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### Professional Identity Formation Through Pro Bono Revealed Through Conversation Analysis

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Linda F. Smith

*S.J. Quinney College of Law, University of Utah*

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# PROFESSIONAL IDENTITY FORMATION THROUGH PRO BONO REVEALED THROUGH CONVERSATION ANALYSIS

LINDA F. SMITH\*

## ABSTRACT

Law school is supposed to teach legal analysis and lawyering skills as well as mold law students' professional identities. Pro bono work provides an opportunity for law students to use their legal knowledge and skills and to develop their identities as emerging legal professionals. As important as both pro bono work and identity formation are, there has been very little research regarding how pro bono contributes to students' identity formation. This Article utilizes a data set of over forty student-client consultations at a pro bono brief advice project that have been recorded and transcribed. It uses conversation analysis to study the approaches students take in presenting themselves to clients. These students are volunteers, supervised by pro bono attorneys, and are not enrolled in a clinic or class designed to teach lawyering skills or to explore professional ethics. As a result, their presentations of themselves are largely untutored portraits. The Article mines this rich data set to understand not only the inclinations of the students but also how law schools might best guide and assist students to reflect upon and develop their professional identities in the context of their volunteering.

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## INTRODUCTION

Legal education should encompass not only how to think like a lawyer, but how to act like a lawyer and how to be a lawyer—analysis, skills, and professional identity. To advance the cause of identity formation, many law schools promote and even require pro bono work. However, there has been little scholarly study of how pro bono work helps the student form a healthy professional identity. This Article begins to fill that void.

The Article begins with a review of the literature about the need for professional identity formation as an integral part of legal education. It references recommendations that clinical legal education as well as pro bono work can contribute to law students' evolving professionalism and references the social science surveying that has been undertaken to see what effect pro bono work has had on law graduates' professionalism.

Next, the Article turns to explain how language science can provide a new window to study students' professional identity formation through pro bono work. This section reviews various ways in which language science has been used to study legal practice, especially in the courts, where recordings and transcripts of recordings are widespread. It explains that language science has been used extensively to study doctor-patient conversations, but very little to study attorney-client or law student-client conversations. It introduces Conversation Analysis as a dominant approach to studying social interaction and explains how Applied Conversation Analysis can shed light on law students' professional identity formation as the students interact with clients in a pro bono brief advice project.

Using Conversation Analysis, the Article considers transcripts of forty-six law student-client consultations to explore the professionalism that the students display. In their introductions, students are both self-effacing and self-promoting. They are self-effacing in explaining their identities as law students, not allowed to give legal advice. They are self-promoting in expressing their control over the interview, *vis-a-vis* the client. They are more self-focused than client-centered. Not infrequently, students err in describing the nature of the attorney-client relationship. During the interviews and counseling sessions, few students express empathy or engage in active listening, though clients express appreciation to the few who do. Some students use colloquial language, perhaps because of uncertainty about the process they are describing or discomfort in their professional role.

The next section takes these conclusions about the professional identities the students present and contextualizes them in light of the literature about identity formation. Finally, the Article recommends strategies to improve the educational value of this pro bono work for the students' identity formation and for the clients' experiences. It argues that such a pro bono program will be enhanced by an instructional component that prepares students for interviewing and counseling the clients and supports their reflection about their experiences. While engaging in pro bono work itself no doubt makes a statement about the students' commitment to service, providing such mentoring support may be necessary to guarantee that it enhances the students' professional identity formation.

## I. PROFESSIONAL IDENTITY FORMATION AND THE POSSIBILITIES OF PRO BONO

The Carnegie Foundation for the Advancement of Teaching has mounted a comparative study of the way professionals are educated.<sup>1</sup> Regarding legal education, the authors identify three apprenticeships focused on the “different emphases of legal analysis, training for practice, and development of professional identity.”<sup>2</sup> The third element is “sometimes described as professionalism, social responsibility, or ethics, [and] draws to the foreground the purposes of the profession and the formation of the identity of lawyers guided by those purposes.”<sup>3</sup> The Carnegie Report found that “in most law schools, the apprenticeship of professionalism and purpose is subordinated to the cognitive, academic apprenticeship.”<sup>4</sup> The Carnegie Report argues: “However, if law schools would take the ethical-social apprenticeship seriously, they could have a significant and lasting impact on many aspects of their students’ professionalism.”<sup>5</sup>

Professor Neil Hamilton, Founding Director of the Holloran Center for Ethical Leadership in the Professions, has published extensively about the formation of a professional identity within the professions.<sup>6</sup> He has urged law schools to carefully

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<sup>1</sup> WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 15 (2007) [hereinafter CARNEGIE REPORT]. This is one of five such reports, which cover educating doctors, nurses, engineers and the clergy. See PATRICIA BENNER ET AL., EDUCATING NURSES: A CALL FOR RADICAL TRANSFORMATION (2009); MOLLY COOKE ET AL., EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY (2010); CHARLES R. FOSTER ET AL., EDUCATING CLERGY: TEACHING PRACTICES AND PASTORAL IMAGINATION (2005); SHERI D. SHEPPARD ET AL., EDUCATING ENGINEERS: DESIGNING FOR THE FUTURE OF THE FIELD (2008).

<sup>2</sup> CARNEGIE REPORT, *supra* note 1, at 13. These three apprenticeships are also used as an analytical structure in the other five reports relating to education of doctors, nurses, engineers and the clergy. See *Carnegie Foundation Archive: Professional and Graduate Education*, CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, <http://archive.carnegiefoundation.org/previous-work/professional-graduate-education.html> (last visited June 18, 2019).

<sup>3</sup> CARNEGIE REPORT, *supra* note 1, at 14.

<sup>4</sup> *Id.* at 133.

<sup>5</sup> *Id.*

<sup>6</sup> See Neil Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 470 (2008); Neil Hamilton, *Foreword: The Formation of an Ethical Professional Identity in the Peer-Review Professions*, 5 U. ST. THOMAS L. J. 361 (2008); Neil Hamilton, *Foreword: The Next Steps of a Formation-of-Student-Professional Identity Social Movement: Building Bridges Among the Three Key Stakeholders—Faculty and Staff, Students, and Legal Employers and Clients*, 14 U. ST. THOMAS. L.J. 285 (2018); Neil Hamilton, *Fostering Professional Formation (Professionalism): Lessons from the Carnegie Foundation’s Five Studies on Educating Professionals*, 45 CREIGHTON L. REV. 763 (2011); Neil Hamilton, *Internalizing a Fiduciary Mindset to Put the Client First*, 24 ABA PROF. LAW. 8 (2018); Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137 (2011); Neil Hamilton, *Professional-Identity/Professional-Formation/Professionalism Learning Outcomes: What Can We Learn About Assessment from Medical Education*, 14 U. ST. THOMAS L.J. 357 (2018); Neil Hamilton & Jerome M. Organ, *Thirty Reflection Questions to Help Each*

include the “third apprenticeship” of “professional formation” as they define the educational objectives or learning outcomes for their students.<sup>7</sup> He makes the point that empirical evidence shows adults develop moral capacities over their lifetimes and that “education significantly affects a student’s moral reasoning . . . .”<sup>8</sup> He argues that “[t]o foster students’ professional formation effectively, professional schools should design and implement curriculum and pedagogies that address the specific elements of professional formation.”<sup>9</sup>

Noting that legal scholars heretofore had been unable to “agree on a widely-accepted, clear and succinct definition of ‘professionalism,’”<sup>10</sup> Professor Hamilton proposes five essential elements comprising professionalism, based on a distillation of ethics rules and national reports.<sup>11</sup> These five elements include (1) continuing to grow in personal conscience, (2) agreeing to comply with ethical duties and rules, (3) striving to realize the highest values of the profession, (4) agreeing to hold other lawyers accountable for their duties under the ethical rules, and (5) agreeing “to act as a fiduciary, where his or her self-interest is over-balanced by devotion to serving the client and the public good in the profession’s area of responsibility: justice.”<sup>12</sup> It is this fifth element of professionalism that is most relevant for students engaged in clinical or pro bono work.

Clinical legal education has typically included a focus on the development of this professional identity in addition to the acquisition of the necessary lawyering skills:

Lawyering is, whatever else, a very personal experience. Sometime in the course of practice we “become” lawyers, in that complex sense in which what we do becomes a part of who we are. The transition is not always a smooth or unemotional one.<sup>13</sup>

The Best Practices of Legal Education book sets forth the acquisition of professional skills and “professionalism” as twin goals of legal education.<sup>14</sup> Bryant, Milstein, and Shalleck list “[d]evelop[ing] a [p]rofessional [i]dentity and [p]ractice with [p]urpose” as “[g]oal [o]ne” of clinical legal education.<sup>15</sup>

The Learning from Practice text argues that “formation of professional identity” will happen during law school “whether or not you are conscious of it. Your goal

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*Student Find Meaningful Employment and Develop an Integrated Professional Identity (Professional Formation)*, 83 TENN. L. REV. 843 (2016).

<sup>7</sup> Hamilton, *Fostering Professional Formation (Professionalism)*, *supra* note 6, at 772–74.

<sup>8</sup> *Id.* at 766.

<sup>9</sup> *Id.* at 781.

<sup>10</sup> Hamilton, *Assessing Professionalism*, *supra* note 6, at 480.

<sup>11</sup> *Id.* at 482–83.

<sup>12</sup> *Id.*

<sup>13</sup> GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY 2* (1978). This canonical text includes the “skills dimension” and the “ethical dimension” of each task a lawyer undertakes.

<sup>14</sup> *See generally* ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

<sup>15</sup> SUSAN BRYANT ET AL., *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 14 (2014).

should be to make the transformative process a conscious one. . . .”<sup>16</sup> The Carnegie Report agrees: “[C]linics can be key settings in which students learn to integrate not only knowledge and skill but the cognitive, practical, and ethical-social facets of lawyering as well.”<sup>17</sup>

However, what of pro bono programs unanchored to the clinical curriculum? The Carnegie Report suggests pro bono could play a valuable role in professional identity formation: “Law schools hold another potential for strengthening students’ development as moral, as well as legal, reasoners and actors: the legal services provided free pro bono publico. . . . [L]egal work for clients who cannot afford legal services is a vivid enactment of law’s professional identity.”<sup>18</sup>

Today, all law schools are required to provide non-credit, pro bono opportunities for their students.<sup>19</sup> The addition of this requirement was largely due to the efforts of Professor Deborah Rhode, then president of the American Association of Law Schools, and to the work of the AALS Commission on Pro Bono and Public Service Opportunities.<sup>20</sup> Professor Rhode explained that this requirement envisioned that pro bono work during law school would help to mold law students’ professional identities by encouraging future pro bono service for the poor and understanding the need for social change.<sup>21</sup>

At least thirty-nine (39) law schools require pro bono work for graduation.<sup>22</sup> The ABA asserts that the benefits of pro bono programs are to “help students develop professionalism and an understanding of a lawyer’s responsibility to the

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<sup>16</sup> DAISY HURST FLOYD & TIMOTHY W. FLOYD, *Professional Identity and Formation, in LEARNING FROM PRACTICE: A TEXT FOR EXPERIENTIAL LEGAL EDUCATION* 686 (Wortham et al. eds., 3d ed. 2016); see also DAISY HURST FLOYD, *The Authentic Lawyer: Merging the Personal and the Professional, in ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER* 20 (Paul A. Haskins ed., 2013).

