring over the protective order to see how long it lasted, poring over the Answer to see if there was a Counterclaim, interviewing

²⁹ Stratford & Smith, *DIY*, *supra* note 1 at 189.

³⁰ JONATHAN SILVERMAN, SUZANNE KURTZ & JULIET DRAPER, *SKILLS FOR COMMUNICATING WITH PATIENTS*, 35, 43, 47 (3rd ed. 2013).

³¹ *Id.* at 45, 51.

³² *Id.* at 53. “Some” has a positive polarity (suggesting the answer should be “yes”) while “any” has a negative polarity (suggesting the patient should deny other concerns.) John Heritage and Jeffrey D. Robinson, ‘*Some*’ versus ‘*Any*’ Medical Issues: Encouraging Patients to Reveal Their Unmet Concerns in APPLIED CONVERSATION ANALYSIS: INTERVENTION AND CHANGE IN INSTITUTIONAL TALK 15 (Charles Antaki ed., 2011).

about whether the opposing party had an attorney, interviewing to try to figure out what sort of order the client had if it was *not* a protective order, exploring ways to discover whose name was on the title and whether a protective order had been issued. While some of these procedural questions deserved answers, it would have been more efficient and effective to have taken the questions and documents to the consulting attorney who would have more familiarity with them and could have promptly addressed the questions.

Consultation with Advisor: In the three weaker consultations, the students did not share sufficient factual information with the advisors. One student utterly forgot that the client's husband had "taken the children and won't give them back," sharing only that an Answer had been filed and the client wanted to know what to do next. She stated "Legal Aid" represented the opposing party in "another case" rather than in "an SSI case," leading to unnecessary confusion about a conflict of interest. Once she learned that the client had already filed a motion for temporary orders, she did not return to get advice about what the client should argue. In the "DV and Visitation" case the student watered down much of the client's account about the children and visitation. After learning additional disturbing details during counseling, the student did not return for further guidance from an attorney. In the "Divorce, DV and Sale of Home" case the student never shared that the client wanted to keep the home (as opposed to get her equity from the home) and was concerned about her getting her furnishings (instead stating that all the other matters had been resolved.) Where the student interviewers left out important facts about the client's circumstances or goals, it was impossible for the attorneys' advice to be maximally helpful. All these consultations would have been improved had the interviewing student taken notes and brought both the Intake Form and any documents for the attorney to review.

However, the advisors also contributed to this less than optimal situation. One advisor lectured extensively on all the topics to raise with a divorcing client, from counterclaims to temporary orders to mediation to pros and cons of representation. This was both too much and too little. The advisor did not model what the student should *say* about these topics (e.g. mediation) so the student's advice was not informative (mediation in "unfortunately" required and prevents "wierdnesses" and a "big expensive mess" in court). At the same time, because the advisor did not know the client had filed a motion for temporary orders or that the husband was keeping the children from the client, the advisor did not provide advice about what the client should argue at the hearing. It would have been better for this advisor to prompt the student to share more about the client's situation, even if it meant having the student go back to conduct a more thorough interview. In the "DV and Visitation" case the student advisor asked good questions -- why are the kids afraid of their dad? Is there abuse? -- but did not get the answers to those questions before ordaining what the advice would be. The attorney in the "Divorce, DV and Sale of Home" case allowed the student to interrupt and redirect the consultation to the protective order issue and did not insist that all the steps for stopping the sale of the home be laid out -- file and serve the divorce, file and serve a motion to temporary orders, and get a hearing date before the date of the threatened sale.

The attorney advisors should ensure a deliberative process. They should insist that the student interviewer learn sufficient factual information about the client's situation so that the advice can be personalized, rather than providing the student with a range of possible things to say depending on the facts. The attorneys should both explain the law or process and model what to say about it to the client.

Counseling: Most of the weaknesses in the counseling flowed directly from insufficient collection of factual information and insufficient sharing of factual information with the advisor. Beyond that, some students were ill-prepared to convey precise advice (e.g. the purpose of mediation). At other times the student counselors stayed quite true to the content of the information the advisor had suggested they convey.