<sup>17</sup> CARNEGIE REPORT, *supra* note 1, at 160.

<sup>18</sup> *Id.* at 138.

<sup>19</sup> AMERICAN BAR ASSOCIATION, STANDARDS AND RULE OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS §303(b)(2) (2018–2019) [hereinafter ABA STANDARDS]. Standard 303 provides in part: “(b) A law school shall provide substantial opportunities to students for: . . . (2) student participation in pro bono legal services, including law-related public service activities.” Interpretation 303-3 provides in part: “Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school’s overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

<sup>20</sup> Linda F. Smith, *Fostering Justice Throughout the Curriculum*, 18 GEO. J. ON POVERTY L. & POL’Y, 427, 445–46 (2011).

<sup>21</sup> ASS’N AM. LAW SCHS., COMM’N ON PRO BONO AND PUBLIC SERV. OPPORTUNITY IN LAW SCH., LEARNING TO SERVE: THE FINDINGS AND PROPOSALS OF THE AALS COMMISSION ON PRO BONO AND PUBLIC SERVICE OPPORTUNITIES IN LAW SCHOOLS 357, 359–60, 363 (Oct. 1999).

<sup>22</sup> *A Guide and Explanation to Pro Bono Services*, AM. BAR ASS’N (July 26, 2018), [https://www.americanbar.org/groups/legal\\_education/resources/pro\\_bono/](https://www.americanbar.org/groups/legal_education/resources/pro_bono/).



community.”<sup>23</sup> In addition, sixty-four (64) law schools have adopted learning outcomes that include a commitment to pro bono service.<sup>24</sup>

The ABA Center for Pro Bono describes the range of pro bono programs available to law students:

Here are the most common ways students perform pro bono work:

1. *Staffing advice and referral clinics*
2. Targeted direct services in appropriate practice areas
3. Creating and distributing know your rights brochures/pamphlets
4. Conducting know your rights presentations in the community
5. *Staffing legal helplines*
6. *Assisting with client intake*
7. Creating pro se materials & *conducting pro se clinics*
8. Providing language translation services
9. Oral translation for clients
10. Written translation of vital forms/documents
11. Research, research, & more research
12. One-to-one attorney match.<sup>25</sup>

Note that four of the different ideas (italicized above) involve students helping with interviewing or with brief advice clinics.

Given the importance of identity formation and the increasing focus on pro bono work as a way to help form students’ identities as persons devoted to serving the neediest, it should be useful to study how pro bono involvement relates to law student identity formation. While a few surveys have been conducted to address possible correlation between pro bono work during law school and pro bono commitment after graduation,<sup>26</sup> no other study has looked directly at the way in which students engage in pro bono work and how that might reveal their forming professional identities.

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<sup>23</sup> *Id.*

<sup>24</sup> See *Learning Outcomes 302(c) and (d)*, UNIV. OF SAINT THOMAS, <https://www.stthomas.edu/hollorancenter/resourcesforlegaleducators/learningoutcomesdatabase/learningoutcomes302c/> (last visited Nov. 12, 2019).

<sup>25</sup> AM. BAR ASS’N CTR. FOR PRO BONO, EVERYTHING YOU WANTED TO KNOW ABOUT LAW SCHOOL PRO BONO BUT WERE AFRAID TO ASK..., at 6 (Feb 2010), [https://www.americanbar.org/content/dam/aba/images/probono\\_public\\_service/ts/everything\\_you\\_always\\_wanted\\_to\\_know.pdf](https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/everything_you_always_wanted_to_know.pdf) (emphasis added).

<sup>26</sup> See Robert Granfield & Philip Veliz, *Good Lawyering and Lawyering for the Good*, in PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF *PRO BONO* IN THE LEGAL PROFESSION 53, 67–68 (Robert Granfield & Lynn Mather eds., 2009) (students appreciated developing professional skills, making contacts and learning how the legal system worked, but the majority did not see the work as intrinsically beneficial for advancing social justice or understanding the needs of the poor); Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers*, 41 LAW & SOC’Y REV. 113, 131 (2007) (pro bono requirement increased respect for pro bono, but not the likelihood students would engage in pro bono after graduation); DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE, 156–59, 165 (2005) (a positive experience with public interest work may increase graduates’ desire for ongoing involvement and their understanding of pro bono service as a professional obligation; but unrewarding experiences had a negative impact); Deborah A.

## II. LAW & LANGUAGE SCIENCE

Before introducing the protocols of this study, it will be useful to provide some background about the rich possibilities of using language science to study the practice of law and the ways lawyers present themselves, the law, and the legal process to the public.

In the 1950s, philosophers of language wrote regarding the ways in which language acquires meaning as it is used.<sup>27</sup> H. Paul Grice proposed that conversation was a cooperative activity in which certain maxims were observed.<sup>28</sup> Erving Goffman proposed that when they interact, people try to present their best faces to one another.<sup>29</sup> Often relying upon ideas proposed by the philosophers of language, and in light of the wide availability of recording devices, social scientists began to study language in use in the 1970s.<sup>30</sup> These studies of spoken language were anchored in a range of disciplines (e.g., linguistics, anthropology, sociology, and psychology) and referred to by various terms (e.g., discourse analysis, sociolinguistics, ethnography, social anthropology, and conversation analysis). Initially, the way in which ordinary conversation worked was the focus of study.<sup>31</sup> But in many cases, social scientists used language analysis to better understand the institution where the language was produced—from courtrooms, to classrooms, to medical offices.<sup>32</sup> Often the frame of reference was how power was constructed within the institution or relationship.<sup>33</sup>

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Schmedemann, *Priming for Pro Bono: The Impact of Law School on Pro Bono Participation in Practice*, in PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION 73, 79–80, 87–88 (Robert Granfield & Lynn Mather eds., 2009) (participating in clinic or pro bono work that included reflection correlated positively with future pro bono work).

<sup>27</sup> DEBORAH CAMERON, WORKING WITH SPOKEN DISCOURSE 48 (2001) (citing J.L. Austin, John Searle, and H. Paul Grice).

<sup>28</sup> 3 H.P. Grice, *Logic and Conversation*, in SYNTAX AND SEMANTICS, at 45 (Peter Cole & Jerry L. Morgan eds., 1975); see also Linda F. Smith, *Client-Lawyer Talk: Lessons from Other Disciplines*, 13 CLIN. L. REV. 505, 507–09 (2006).

<sup>29</sup> See generally ERVING GOFFMAN, FORMS OF TALK (1981); ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959); 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); Erving Goffman, *Felicity's Condition*, 89 AM. J. SOCIOL. 1 (1973).

<sup>30</sup> See generally DAVID MELLINKOFF, THE LANGUAGE OF LAW (1963) (of course, law and language scholarship has also focused upon written language, from the arcane language of statutes and legal documents). For more recent studies of judicial opinions, see LAWRENCE M. SOLAN, THE LANGUAGE OF JUDGES (1993).

<sup>31</sup> Harvey Sacks et al., *A Simplest Systematics for the Organization of Turn-Taking for Conversation*, 50 LANGUAGE 696 (1974).

<sup>32</sup> CHARLES ANTAKI, APPLIED CONVERSATION ANALYSIS 1, 1–2 (Charles Antaki ed., 2011); CAMERON, *supra* note 27, at 100.

<sup>33</sup> CAMERON, *supra* note 27, at 161; see also NANCY AINSWORTH-VAUGHN, CLAIMING POWER IN DOCTOR-PATIENT TALK (1998).

### A. *Language Science in Court Cases*

In the legal arena, anthropologist William O’Barr studied language used in the courtroom.<sup>34</sup> He and his collaborator, law professor John Conley, have spent decades examining “power relations in the linguistic details of institutional discourse.”<sup>35</sup> Their first book was an ethnographic study of language used in small claims courts.<sup>36</sup> Their book, *Just Words*, contains chapters covering language-based approaches to different experiences in the law—from cross-examination of a rape victim, to mediation in a divorce case, to different argumentation styles (rule-oriented vs. relational) in court.<sup>37</sup>

More recently, law professors Tonja Jacobi and Dylan Schweers have analyzed Supreme Court arguments; they looked at interruptions and noted that female justices were interrupted at disproportionate rates by male justices and by male advocates.<sup>38</sup>

Another area of language science that also arose in the 1970s was forensic linguistics. Distinguished linguist, Roger Shuy, has consulted in hundreds of cases and testified in dozens, analyzing, for example, police interviews, FBI recordings, and courtroom testimony.<sup>39</sup> He has also authored over a dozen books that illuminate the ways in which language can be used and misused in criminal and civil trials.<sup>40</sup> In his books, Shuy outlines basic linguistic insights about speech acts and shows how the law can misinterpret what people mean to communicate. Forensic linguists also work within academia, studying how language works in the legal process. For example, law professor Janet Ainsworth and collaborators, sociolinguists Susan Ehrlich and Diana Eades, have compiled a collection of essays that study the meaning of “consent” in a wide variety of legal settings (e.g., police interrogations, sting operations, sexual activity, and contracts) as illuminated through the language used in context.<sup>41</sup>

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<sup>34</sup> WILLIAM M. O’BARR, *LINGUISTIC EVIDENCE: LANGUAGE, POWER, AND STRATEGY IN THE COURTROOM* 74 (1982) (showing that witnesses who use “powerful” speech are more credible, convincing and trustworthy than those who use “powerless” speech).

<sup>35</sup> Jason Cross, *Language, Power and Law: An Interview with John Conley and William O’Barr*, 29 *PoLAR* 337, 337 (2006).

<sup>36</sup> See JOHN M. CONLEY & WILLIAM M. O’BARR, *RULES VERSUS RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE* (1990).

<sup>37</sup> See JOHN M. CONLEY & WILLIAM M. O’BARR, *JUST WORDS: LAW, LANGUAGE AND POWER* (2d ed. 2005).

<sup>38</sup> See Tonja Jacobi & Dylan Schweers, *Justice, Interrupted: The Effect of Gender, Ideology, and Seniority at Supreme Court Oral Arguments*, 103 *VA. L. REV.* 1379 (2017).

<sup>39</sup> CONLEY & O’BARR, *JUST WORDS: LAW, LANGUAGE AND POWER*, *supra* note 37, at 170.

<sup>40</sup> See, e.g., ROGER W. SHUY, *DECEPTIVE AMBIGUITY BY POLICE AND PROSECUTORS* (2017); ROGER W. SHUY, *LANGUAGE CRIMES: THE USE AND ABUSE OF LANGUAGE EVIDENCE IN THE COURTROOM* (1993, 1996); ROGER W. SHUY, *THE LANGUAGE OF FRAUD CASES* (2016); ROGER W. SHUY, *THE LANGUAGE OF SEXUAL MISCONDUCT CASES* (2012); ROGER W. SHUY, *LINGUISTICS IN THE COURTROOM: A PRACTICAL GUIDE* (2006); *SPEAKING TO LANGUAGE AND LAW* (Roger Shuy et al. eds., 2015).

<sup>41</sup> See *DISCURSIVE CONSTRUCTIONS OF CONSENT IN THE LEGAL PROCESS* (Susan Ehrlich et al. eds., 2016).

### B. Language Science and Medicine

At the same time that language science was being employed to study legal institutions, social scientists were also studying medical institutions and, particularly, provider-patient conversations. There have been thousands of social science studies of doctor-patient consultations,<sup>42</sup> and hundreds more are added each year.<sup>43</sup> Some of these studies have included medical students, interns, and residents, as well as doctors. Today, medical school texts teach patient interviewing and counseling skills based on the evidence derived from these many studies.<sup>44</sup> In a previous article, I argued that law school clinics should record, transcribe, and study client-lawyer or client-student conversations in order to acquire the same evidence about best practices that inform medical education.<sup>45</sup>

### C. Language Science and Client Consultations

In comparison, studies of lawyer-client communication, that could determine best practices in client interviewing and counseling or shed light on the lawyer's role or identity, have been almost non-existent.<sup>46</sup> In the 1970-80s, there were two studies based on observations (without recordings) of attorneys interviewing clients (that highlighted attorneys' excessive control over the relationship and the case)<sup>47</sup> and one conversation analysis of a single recorded interview (similarly showing the attorney controlling the client for bureaucratic benefit of the office).<sup>48</sup> In the 1990s, a law professor-anthropologist team studied students interviewing clients seeking disability

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<sup>42</sup> Nancy Ainsworth-Vaughn, *The Discourse of Medical Encounters*, in THE HANDBOOK OF DISCOURSE ANALYSIS 453, 453 (Deborah Schiffrin et al. eds., 2003) ("There is a huge cross-disciplinary literature on medical encounters" with over 7000 titles counted by 2003).

<sup>43</sup> JONATHAN SILVERMAN ET AL., *SKILLS FOR COMMUNICATING WITH PATIENTS* (3d ed. 2013). A leading medical school text states there are "approximately 400 papers per year listed on Medline on physician-patient relations and communication."

<sup>44</sup> See *id.*; NANCY AINSWORTH-VAUGHN, *CLAIMING POWER IN DOCTOR-PATIENT TALK* (1998); *COMMUNICATION IN MEDICAL CARE: INTERACTION BETWEEN PRIMARY CARE PHYSICIANS AND PATIENTS* (John Heritage & Douglas W. Maynard eds., 2006); AUGUSTE H. FORTIN VI ET AL., *SMITH'S PATIENT-CENTERED INTERVIEWING: AN EVIDENCE-BASED METHOD* (3d ed. 2012); DEBRA L. ROTER, *DOCTORS TALKING WITH PATIENTS/PATIENTS TALKING WITH DOCTORS: IMPROVING COMMUNICATION IN MEDICAL VISITS* (2d ed. 2006).

<sup>45</sup> See Linda F. Smith, *Rx for Teaching Communication Skills: Why and How Clinicians Should Record, Transcribe and Study Actual Client Consultations*, 24 CLIN. L. REV. 487 (2018) [hereinafter *Rx for Teaching*].

<sup>46</sup> For a thorough discussion of the social science studies of attorney-client communication, see *id.*

<sup>47</sup> See Carl J. Hosticka, *We Don't Care About What Happened, We Only Care About What is Going to Happen: Lawyer-Client Negotiations of Reality*, 26 SOC. PROBS. 599 (1979); Gary Neustadter, *When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office*, 35 BUFF. L. REV. 177 (1986).

<sup>48</sup> Bryna Bogoch & Brenda Danet, *Challenge and Control in Lawyer-Client Interaction: A Case Study in an Israeli Legal Aid Office*, 4 TEXT 249 (1984).

benefits.<sup>49</sup> They discovered that “clients reveal critical self-information in their opening words,” which students often miss, and that interview instruction should be adjusted accordingly.<sup>50</sup> This finding about client presentation of self was confirmed in my recent study of an experienced attorney successfully interviewing a client with disabilities.<sup>51</sup>

The most well-known study of attorney-client conversations was based on audio-recordings of over one hundred divorce cases.<sup>52</sup> The law professor-political scientist team focused on ethnographic insights about the attorney-client relationship and the legal process. They saw the attorneys negotiating reality with the clients, trying to move the cases to settlement while often ignoring clients’ feelings.<sup>53</sup> They also observed lawyers describing a chaotic system where it was important for clients to rely on their attorneys because opposing counsel and courts could not be trusted.<sup>54</sup> “Lawyer cynicism and pessimism about legal actors and processes is a means through which they seek to control clients and maintain professional authority.”<sup>55</sup> While these authors used recordings and transcripts, they did not analyze them to explore best practices in the skills of interviewing or counseling, as researchers focusing on medical conversations have done.

Why have there been so few studies of attorney-client and student-client conversations, in comparison with the thousands of studies of doctor-patient talk? A social science research team shared their inability to recruit study subjects and concluded that lawyers’ concerns for attorney-client privilege have prevented this research.<sup>56</sup>

As I have argued in a prior article, this lack of data is unfortunate and unnecessary.<sup>57</sup> There is much to be learned from recording, transcribing, and studying client consultations. And much of that work can be accomplished by thoughtful clinical law faculty-practitioners themselves, without worrying about risks to attorney-

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<sup>49</sup> See Gay Gellhorn et al., *Law and Language: An Interdisciplinary Study of Client Interviews*, 1 CLIN. L. REV. 245, 262–63 (1994).

<sup>50</sup> Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLIN. L. REV. 321 (1998).

<sup>51</sup> See Linda F. Smith, *Always Judged – Case Study of an Interview Using Conversation Analysis*, 16 CLIN. L. REV. 423 (2010). This interview also demonstrated a balanced conversation with a narrative, appropriate questioning, and helpful expressions of empathy.

<sup>52</sup> AUSTIN SARAT & WILLIAM L. F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS* 8 (1997); Austin Sarat & William L. F. Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer’s Office*, 98 YALE L. J. 1663, 1669 (1989); Austin Sarat & William L. F. Felstiner, *Law and Strategy in the Divorce Lawyer’s Office*, 20 LAW & SOCIETY REV. 93 (1986).

<sup>53</sup> SARAT & FELSTINER, *Law and Strategy in the Divorce Lawyer’s Office*, *supra* note 52, at 126, 128, 132.

<sup>54</sup> SARAT & FELSTINER, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer’s Office*, *supra* note 52, at 1665, 1685.

<sup>55</sup> *Id.* at 1665.

<sup>56</sup> See Brenda Danet et. al., *Obstacles to the Study of Lawyer-Client Interaction: A Biography of a Failure*, 14 LAW & SOC’Y REV. 905 (1980).

<sup>57</sup> See *Rx for Teaching*, *supra* note 45.

client privilege. Hopefully, this study will convince the reader of the feasibility and utility of studying attorney-client consultations.

#### *D. This Study*

This Article studies forty-six (46) transcripts of students interacting with clients at a pro bono project where the student-lawyer team provides limited legal services. Students conducted the client interviews, consulted with supervising attorneys, and then typically conveyed the advice the attorneys had authorized. The pro bono students' experience level ranged from graduating third-year students to first-year students in their second semester. While the students were oriented to their pro bono work in one large group session, they were not generally enrolled in a class designed to instruct them in interviewing or counseling skills, or to help them reflect on their pro bono experiences or their developing roles as legal professionals. The upper-division students may have completed or been enrolled in the required "Legal Profession" class or an elective "Lawyering Skills" class in which issues of identity may have been discussed. But any such enrollment was not linked to their pro bono volunteerism.

Accordingly, the transcripts of the students' interactions with their clients and their supervising attorneys are largely untutored portraits that can give a window into their varying and developing professional identities. The Article uses Conversation Analysis to study these interactions.

Conversation Analysis (CA) is the "dominant approach to the study of human social interaction across the disciplines of Sociology, Linguistics and Communication."<sup>58</sup> "CA is the close examination of language in interaction."<sup>59</sup> It involves recording, transcribing, and carefully studying the conversation to discover how conversation partners take turns and set up normative expectations that conversation partners either follow or flout.<sup>60</sup> "Applied" CA can "shed light on routine 'institutional talk'—the way that the business of a doctor's clinic, the classroom, the interview and so on is carried out."<sup>61</sup> Such "Institutional Applied CA" is often focused on understanding "how the institution manages to carry off its work . . ."<sup>62</sup> A second type of Applied CA has been termed "Interventionist Applied CA" because it seeks to study problems with the way in which institutional talk is carried out and to propose solutions to those problems.<sup>63</sup>

Conversation Analysis has been recognized as a valuable tool for exploring identity.<sup>64</sup> "[C]onversational analysts view 'identity' as not something that can be

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<sup>58</sup> Tanya Stivers & Jack Sidnell, *Introduction*, in *THE HANDBOOK OF CONVERSATION ANALYSIS* 1,1 (Jack Sidnell & Tanya Stivers eds., 2013).

<sup>59</sup> ANTAKI, *supra* note 32, at 1–2.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 6.

<sup>62</sup> *Id.* at 7.

<sup>63</sup> *Id.* at 8.

<sup>64</sup> LISA McENTEE-ATALIANIS, *IDENTITY IN APPLIED LINGUISTICS RESEARCH* 14 (2018).

determined a priori but as something which is emergent in talk and connected to the accomplishment of social action.”<sup>65</sup>

This Article will incorporate elements of Institutional Applied CA, insofar as it reveals how law students present themselves to clients and how clients respond to that presentation. It will also include elements of Interventionist Applied CA as it makes suggestions about better ways to mentor law students and for law students to interact with clients.

This Article uses a simplified transcription method, representing talk “as it is produced,” though with proper spelling and some punctuation inserted for ease of reading.<sup>66</sup> The transcripts identify overlapping talk with slashes //, passive listening back-channel cues with brackets [“uhhuh”], pauses with a series of periods (one per second) or a note, and actions with chevrons <laughs>. Various other conventions, indicating speed, tempo, pitch, etc., were not included as they were not significant for Applied CA here. Bold and italics are occasionally used to draw attention to issues being analyzed, and do not indicate any emphasis in the spoken language.