The Drive to Advise: The one commonality amongst all four consultations was the students' consistent and persistent desire to begin advising the client, and disinclination to consult an advisor. This was most notable with the "Divorce, DV and Sale of Home" where the student independently interviewed and counselled for over 17 minutes before checking with an attorney to confirm that his advice had been well founded. The "DV and Visitation" student provided one minor opinion during the interview segment (client should "definitely show them" divorce decree saying children should not be left alone with husband's own parents) and never followed up on that topic with an attorney. The "Spouse won't Return the Children" case had four separate advice sessions, but often the student first guessed at the answer (the respondent's statement seeking sole custody "is not supposed to be in there [the Answer]"; the judge will not make the client pay for mediation; "the general rule with attorneys is they're pretty practice specific" in answer to the conflicts question; regarding having the divorce dismissed after 120 days--"Here's the tricky part. Even if I know the answer I have to go ask, because technically, I'm a student.") Even the "Checking Forms for Divorce" student began providing information and answers to the client during the interview before, each time, stopping himself and committing to get the question answered completely by the attorney ("talk to the court and get them to seek enforce through the court system" at 3:00-3:33; process for filing, serving, answer in contested divorce 10:13-11:18; hiring an attorney for "unbundled" legal services.) Here one can compare the student's initial stab at an answer with the ultimate answer and see that having consulted the attorney resulted in a clearer, more focused answer. Accordingly, it would be wise to encourage law students to focus on conducting a thorough interview without any advice- or information-giving, then strategize with the attorney about the way to explain the situation to the client, and then counsel the client. This should provide the most efficient, effective and accurate advice to the client.

It is possible that the students' drive to advise springs from a need or desire to appear knowledgeable. If so, one might hope that the prospect of actually doing a better job after a consultation with an attorney might allow them to overcome whatever feelings drive them to begin advising during the interview.

It is also possible that the drive to advise is an occupational hazard of attorneys. In the study of four attorney-client conferences, three of the four attorneys began advising before

interviewing sufficiently about the matter.³³ In one case, the attorney's advice was not well founded once the client had revealed all the facts. In these three cases the attorneys' failure to fully interview the client resulted in the clients interjecting disjointed narratives throughout the consultation. Accordingly, the discipline of conducting a thorough interview before turning to provide well-thought-out and organized advice would be a good habit for the students to acquire.

Clients: Clients are the one factor that cannot be controlled. Conversation Analysis teaches that each party to a conversation shares in structuring and controlling the conversation.³⁴ In this Clinic, clients are also given an opportunity to complete an Intake Form. Some clients choose to reveal significant facts about themselves on that form; others do not.³⁵ Once speaking with a legal advisor, most want to tell their narratives and present themselves in a positive light. Yet in each of the challenging cases the client's narrative was not as complete or detailed as it might have been ("DV and Visitation" client did not tell of the most recent visitation problem, "Husband won't Give Back Children" client did not mention filing a motion for temporary custody, "Divorce, DV and Sale of Home" client did not mention furniture or that she wanted to live in home until late in the interview). Perhaps clients at a brief advice clinic provide truncated accounts, thinking that to do more would be an unnecessary imposition. However, once the student began counseling, these clients all added important details.³⁶ This dynamic underscores the importance of the student interviewers urging the clients to complete a time line and to ask follow-up questions during the interview segment. It also suggests that sometimes the student engaged in counseling will need to check back in with an attorney advisor a second time, to ensure that new, important facts are taken into account in the advice or that when new questions are raised they, too, get the attorney's attention.

Brief Advice Clinics: Law students can serve a useful role in a brief advice clinic. However, their involvement will be maximally beneficial if they are instructed in the interviewing and counseling techniques that this study demonstrates will be useful.

³³ Smith, *Firehose supra* note 3 at 133.

³⁴ "Taking turns to talk is fundamental to conversation. . . [and] is locally managed, party-administered, interactionally controlled, and sensitive to recipient design." Harvey Sacks, Emanuel Schegloff & Gail Jefferson, *A Simplest Systematics for the Organization of Turn-Taking for Conversation*, 50 LANGUAGE No. 4, at 696 (1974).

³⁵ The clients interviewed by attorneys similarly sometimes varied in the degree to which they would share relevant factual information on the Intake Form. See Smith, *Firehose, supra* note 3 at 87.