### III. LESSON FROM THE TRANSCRIPTS

Erving Goffman wrote seminal works sharing sociological and linguistic insights.<sup>67</sup> An important lesson was that in social interactions “we make a presentation of ourselves to others.”<sup>68</sup> He compares our self-presentations to a part one may be playing,<sup>69</sup> and suggests that the impression we offer is often idealized.<sup>70</sup> “When the individual presents himself before others, his performance will often tend to incorporate and exemplify the officially accredited values of the society. . . .”<sup>71</sup>

One imagines that law students undertaking their first encounters with clients will also attempt to present their best selves. Thus, we should consider not only how the students’ untutored professional identities are displayed, but, if the students appear to be presenting their best selves, what conception the students appear to have about their identities.

The transcripts suggest three topics to study these issues—the ways the students introduce themselves and the project to the clients, the register of the students’ talk, and the students’ expression of empathy. Each of these topics provides insight into the students’ developing professional identities.

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<sup>65</sup> *Id.* (citing Antaki & Widdicombe (1998)).

<sup>66</sup> See Alexa Hepburn & Gelina B. Bolden, *The Conversation Analytic Approach to Transcription*, in *THE HANDBOOK OF CONVERSATION ANALYSIS* 57–67 (Jack Sidnell & Tanya Stivers eds., 2014); see generally Sacks et al., *supra* note 31.

<sup>67</sup> See *supra* note 29.

<sup>68</sup> GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE*, *supra* note 29, at 252.

<sup>69</sup> *Id.* at 17.

<sup>70</sup> *Id.* at 35.

<sup>71</sup> *Id.*

### A. Introductions

The ways in which the students introduce themselves and the project to the clients is quite revealing.<sup>72</sup> Most of the students are simultaneously self-effacing and self-promoting. They are self-effacing in the ways they express that they are law students not allowed to give legal advice. They are self-promoting in the way in which they express their control over the interview, vis-a-vis the client. This duality is best understood by considering the actual transcripts.

Of the forty-six (46) student interviews, fourteen (14) did not include or record a student-lead introduction to the project and the protocols of the project. The other thirty-two (32) interviews (by twenty-one different students) did include such an introduction. It is these transcripts that we analyze here.

#### 1. The General Pattern—Unable to Advise but in Control of the Matter

This is a typical introduction by a law student interviewer:<sup>73</sup>

#1 <i>Student:</i>	Okay. How about if we just take a seat here. Welcome. Have you been here, to the clinic, before?
<i>Client:</i>	Nope.
<i>Student:</i>	Okay. Well, my name's Nick Kelly, and I'm a second-year law student with the university.
<i>Client:</i>	That's you?
<i>Student:</i>	Uh-huh.
<i>Client:</i>	Okay.
<i>Student:</i>	Typically, as people come into the clinic, one of our volunteers will have a seat with you and ask you questions about what's brought you here. [ok] Look over your forms a little bit and then, take whatever questions you have. We're not allowed to give legal advice but, once we consult with one of the attorneys, we're allowed to pass that information on to you.
<i>Client:</i>	Cool.

In explaining his role vis-a-vis the supervising attorneys, the student notes what he cannot do—"we're not allowed to give legal advice." However, in describing his role in relation to the client, the student seizes control—he will "ask you questions" and will "look over your forms" and "take whatever questions"—rather than "I'll listen to you" or "I'll try to understand your concerns."

<sup>72</sup> In most instances the clients have already sat through a group educational session that described the protocol and provided some general information about family law and the court's website. In all instances the clients had signed a Representation Agreement that made clear that the client would receive limited scope representation—legal advice that evening—and that the Agreement did not create an ongoing relationship between the client and the program or the client and any individual advisor.

<sup>73</sup> All names have been changed and some additional facts (such as places, dates, ages) have also been changed to further protect the subjects' identities.



Seven different students (engaged in eight interviews)<sup>74</sup> presented the same sort of information—emphasizing that they were not allowed or not able to give legal advice, but asserting control over the interview, analysis, and access to attorneys for advice. (The assertions of incapacity and control are both shown in bold).

#2 <i>Student:</i>	All right. Let's come on back here. (Pause) Have a seat. Before we begin my name is Vince Hoover. I'm a law student. I'm not an attorney so I can't give legal advice. But what we're here today, is—can I take this form? (Pause) Perfect. What we'll do is talk about your situation and find out what questions you have. And then we'll also speak with an attorney and get you on your way. So. Your name is Ursula. All right. Let me take a quick glance at the paperwork here. (Pause) All right. I have a general idea. Let's go ahead and get started. What's going on?
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#3 <i>Student 1:</i>	. . . I'm Bea and this is—
<i>Student 2:</i>	Karra.
<i>Student 1:</i>	We're both law students.
<i>Client:</i>	Bea and Karra?
<i>Student 1:</i>	Mm-hmm. We're law students, so we can't give you the legal advice, but what we can do is take down the information and go to an attorney and get the information. Can I see this?

The same student provided this very similar introduction:

#4 <i>Student:</i>	Just so you know, I'm a law student, so I can't give you the advice. What I can do is collect information, go to an attorney. They'll give me the advice, then I'll get back to you.
<i>Client</i>	Okay

The other students similarly emphasized their control over the client's matter but their subordination to supervising attorneys:

#5 <i>Student:</i>	Come on back this way. (Pause) Just have a seat where you'd like. (Pause) Ok, my name is Beverly and I'm a law student, so I cannot give you legal advice, but I will be talking to attorneys about whatever it is that brought you here and hopefully giving you some answers. That's all.
<i>Client:</i>	Okay, cool.

#6 <i>Student</i>	Do you want to go ahead and sit down? Have you been here before?
<i>Client</i>	No

<sup>74</sup> One of the eight interview introductions (#8) is discussed in C. Informal Presentations below.

<i>Student</i>	So just to let you know—I'm a law student. I can't give you any legal advice because I'm not an attorney. But I'll just talk to you about what's going on and then one of the attorneys is going to help you out.
<i>Client</i>	OK

#7 <i>Student:</i>	Ok. So, counsel concerning divorce and custody proceedings. [reading] So do you want to—before you go into the story, before we do anything actually, I should tell y'all I'm a law student, so I can't myself give you all advice. However, what I can do is I can get the story from y'all, talk to one of the attorneys, get advice from them, and should the situation warrant it, they could come back, or they'll just tell me what to tell y'all. So, you're still getting legal advice, just not directly from me. Let's see. . . .
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A ninth student did not assert her inability to give legal advice but did introduce herself self-effacingly, emphasizing her status as a law-student, not a lawyer:

#9 <i>Student</i>	Let's go find a spot then. . . .(Pause) My name is Catherine Nelson. I am a third-year law student so just about to graduate, but I'm not a lawyer yet. Thought I'd tell you that up front. I think they explained all that to you at the beginning. Right?
<i>Client</i>	Right

Interestingly, in their introductions none of the students mentioned that they were learning how to practice law or to interview clients. This, coupled with the students' focus on themselves as actively controlling the relationship with the clients, is what Goffman would refer to as “face-saving” actions.

## 2. The General Pattern and Mistakes About the Client-Attorney Relationship

An additional ten interviews presented the same general introduction—emphasizing the student's inability to give advice but asserting control over the interview—while misstating important aspects of the relationship with the clients. (Errors are italicized below.)

### a. Mistakenly denying the “attorney-client relationship” or “representation”

The student who interviewed client #1 is consistent in his presentation of himself with a second client, even while erroneously describing the nature of the attorney-client relationship:

#10 <i>Student</i>	Let's just look for an open spot. Ok, right here. Have a seat at this table there . . . It might be a little bit noisy in here. Have you been here before?
<i>Client</i>	Um, not to this clinic
<i>Student</i>	Not this clinic? Ok. Well, let me just take a moment to tell you a little about the Clinic. This front sheet of paper here notes that this is a, um, designed to be temporary legal help. <i>It doesn't establish a formal attorney-client relationship</i> with you. And just to let you know, I'm a

	law student. I don't know if you were there at the beginning when we give the presentation.
<i>Client</i>	Yeah
<i>Student</i>	So essentially that means I'm not allowed to give you legal advice directly. But I will consult with an attorney and pass along his or her counsel to you. Or in some cases I'll invite them to come and have a seat with you. But as a student they typically have us ask questions and find out what it is that brought you here and get some of the details of your case.
<i>Client</i>	Ok
<i>Student:</i>	Why don't you take a minute to tell me what brought you?

The student is incorrect that the clinic “doesn’t establish a formal attorney-client relationship”—rather it doesn’t establish an ongoing attorney-client relationship. The student presents his identity as a law student as “essentially” meaning he cannot give legal advice—emphasizing what he cannot do vis-a-vis the lawyers. However, he extends his control over the process by not only “asking questions,” “finding out,” and “getting details,” but, surprisingly, presents himself as deciding whether the attorney will be directly involved in the legal advice (“in some cases I’ll invite them to come and have a seat with you”).

Seven other students make the same error in denying an “attorney-client relationship” or “representing” the client, even while asserting their agency in interviewing the client and getting the client the necessary legal advice:

#11 <i>Student:</i>	All right. So, just to start off like I said I'm a law student. [Mmhm] And, um, did you have any questions about any of these on the first page?
<i>Client:</i>	No.
<i>Student:</i>	The main thing that we wanted to focus- is that <i>this isn't establishing an attorney-client relationship</i> . Anything that we talk about I will go and discuss with an attorney and come back with some of their counsel, advice and, you know, where to go from here basically.

This student did not state that his status as a law student limited his role, but described the protocol involving getting from an attorney “some of their counsel, advice” while erroneously stating they were not establishing an attorney-client relationship.

The next students merged their inability to give legal advice with the program’s limited scope of services:

#12 <i>Student</i>	So, you probably know how we do this. But I'm the law student [ok] just some of what was- what you signed here just expresses that I can't give you any legal advice. <i>You can't create an attorney-client relationship through advice we give you here</i> . I'm just going to do my best to get an understanding of what's going on and then we'll talk to one of the attorneys.
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#13 Student:	All right, first, to start off with, I do have to tell you that I am a law student, and I will not be giving you legal advice, or <i>I cannot represent you.</i>
Client	Ok
Student	I'll be talking to attorneys and bringing their advice back to you. <i>We're not representing you in any way.</i> This is just a onetime deal, but you're more than welcome to come back as well. I just have to make you aware of that . . . .

Both erroneously claim no attorney-client relationship or representation.

#14 Student:	Okay, so good afternoon. We were just talking about the recording project and we just got consent from Doug and his parents. I also explained how the clinic works and how I'm a student, and we have attorneys here helping to give a little advice, but <i>we don't represent you as your attorney.</i> Okay, so I'm looking at your forms here. And it says, okay, it says that you have a custody and adoption issue. Okay, so could you just sorta tell me a little bit about what's going on?
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While misstating the absence of representation, this student did not state his inability to give legal advice, but referred to the attorney in a somewhat dismissive way, as "helping to give a little advice."

#15 Student:	. . . That's pretty much on the front of this page is basically emphasizing that I'm a volunteer, that these are volunteer attorneys and that <i>this isn't an attorney-client relationship.</i> Did you have any other questions before we get started?
Client:	No, I think I'm okay with that cuz [ok] I already knew that.

Although most clients silently accepted the statements that the Clinic did not represent them, two clients responded. The following client sought clarification:

#16 Student:	. . . Just before we get started I have to go over this front page with you. I'm Laura and I'm a law student
Student #2	Hi, I'm Susan. I'm also a law student.
Student:	We are not sure- <i>we do not represent you. I mean, this is what you signed on the front. We do not represent you.</i> We can't-
Client	But I can ask all the questions I want.
Student:	Absolutely. So- and we do have confidentiality with you just like an attorney-client does. So, sign this. (Pause) Tell me about what's going on.

In response to the client's question, the student not only strongly agreed ("absolutely") but went on to promise "confidentiality" even while mistakenly minimizing the relationship, characterizing it as "just like an attorney-client relationship."

The second client responded by minimizing what she was requesting:

#17 Student	Oh, perfect. I'm ready [ <i>background noise 1:02</i> ]. Okay. Before we get started, I just need to tell you that I'm a law student, so I'm not allowed to give you legal advice but I'll listen to your problem and I'll go grab an attorney and report back to you what they say.
Client	Perfect
Student	Also, <i>this meeting doesn't establish an attorney/client relationship</i> , just for future reference.
Client	Definitely, no problem. I'm just looking to find the proper direction to go more than anything. We'll help each other learn.
Student	Okay perfect. I like that.

In redefining her goal as just looking for direction, the client also sought rapport with the student as they both “help each other learn” about the client’s legal concern.

#### b. Mistakenly denying “attorney-client privilege”

Two students made a different error—stating no attorney-client privilege exists:

#18 Student 1	A couple things we have to go over real quick before we get started is we're law students, not lawyers. So we won't be the ones giving you advice. We'll be going to the lawyers getting their advice. And they'll either come back and talk with us or they'll just tell us what to tell you.
Client	Ok
Student 1	And then another thing is, <i>because we're not actually being retained as attorneys, there's no attorney-client privilege. [ok] Um, which basically means if we were ever subpoenaed to talk in court, we would have to. . .</i> Um, so, I see you and your husband want custody of your great-nephew?

And:

#19 Student	So, there's a couple of preliminary matters we have to go over real quick, Ken.
Client	OK
Student	The first is I have to let you know that I'm a law student [right] so I can't give you any legal advice.
Client	OK
Student	We'll go through what kind of questions you have and I'll go grab an attorney real quick [ok] and go over the case with him and he'll give me the advice which I'll relay to you. Any way- actually because we're recording this I'll probably bring the attorney back with me.
Client	Ok that's fine //[and then]// I've actually talked to an attorney here before. I've been here- this is my third time, fourth time
Student	Well so you already know that <i>no attorney-client privilege is being created.</i> //
Client	//Sort of. Yeah//

Besides being mistaken about the lack of privilege, the second student was quite informal, going over issues “real quick” and “grabbing” an attorney for advice. (See discussion below.) This student also seems to be the one deciding what involvement the attorney would have in counseling the client (“I’ll probably bring the attorney back with me.”).

### 3. Client-Controlled Introductions

Occasionally, the client seized control of the introduction. This usually involved the client engaging the student in chitchat. There were three interviews where this was a significant variation:

#20	
Student:	Okay.
Client:	Are we going in there, or—
Student:	No, we can do it here.
Client:	You are?
Student:	My name is Talia. You’re Hannah?
Client:	Right.
Student:	All right.
Client:	You are an—?
Student:	I’m a law student.
Client:	Student, so not an attorney?
Student:	Right. I will, after consulting with you, I’ll go—
Client:	Where to send me?
Student:	Well, I’ll talk to an attorney and I’ll see if I can bring an attorney back here who will then give you the legal advice.
Client:	Okay. I’m just sitting here because the seats are more comfortable.
Student:	Yeah, I get it. Definitely.
Client:	I’m in school, and I’m already behind.
Student:	I think it’s recording. Who knows? I don’t know.
Client:	What year are you?
Student:	I’m a second-year law student.
Client:	Are you glad you did it?
Student:	I think so.
Client:	Are you? My—
Student:	I’ve just been going to college all my life I feel like, but, you know.
Client:	My daughter’s almost a senior, and then she wants to go to law school, so—
Student:	A senior in high school or college?
Client:	College.
Student:	Yeah? What’s she studying?
Client:	Psychology.
Student:	Oh. Nice. A lot of my siblings were psych majors.
Client:	Oh, is that right?
Student:	Yeah.
Client:	Have they done anything with it?
Student:	One went into business. The other went into non-profit. She does grant writing.

<i>Client:</i>	Ooh, I'd like to know her. I run a non-profit.
<i>Student:</i>	Oh, really?
<i>Client:</i>	Work with homeless.
<i>Student:</i>	Oh, cool. She's working with nurses, like a nursing—I don't quite understand it. Okay, so let's see what you've got here.

In this case, the client seized control of the interview initially by questioning the student as to her name and identity. When the client guessed that the student would just give a referral, the student explained a small part of the protocol—that she would try to get an attorney to give advice. Most students indicated that they would give the advice after consulting with an attorney. Perhaps this student promised an attorney because the client seemed to question her not being an attorney.

The client then introduced ice breaking or chitchat by asking the student about law school and sharing her daughter's desire to go to law school. The student reciprocated, asking about the daughter's major and sharing that her sibling had pursued the same course of study. This led to discussion about careers and the client's assertion about her own work. This chitchat conversation may have had the effect of leveling the playing field, putting both student and client in the category of families with careers. While most of the interviews involved the student asserting control over the client and the client's problem, this client chose to begin the interview by presenting herself as a professional with a future lawyer in the family, rather than a needy person seeking help.

A second client chose to make a joke during the student's introduction:

#21	
<i>Student:</i>	You're gonna grab this and this.
<i>Client:</i>	Way over there.
<i>Student:</i>	Yeah. We're gonna go sit in that corner. Okay.
<i>Client:</i>	Trying to make this real easy.
<i>Student:</i>	Yeah. I'll do my little spiel. They probably already told you all in there, but I'm a student. [right] What I'll be doing is I'll get your story. I'll just—
<i>Client:</i>	Can I see your grades?
<i>Student:</i>	<Laughs> No. [<client laughs>] I did pass my first year.
<i>Client:</i>	There you go, good job.
<i>Student:</i>	Yeah, no, I'll just speak to an attorney. If there's a line, I think there might be fewer attorneys than usual just cuz it's summer. But it'll take like a minute or two.
<i>Client:</i>	That's fine.
<i>Student:</i>	They might come back if it's a really hairy situation. If it's pretty straight forward, they'll just send me back.

The client interrupted the student's "little spiel" to ask to see her grades. The student laughed and asserted that she passed her first year and the client congratulated her. Then the student returned to the typical explanation about doing the interview and seeking out an attorney for the advice. Here, the student began informally (calling her introductory talk her "little spiel") and the client replied with humor, perhaps to level the playing field.

A third client joked about the heat in the room, as if the volunteers were not well treated:

#22	
<i>Student:</i>	Hi, I'm Nathan
<i>Client:</i>	I'm Dorie
<i>Student:</i>	Dorie?
<i>Client:</i>	Yeah.
<i>Student:</i>	Nice to meet you.
<i>Client:</i>	Keep you guys a little sweltering in here, huh?
<i>Student:</i>	What?
<i>Client:</i>	Keep you a little sweltering in here, huh?
<i>Student:</i>	Yeah. That's what they do to us, they're like, "You guys are just students."
<i>Client:</i>	Figure it out.
<i>Student:</i>	So yeah, we'll probably use this table down here. Or actually we can go right— Okay, so I'm just gonna take a look at this, you understand that I'm a student, and I can't give you any legal advice?
<i>Client:</i>	Mm-hmm.
<i>Student:</i>	Okay. So I'll talk to an attorney <i>if I need to</i> —
<i>Client:</i>	Okay. I'm actually here on behalf of my boyfriend, so—

Although the client's reference to "you guys" did not identify student volunteers as opposed to attorney volunteers, the student joked as if the heat was due to disrespect for students. This joke, too, may have had the effect of putting the client and the disrespected student on the same level. When the student then turned to explain the protocol, he mentioned he would "talk to an attorney if I need to," asserting greater control over the process than was appropriate.

In each of these cases, the client's chitchat had the effect of putting the client, a person seeking free legal advice, on par with the student, the person conducting the interview and dispensing the advice. The fact that some clients chose to interact in this way raises a question: how best to communicate respect for the client and that the program exists to serve the client.

#### 4. The Solicitous but Nervous Student

One student was atypical in not asserting her control vis-a-vis the client, but approaching the interview in a client-centered way. She was also unusual in revealing her own concern about conducting the interview well:

#23	
<i>Student</i>	Do you mind if we're back in the corner? Is that all right?
<i>Client</i>	Ok
<i>Student</i>	We can like turn a chair a little bit. We can make a little comfortable space? Ok. Do you want-
<i>Client</i>	Ok
<i>Student</i>	My name is Darla McEdwards. Have you been here before?
<i>Client</i>	I have not. I have not ever come before.



<i>Student</i>	Ok. Well then let me tell you a little bit about how this works. I'm a law student. I'm not a lawyer.
<i>Client</i>	Ok
<i>Student</i>	And I can't give you any advice. But I'm- my job is to listen to your story and your experience and find out what your needs are. And then I serve as the go-between between you and an attorney. And so I'll take your story to her or him, tell the important facts and then come back to you with everything- what you need to know to go forward.
<i>Client</i>	Ok
<i>Student</i>	So- um, with that said. Great. This is my first time [Oh! Ok] without shadowing somebody. So if I //stumble a little//
<i>Client</i>	//Oh, no worries//
<i>Student</i>	bit, help me out <laughs> or be patient with me. Do you want to just tell me the heart of the matter?

While this student stated her inability to give legal advice, she did not emphasize her own control of the interview, but the client's—she was there “to listen to your story and your experience and find out what your needs are.” She did not characterize herself as in charge of interviewing, but as a “go-between” for the client and the attorney who would dispense the advice. In these ways she was uniquely self-effacing, and in a client-centered way that focused on the client's experience, story, and needs. She was also atypically candid in sharing this was her first unsupervised interview and in asking for the client's patience. She also began the interview with four separate utterances seeking the client's consent to the location for their interview, seeking to “make a little comfortable space” for the client. In these ways, this student leveled the playing field by bringing herself closer to the client—soliciting the client's approval for the location of the consultation, focusing on serving the client, and sharing her concerns that she might make mistakes.