³⁶ The clients interviewed by attorneys were not invited to give a narrative, but endeavored to slip in their accounts during the attorney's counseling. Only the client who was thoroughly interviewed before counseling did not resort to this approach. See Smith, *Firehose, supra* note 3 at 133-34.

Appendix

For 33 student-client consultations for which complete data is available	Student Shortest	Student Longest	Student Median
Time for initial interview of client	2:00	43:00	9:30
Time consulting with supervising attorney	2:00	17:00	6:00
Time for follow-up with client (counseling, further interviewing) -- 10 involved more than one follow-up	2:00	63:00	8:00
Total client conference time	8:00	1:43:00	21:00
Total time expended	10:00	2:00:00	25:00

For 4 student consultations subject of this study	A*	B**	C***	D****	Median for all students
Time of initial interview of client	3:58	8:30	17:46	18:00	9:30
Time consulting with supervising attorney	6:28	7:31	4:30	9:16	6:00
Time of follow-up(s) with client	11:29	7:11	2:06	8:40	8:00
Total client conference time	15:21	15:31	19:52	26:40	21:00
Total time expended	21:49	23:07	24:22	35:56	25:00

*Husband Won't Return the Children. This student consulted with the attorney and returned to the client for follow-up advice four times. The initial interview portion includes only the first part of the conversation and the follow-up sessions include further interviewing.

**DV and Visitation

*** Divorce, DV & Sale of Home. This student began to provide information and advice during the "interview" portion of the consultation, and then confirmed this advice with the attorney. Accordingly, the interview period is longer than average and the counseling period much shorter.

**** Review Some Papers -- best consultation

	A	B	C	D
Total Time of consultation with Client (interview & counseling)	15:21	15:31	19:52	26:40
Time client (client team) talked	7:10	8:46	5:51	10:03
Time student talked	8:39	7:18	14:20	16:57
% Client (client team) controlled floor	45%	55%	29%	37%
% Student controlled floor	55%	45%	71%	63%
Turns by Client (Client Team) *	99	50	82	58
Turns by Student(s) Team	80	49	71	57

Frequency of turn changes - every x sec.	0:07	0:14	0:10	0:19
Longest speech by Client	0:52	1:23	0:25	1:45
Longest Speech by Student	0:47	0:28	1:52	1:24
Number of overlaps	44	20	45	23
Frequency of overlaps -- every x seconds	21	47	26.5	70
Frequency of overlaps -- % of turns	25%	20%	29%	22%

Time with Attorney Advisor / TOTAL	6:28	7:26	4:30	9:16
Percent of total time Student with Advisor	30%	32%	17%	26%
Percent of total time Student with Client	70%	68%	83%	74%
Time Student talking	2:20	2:51	2:15	4:03
Time Attorney talking	4:41	4:46	2:16	5:19
% Student talking	64%	64%	50%	44 %
% Attorney talking	36%	38%	50%	57%

2 Consultations with one "interview" and one "counseling" segment	B	D (best)
Time of initial "interview" portion	8:30	18:00
Time client talked	4:31	8:49
Time student talked	4:05	9:33
% Client controlled floor	53%	49%
% Student controlled floor	47%	51%
Turns by Client	28	37
Turns by Student(s)	28	37
Longest speech by Client	1:06	1:45
Longest Speech by Student	0:45	1:07
Average Speech / turn changes every x sec	0:09	0:15
Overlapping talk by Client	9	6
Overlapping talk by Student of client team	3	7
Frequency of overlap -- every X seconds	43 sec	83 sec
Frequency of overlap - % of turns	21%	18%

Time of “counseling” portion	7:11	8:40
Time client talked	4:15	1:13
Time student talked	3:13	7:24
% Client controlled floor	59%*	14%
% Student controlled floor	45%	86%
Turns by Client	22	21
Turns by Student(s)	21	20
Longest speech by Client	1:23	0:11
Longest Speech by Student	0:28	1:24
Turn changes every x seconds	0:10	0:13
Overlapping talk by Client	5	5
Overlapping talk by Student of client team	3	5
Frequency of overlap -- every X seconds	54 sec	52 sec
Frequency of overlap -- % of turns	19%	24%

*Totals may exceed 100% due to overlaps.