### 5. The Confident Students

Three students—including one experienced 3L and one student-paralegal—when introducing themselves as students, did not emphasize what they could not do, but simply explained the process and what they would do:

#24 <i>Student 1:</i>	Do you wanna try this one?
<i>Student 2:</i>	Yes. Okay. Hello, I'm Kelli, and—I'm sorry.
<i>Student 1:</i>	Bea
<i>Student 2:</i>	I'm a paralegal and law student. And what we're gonna do, we're just gonna go through, um and you know just listen to what you have questions on, and then we'll go to the attorney [ok] and ask for the advice.

A second student, though once calling himself “only” a law student, gave similar openings describing the protocol without emphasizing what he could not do in three<sup>75</sup> interviews:

#25 Student	. . . Um, as far as this form goes, the main thing we want to stress is this isn't an ongoing attorney-client relationship. It's kind of come in with one shot then with some questions. I'm only a law student which means after we're done talking I'll go get some advice from the attorneys and then I'll come back and relay that information to you. And if you have more questions, I'll go ask them and we'll kind of play that game until all your questions are answered.
Client	Sounds good
Student	Perfect
Client	A little bit of help is a big help.

#26 Student:	Okay, as far as this first form, the main thing that we wanted to stress is obviously this isn't an on-going attorney-client relationship. I'm a law student, so after we get to talk a little bit, I'll go and get advice from the attorneys. Come back, relay that to you, if you have questions, I'll go back. We'll play ping pong until everything's sorted. Is that all right?
Client:	That's fine.

A third 3L student presented a confident description of the protocol, and, as the months passed, shared more personal information about progress in law school:

#27 Student	My name is Steven. I'm a student at the University of Utah. A third year. And what I'll do is <i>I'll talk with you and I'll figure out what your legal issues are</i> . And I will then go talk with an attorney. The attorney will either tell me what you need to know or the attorney'll come and talk with you themselves. //Ok?//
Client	// I appreciate that.//

This student emphasized his experience (“a third year”) and, as was typical, seized control vis-a-vis the client—“I'll talk with you” and “I'll figure out what your legal issues are.” Later in the year, this student shared his feelings about his pending graduation:

#28 Student:	My name's Steven. I'm a law student up at the University of Utah. I'm about to graduate. Hallelujah!
Client 1:	Thank goodness.
Student:	What I'm gonna do is <i>I'm gonna talk with you and figure out what your legal issues are</i> and talk with an attorney. The attorney will either let me know what you need to know, or the attorney will come and talk to you directly. Odds are, based on what I just discussed with the other person, there's gonna be an attorney coming to talk with you, so

<sup>75</sup> In the third interview (46-6), this student misspeaks and claims this is “not an attorney-client relationship” rather than stating it is not an *ongoing* attorney-client relationship.

	lucky you. <Laughs.> This is a copy of what you've signed. It's for your own records. You can keep it. Let me read through this real quick.
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The client appeared happy to engage with the student's celebratory feelings about graduating. The student predicted that a lawyer would be directly involved in the counseling, commenting to the client, perhaps with some self-deprecation, "so lucky you."

Finally, this interviewer was a law graduate who had not yet sat for the bar. His introduction changed accordingly, making it clear how eager he was to "fly solo" without attorney oversight.

#29 Student	So, we'll sit at one of these tables. (Pause) My name is Steven. I am a- what am I? I'm a law school graduate but I'm not a lawyer. So I've graduated but I haven't taken the bar yet. I'm close [//real close//]. So what I'll do—I still can't give you legal advice without passing it by an attorney. Oh well. What I'll do is I'll figure out what your legal issues are and then I'll talk to an attorney. The attorney will either tell me what you need to know or they'll come and talk with you directly.
Client	All right.

This student's evolving introductions suggest that he is eager to advance from the state of supervised student to independent counsel able to give advice themselves.

## 6. Conclusions about Introductions

Based on this close reading of these introductions, we can reach certain conclusions. First, other than the fact that the law students identified themselves as "law students," it does not appear that there was a strict protocol that the project instituted for what the students should say to the clients. It appears that the students were free to infuse their own personalities into their introductions. Since some students were recorded two or three times, it can be seen that the students had individually developed their typical introductions. (The two "confident" students above present perhaps the best example of this.) Accordingly, we should be aware that the students are developing scripts for themselves to use in their professional roles. We will aid the students in their professional identity formation if we help them to be thoughtful and reflective about the ways they introduce themselves and the project's work.

Unfortunately, their introductions sometimes resulted in misstatements about the program-client relationship (e.g., not representing you, no attorney-client relationship, and no privilege). Here again, students are learning about the program's and their professional responsibilities through this work, and some of them are learning inaccuracies.

The majority of law students emphasized that they were not allowed or not able to give the clients legal advice. Only the three "confident" students simply explained the protocol—student interviews client, student consults with attorney, student or attorney counsel client—rather than emphasizing this limitation. However, the one confident student altered his presentation after graduation to note that he "still can't give you legal advice without passing it by an attorney." It is unnecessary for the student to explain to the client what he will not or cannot do; the student simply needs to explain

and comply with the protocol. The frequent emphasis on what the student may not do suggests that the students are keenly aware of their limitations as law students and perhaps frustrated or embarrassed by them.

At the same time, some students also presented themselves to the clients as controlling the interaction with the attorney or having significant agency over that interaction. Students will “grab” an attorney and “report back,” or “go to the attorney and get the information” or “get advice from them” or “I’ll invite them to come back” or “talk to an attorney if I need to.” This, too, suggests student frustration with the limitations in their role and desire to assert greater control.

Another theme in these introductions is that the majority of students present themselves as actively controlling the interview vis-a-vis the client. They will “question,” “analyze,” “find out,” and “figure out.” Only one student clearly focused on her role as listener, speaking of “listening” and “find[ing] out” the client’s “experience” and “needs.” Texts on client interviewing and counseling promote a “client-centered” practice in which the attorney treats the client “as an effective collaborator (rather than a helpless person we will rescue).”<sup>76</sup> This client-centered approach has received little criticism and could be called “one of the most influential doctrines in legal education today.”<sup>77</sup> The students’ orientation to controlling the interaction with the client could run afoul of the ideal of client-centeredness, the need to internalize a fiduciary mindset,<sup>78</sup> and the need to respect client autonomy.

Finally, there are the handful of cases in which the client seized control of the opening moments and questioned or joked with the student. These clients appear to be intervening to level the playing field, to assert their autonomy or equality. This, too, suggests that a client-centered orientation to serving the client might be an orientation that clients would welcome.

Given these observations, we should consider how the law school and the lawyer supervisors might best prepare and mentor the students as they develop their professional roles and identities through this pro bono work.

### *B. Style of Language Used*

As Professor Hamilton has suggested, students varied in their development of professional identity. This is to be expected as some students were only in the second semester of the first year and other students were nearing graduation. One way in which this difference appeared to manifest itself was in the “style” or “register” of language used. Scholars have identified the registers of formal legal language

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<sup>76</sup> STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS* 22 (5th ed. 2015) (quoting DAVID A. BINDER & SUSAN M. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977) as originating the concept).

<sup>77</sup> Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369, 370–71 (2006); see also Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 504 (1990).

<sup>78</sup> See generally Hamilton, *Internalizing a Fiduciary Mindset to Put the Client First*, *supra* note 6.

(typically used in court), standard English, and colloquial English.<sup>79</sup> Part of socializing law students to their professional roles is having them come to understand and use formal legal language when and as appropriate. Sociolinguists explain that context is important to speakers when determining what style of language to employ.<sup>80</sup> People may speak differently at work than they do at home; the subject matter of the conversation may have an effect, and the social context and role, relationships, and relative statuses of the speakers should have an effect on the style of language used.<sup>81</sup> Law students at a pro bono program might choose to be informal with low income clients, thinking this will bridge any difference between them. Nevertheless, law students should appear as helping professionals, and this may properly affect the language style they employ.

In most of these interviews, standard English was predominant, and this seems appropriate given the setting and social context. Students did not tend to confuse or try to impress the clients with their use of formal legal language, which is to be celebrated. On the other hand, a few students used colloquial language throughout their consultations. This raises questions about their conceptions of their professional roles.

### 1. In the Introduction

In most cases, the law students used standard English when introducing themselves and the program to the clients. But a handful of students used informal expressions in their introductory speeches (e.g., “grab an attorney,” “just a one-time deal,” “preliminary matter we have to go over real quick . . . grab an attorney real quick,” and “my little spiel”). Two students were noteworthy in that they explained the protocol in very informal ways. We will focus on these two students (informal comments in italics):

#30 <i>Student</i>	Um thank you so much. Okay. Welcome to the Family Law Clinic.
<i>Client</i>	Thanks.
<i>Student</i>	We are, I’m a law student, I’m a second-year. So I’m going to do the <i>intake part of this</i> —ask you some questions [okay] see if we can figure out what’s going on. Then I’ll go <i>scrounge up an attorney</i> . <i>Who’ll float in here</i> [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 <i>little paperwork we gave you?</i> [This] <i>I just want to peek at that.</i> [okay] And I want to give you your copy of this.

This student spoke informally on a number of levels. She referred to her role as doing “the intake part of this” and being the “question person.” She didn’t express a

<sup>79</sup> O’BARR, *supra* note 34, at 25; see generally WILLIAM LABOV, THE SOCIAL STRATIFICATION OF ENGLISH IN NEW YORK CITY (1996) (presenting a range of speaking styles from more to less formal and related to class and gender).

<sup>80</sup> PETER TRUDGILL, SOCIOLINGUISTICS: AN INTRODUCTION TO LANGUAGE AND SOCIETY 100 (1983).

<sup>81</sup> *Id.* at 100–03.

high degree of respect for the attorneys who “float in” and who appeared to be in short supply and needed “scrounging up.” She used powerless speech in referring to the “little paperwork” and wanting to “peek” at it.<sup>82</sup> Yet, even as this student spoke informally, she nevertheless presented herself as in charge of the interview (e.g., “do the intake part . . . ask you some questions . . . see if we can figure out what’s going on”). She expressed her control over access to the attorney (e.g., she will “scrounge up an attorney” and “get them involved in the actual legal advice”). Even as this student presented an extremely informal attitude, she asserted control.

A second client began with questions about paperwork he had completed, causing the student to turn to describe the protocol:

#8 Student:	Okay. Let me <i>grab</i> this. Let's <i>head over</i> to that corner. (pause 9 seconds) Okay. You need help filling out your temporary order. Have you tried filling it out?
Client:	Yeah, and I'm just afraid that I'm gonna fill something out that I shouldn't, 'cause I wanna like have it be presented correctly, you know what I mean? Can we go over it real quick? Is that something you can //do or not?//
Student:	//So before// we start, I don't know if they did go over it in there, but I'm a law student, [uhhuh] and so I can't actually give advice. However, I can hear you out. [ok] I can take your questions to an attorney. [ok] If they are sufficiently complicated or <i>if the situation is hairy</i> , they'll come back with me. For this, they might wanna come back, just look over it. [ok] Just let you have that.

This student began informally by “grabbing” paperwork and “heading over” to a place to sit down. In describing the fact that the attorneys might choose to personally advise the client (as opposed to tell the student what advice to convey), the student referred to the client’s situation as possibly “hairy.”

This student conducted a second interview discussed above (#21) and used similarly informal language: “I’ll do my little spiel” and “They [attorney supervisors] might come back if it’s a really hairy situation.”

## 2. During Interviewing and Counseling

The first student, who promised to “scrounge up” attorneys who would “float in,” continued with similarly informal language throughout the interview and counseling phases. Because she did not conduct a thorough interview at the outset and because the client continued to ask new questions, she ultimately conducted five (5) interview-counseling sessions and consulted with attorneys four (4) times. The client first asked about the Answer the opposing party had filed, which evoked a joking reply:

#30 Client	Wouldn't it be hard to draw that up?
Student	Normally. [perfect] But if he's not paying them, then maybe not, haha if he's got someb-

<sup>82</sup> See O'BARR, *supra* note 34, at 64, 74 (describing characteristics of powerless speech and showing that jurors tend to disbelieve powerless speech more than powerful speech).

<i>Client</i>	So it's kind of like this where I'm getting free consultation kind of thing? Probably?
<i>Student</i>	Yeah, I mean, he may have come in here. <laugh> Who would know? <laugh> Don't worry. At this point, nobody would have any idea, [okay] if he had been. Or if they did, they just wouldn't talk to you.

While the student was not prepared to comment on the Answer that had been filed (probably prepared by using the court's web-based computer program), she nevertheless responded to the question, making a joke about the opposing party perhaps having come to the same brief advice program. It is doubtful that this commentary made the client feel comfortable or that the client even understood the student's reference to different volunteer attorneys being able to meet with clients on opposing sides.<sup>83</sup>

When the student returned to counsel the client, she began with: "Okay. I guess you get me again. <laugh>." Then, asking to study the Answer, she explained that she was looking to see if the respondent did "a counter-claim thing." As both the student and client read through the Answer and observed the respondent had gone beyond "admit" and "deny" to say what he wanted, the student commented: "That's interesting, because that's not supposed to be there" with her voice rising to a high-pitch as sometimes occurs in powerless speech.

This client asked about the possibility of having Legal Aid represent her and the student recommended that she submit her on-line application for representation, commenting: "Which works. I know it doesn't seem like it would. But it can work. Let me go find out about the Legal Aid fun-ness." Because the client was concerned that the opposing party may be represented by Legal Aid in a benefits case, the student got an attorney's guidance and reported back: "All right. Um, my attorney, your attorney, whoever's attorney recommends that you call Legal Aid and have them do a conflict's check."

Later the client asked about a notice that the case would be dismissed if there was no action after 120 days. The student responded: "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." Even while presenting an informal persona, this student shared her frustration with the need to seek attorney advice or supervision. Upon her return the student said: "Okay. The answer to your question is if there's no action in 120 days after the Answer is filed, it gets, basically, it gets tossed."

It is certainly possible that this student's highly informal (and sometimes incomplete) expressions were motivated by nervousness or lack of confidence in her professional role. As we work to help our students think of themselves as serving clients and concerned for clients' welfare and feelings, we might explore how to develop rapport and when informality may assist with or hinder that goal.

A second student dealt with a client facing visitation disputes and serious domestic violence. The interview began as follows:

#31 <i>Student</i>	All right Betina. So can you tell me what your custody order is now?
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<sup>83</sup> Rule 6.5 of the Utah and Model Rules of Professional Conduct permit individual attorneys to volunteer at court-sponsored clinics without a firm-wide conflicts check but prohibit handling a case if the individual attorney knows of a conflict of interest.

<i>Client</i>	It's currently //inaudible//
<i>Student</i>	<i>Ooo documentation!</i>

Later, during the counseling phase, the student advised: “stuff like that, um document, document everything” and later addressed seeking help from the Department of Children and Family Services:

#31 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] <i>and stuff</i> and they'll um do <i>an investigation sort of thing</i> [okay] and then <i>that'll go from there . . .</i>
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This student, too, perhaps was using colloquial, imprecise language (e.g., “stuff like that” and “investigation sort of thing . . . that'll go from there”) because she does not know the correct information or terms to use. This, too, presents questions as to the amount and type of guidance that is provided to the novice student volunteers.

While informal or colloquial language was not typical, the occasional informality in these encounters is worthy of consideration as we look at professional identity formation. Does the student mean to be so off-hand and informal? If so, why? Does she think this will set the client at ease? Or is the informality a result of nervousness and discomfort with the professional role? Does she think a legal professional should be informal in a brief advice setting?

Finally, how can the law school and the supervising attorneys best mentor these students as they form their professional identities and ask clients to rely on and to trust them? This should be the ultimate question for a law school sponsoring a pro bono program.

### C. Empathy

All the legal interviewing texts emphasize the importance of developing rapport with one's client by expressing empathy for the client.<sup>84</sup> Medical school evidence-based texts similarly teach to respond verbally to a patient's expressed emotion, so the patient does not feel disapproval or disinterest. “Empathy skills communicate that you have heard the patient and result in the patient feeling understood and cared for.”<sup>85</sup> Studies have shown that doctors can incorporate empathy skills into their personal style, but that medical students' ability to empathize did not improve without specific training.<sup>86</sup>

<sup>84</sup> See DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 40–62 (3d ed. 2004) (discussing “active listening”); STEPHEN ELLMANN ET AL., *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* 27–33 (2009) (recommending “creating connection” with the client through active listening, reflection, validation, and empathy); G. NICHOLAS HERMAN & JEAN M. CARY, *A PRACTICAL APPROACH TO CLIENT INTERVIEWING, COUNSELING, AND DECISION-MAKING: FOR CLINICAL PROGRAMS AND PRACTICAL SKILLS COURSES* 28–30 (2009) (recommending conveying empathic understanding and active listening); KRIEGER & NEUMANN, JR., *supra* note 76, at 97–100 (recommending “active listening.”).

<sup>85</sup> FORTIN IV ET AL., *supra* note 44, at 21.

<sup>86</sup> JONATHAN SILVERMAN ET AL., *SKILLS FOR COMMUNICATING WITH PATIENTS* 137–40 (3d ed. 2013).



### 1. Emotional Accounts Followed by More Questions

Interestingly, there are few transcripts of students interviewing and counseling clients that included active listening, reflection, or expressions of genuine empathy. In most cases, the students followed upsetting revelations and expressions of emotion with further questions. For example, this client's short but revealing narrative resulted in passive acknowledgment of his goals and a question:

#32 <i>Client:</i>	Not a problem. I was served with divorce papers. [ok] Um and I guess—well, not I guess—my main concern is—I mean there—as we know, divorce is always so fun. [Mm] There's some statements that were made that are not—by no means are a proper picture of what really transpired. This is a simple divorce you know that she did online. [Mm] I guess I don't know what weight any of that has. [Mm] So that you know, I'm a convicted felon, on parole, at Valley Services, so I'm in a treatment facility. [ok] Okay. Obviously, I've made some poor choices in life. However, that doesn't—you know, I mean I have rights. [Mm] I just—I want to make sure that if I'm signing something that it's something that's not gonna be set in stone or that can be modified, simply.
<i>Student:</i>	Got you. Okay. How long ago did she file these?

Another client owed thousands of dollars in child support that accrued while the client was incarcerated and her daughter lived with relatives:

#33 <i>Client:</i>	//My concerns// are what are my rights as a mother. I haven't even seen the child since she was six. [Mmhm] I wouldn't wanna go in there and disrupt the life that she's been living now. I mean it is what it is. I have a whole new different life that I'm just trying to tie up all //the loose ends.//
<i>Student:</i>	//She's 16 right now?//
<i>Client:</i>	She's 16. She just turned.
<i>Student:</i>	Was there ever a court order or anything like that giving custody to the aunt and uncle?

Here again, the student responded with a question without any active listening or acknowledgement of the client's pain or upset.

One particularly upset client was asking how she should deal with the fact that her children were afraid of their father, who had been severely abusive to her. She described a recent encounter when she took the children to visit, they refused to get out of the car, and the ex-husband called the police. Here is the final exchange:

#31 <i>Student</i>	And what did the cops end up doing?
<i>Client</i>	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 10 year old,

	even in the police report, said that he was curled up in a in a ball [//fetal position//]. Yeah just scared out of his mind, and they're absolutely petrified of him.
<i>Student</i>	And can I see the original divorce decree um that lays out the original //order//?

Where the student might have expressed some empathy or reflected the client's feelings, she instead asked a question. A few minutes later in the interview, the client summarized her confusion, and the student responded with a summary of her plans to consult with the attorney:

#31 <i>Client</i>	I have two little kids 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 his cell phone he literally in a store wrestled it out of his hand. Pinned him down, said that's my effin you know, give me your effin cell phone, started cussing at him. Took it away. [right] And then threatened to leave him in a store, I mean, and this is someone who hasn't seen his kids in two months.
<i>Student</i>	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, and also what effect the um mediation stipulation in here //will have in the divorce//
<i>Client</i>	//Perfect, yeah// I just need to know which direction to head in.

Although the student did not employ active listening, her express plans to seek guidance from an attorney evoked agreement and gratitude from the client.

In almost all the interviews, students responded to the client's narratives with questions rather than including reflection, active listening, or genuine expressions of empathy.

## 2. Empathic Responses

However, three students did include expressions of empathy in their interactions with their clients, to good effect. One student interviewed a client who had suffered years of abuse and was now seeking a divorce:

#31 <i>Client:</i>	I have a protective order, yes. We go back to—we actually go to court on it. That's been issued. His parental rights, because of the DCSF was called in and because of the spousal abuse over all the years. I couldn't even eat, okay? This is how bad it was. [Mm] I could not even eat. The man would call me a pig.
<i>Student:</i>	Wow.
<i>Client:</i>	I mean, look at me. Am I pig?
<i>Student:</i>	No, not at all.
<i>Client:</i>	So yeah, it was bad. I would hide around corners and snatch bites of food.

<i>Student:</i>	Wow, wow. All right. So it looks like you have your court hearing on October 26 <sup>th</sup> to finalize the protective order.
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Later in the same interview, the client set forth her goals:

#31 <i>Client:</i>	We- the thing is and I talked to my daughter about this, 'cause I wouldn't move if my daughter didn't want to move, if she wanted to be close, but we just wanna get away. We wanna get away from him. It's, like unless you live it, you don't know. When you can't have a conversation with your children, but you have to go back and you have to recount word for words. You have to remember word for word what you said, and what did they say, and then you have to sit and listen to what you should have said.
<i>Student:</i>	It's a lot to deal with. I can't imagine. I can't even begin to imagine. I can see why you wanted to just get out of the state, just to leave it behind you.

This client was describing a clearly abusive situation in unambiguous terms. Initially, the student did not use reflection or active listening, but responded with genuine feeling (“Wow” three times) and a direct, affirming answer about the client’s appearance. The empathy expressed may have encouraged the client to continue to share her history, feelings, and goals. The student then made a reflective statement (“It’s a lot to deal with”) and then shared how he felt about the client’s circumstances (“I can’t imagine”). Ultimately, the student gave the client positive affirmation (“I can see why you wanted to just get out of the state, just to leave it behind you”).

A second student interviewed a client who was in a drug treatment program, and responded supportively to that account:

#5 <i>Client:</i>	I’m in a residential treatment facility– [ok] - where I – like, I’m almost to the step where I’m transitioning out–
<i>Student:</i>	Very nice.
<i>Client:</i>	- and get to be on my own– [ok] - with my daughter but I’m not allowed internet access currently

A third student interviewed a client who had a protective order entered against him by a roommate, and who asserted that there had been no basis for the roommate’s allegations against him. The client began by complaining about “the legal system” and the judge who entered the order against him:

#34 <i>Client:</i>	Well, first, I’m very discouraged with the legal system that this request turned into a protective order. I just cannot believe—green eyes, red hair. No. All these are false allegations. [ok] This is nobody I know and yet it went to Commissioner Vincent Benson [Uhhuh] and he said I didn’t even address two of the issues. I don’t understand. Did he just not read my order to vacate? I addressed everything. I am so discouraged with the judicial system. I do not understand it.
<i>Student:</i>	Well, I tell ya, you’re not alone if you don’t understand [okay] the details of the judicial system. //Don’t feel bad about that.//
<i>Client:</i>	//Okay. Thank you.// Oh, man.

The student normalized the client's feelings by stating the client "was not alone" in not understanding "the details of the judicial system." Even though this response did not side with the client against the judge, the client found it affirming and thanked the student for this support.

Later the client complained about a "rude" clerk and the student replied, "I'm sorry to hear that" and "which I know can be frustrating;" first sharing genuine empathy and then reflection.

During the counseling phase, this client affirmatively thanked the student for listening:

#34 <i>Client:</i>	Chuck, it is so empowering talking with you. I got the same thing from my attorney; that empowerment. With talking with friends, it's just like, "Yeah, Thom. Well, we know you didn't do this." With you and my attorney, it's so empowering to tell you my story. Thank you for listening to //all of it.//
<i>Student:</i>	//You're welcome. // Well, it feels good. I mean, everybody—whenever we have conflicts in life, everybody has a story and I think there's nothing more frustrating than feeling like you haven't been heard.

The student accepted the compliment and then normalized the client's situation by agreeing that everyone has a story and a need to be heard.

During a counseling session, this client was informed that he would still be able to work for the landlord, even though the protective order was in place. The student framed the conclusion in positive terms:

#34 <i>Student:</i>	Okay. That way the good news there is that you don't have anything more to do with her. You don't have to see her. You don't have to talk to her. She becomes the sole occupant of that apartment number four. Then, all that is her issue, right? Whether or not she's paying the rent. Whether she's paying the utilities.
<i>Client:</i>	It's all her issue.
<i>Student:</i>	You're clear. That's the best way we feel to disentangle you from her. Which since she filed a protective order sounds like she wants the same thing. She doesn't want to have anything— anymore to do with you.
<i>Client:</i>	Yeah.
<i>Student:</i>	In that case, it's a win-win situation.
<i>Client:</i>	Yeah, it is. I have to stay away from someone that I want to stay away from.
<i>Student:</i>	Right. Exactly. Exactly. This way you get to live in the same place, just not the same exact unit.
<i>Client:</i>	Do work for the landlords.
<i>Student:</i>	You get to continue to work for the landlord. You're not—how do you feel about that?
<i>Client:</i>	Good. That's good.

Although getting the protective order vacated was not a likely strategy, the student was able to frame the existence of the protective order in positive terms—the client gets to stay away from someone he wants nothing to do with.

### 3. Mistakes in Attempted Empathy

One student attempted to empathize with the client by saying, “these/it can get difficult” at two different points. Initially, the client described a very confusing procedural situation, and included many complaints and questions in her account. Here are the client’s concluding utterances, wishing for an attorney, and the student’s response:

#20	. . . In his e-mail, he sent me several items that he wants changed.
Client:	[Mmhm] I have to respond to him within five days, I think, but I don’t know. [ok] I wish I could find a good attorney.
Student:	Okay. Yeah. <i>These can get difficult</i> , so—
Client:	Was that as unclear as possible?
Student:	I think I got it. . . .

The student’s response (“these can get difficult”) was either not taken in by the client or accepted as agreement with her frustration in not having representation. A few minutes later, the client again expressed frustration, but the student’s similar response lead to a different result:

Client:	Mainly due to my health. I’ve had very poor health. [ok] And so I was also to be his beneficiary. He wants to change that. He doesn’t want me to be the beneficiary of his income. [Mmhm] He’s soon to retire. So from what I could tell from what the Commissioner said, I could be in court—he could keep me in court forever. [Mmhm] I’d rather not do that. Even if I sign you know and state I want the divorce and the divorce is finalized, he’s gonna keep taking me back to court [Mmhm] to change some of the documentation.
Student:	<i>It, it can get difficult.</i>
Client:	<i>Can it?</i>
Student:	<i>It can. //I mean, there’s //—</i>
Client:	<i>//So Even though// there’s a permanent decree, he can still—</i>
Student:	There are motions to modify. They won’t always be granted, but potentially that could be the case. Do you have a copy of your separation decree?

This time the student’s attempt at empathy (“it can get difficult”) was taken as an assessment of the case. Indeed, the student was not reflecting the client’s feelings (e.g., “that sounds frustrating” or “you sound discouraged”), but was literally referencing the case as something that “can get difficult.” While comments such as these (agreeing that the speaker is in a pickle) may suffice with friends and family, they are not reflection or active listening and are inappropriate for a professional’s response.

The student’s statement (“it can get difficult”) resulted in the client questioning this opinion, and led to the student (improperly, without attorney oversight) explaining that “there are motions to modify.” Thus, the student confirmed the client’s fears that her husband could keep taking her back to court, when she intended to express empathy for the client.

This student's instincts to provide empathy to this client were correct. But she had not learned how to engage in active listening or reflection of the client's feelings. As a result, the client was given an opinion about her case rather than hearing that her feelings had been understood. The difference between reflecting the client's expressed feelings and commenting on the client's situation can be a fine line, which argues for instruction in this important skill.

#### 4. Summary

The absence of expressions of empathy in the vast majority of cases did not seem to derail the interviews, although the transcripts seem hollow when read. Similarly, one student's wooden attempts at empathy did not seriously harm rapport, but clearly did not help it. However, in the few cases where the students did successfully express empathy, the clients responded in positive ways. Because studies of medical education show that medical students do not naturally pick up the ability to empathize without specific training,<sup>87</sup> one can imagine the same is true of law students. This argues for including an instructional component for pro bono students so that they will acquire and use empathy skills when and as appropriate.

#### *D. Conclusions from the Transcripts*

The fine-grained analysis of transcripts from a student-staffed brief advice program provides a window into the developing professional identities of law students. To understand the professional identities that the law students were presenting at this brief advice project, we have looked at students' introductions, the style or language used, and the use of empathy. Here, we briefly summarize what we have discovered.

Students' introductions reveal that, with some frequency (12 out of 46 interviews), students do not accurately describe the nature of the attorney-client relationship. The large majority of students presented themselves both in self-effacing ways (explaining they are only law students and may not give legal advice) and in self-promoting ways (expressing their control over the interview and the problem vis-à-vis the client). Some students also presented themselves as controlling the interaction with the attorney or as otherwise dismissive or critical of the supervising attorneys. In turning to the client's matter, only one student began with a client-centered inquiry; the vast majority of students were instead focused on what they themselves would do. In three cases, the clients seized control of the opening moments with chitchat, and the students responded appropriately to this tactic, perhaps intended by the clients to level the playing field between themselves and the student-professional.

Most of the students used standard English throughout the interview. None of the students used difficult-to-understand formal legal language. However, a few students used very informal, colloquial, and sometimes "powerless" language when speaking to the clients.

When clients shared upsetting accounts or expressed emotion, most students failed to respond with reflection, active listening, or genuine empathy. One student attempted an empathic reply that expressed a judgment about the client's matter instead. Only three students successfully included expressions of empathy in their interactions with clients, and this was effective.

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<sup>87</sup> *Id.*

#### IV. CONCLUSIONS AND RECOMMENDATIONS

This careful analysis of transcripts from a student-staffed brief advice project also suggests ways to support students in their formation as legal professionals and raises topics for further study.

##### A. *Studies of Professional Identity Formation Applied Here*

“A critical question . . . is how most effectively to socialize graduate students and practicing professionals into an ethical professional identity that connects technical professional skills with the public purpose of each profession.”<sup>88</sup> The evidence from the transcripts can help us answer that question.

All five Carnegie Foundation studies (medicine, nursing, clergy, engineering and law) “agree that a fundamental element of professional formation is internalizing a deep responsibility to the person being served.”<sup>89</sup> An important part of “professionalism means that each lawyer: . . . agrees to act as a fiduciary, where his or her self-interest is over-balanced by devotion to serving the client and the public good in the profession’s area of responsibility: justice. . . .”<sup>90</sup>

Closely related to the deep responsibility to the clients is an ability to empathize with them—sometimes called “personal conscience” or “moral sensitivity.”<sup>91</sup> Hamilton notes:

In medicine, definitions of empathy center primarily on a cognitive process involving perspective taking and recognition of another’s pain or distress (while preserving objectivity and guarding against compassion fatigue). In law, like medicine, the need to see the other person’s perspective while maintaining healthy boundaries with respect to the emotional aspects of empathy is critical to effectiveness, particularly in situations rife with conflict, hostility, or manipulation.<sup>92</sup>

Professor Hamilton notes that since *Educating Lawyers* was published in 2007, there have been “a few empirical studies that help us understand students’ developmental stages with respect to demonstrating an understanding of and integrating an internalized deep responsibility to clients and the legal system.”<sup>93</sup> One survey of young adults (18–29) regarding becoming an adult concluded “what matters most [to them] is accepting responsibility for oneself and becoming financially independent.”<sup>94</sup> A second study found that the “majority of those interviewed . . . stated that nobody has any natural or general responsibility or obligation to help other

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<sup>88</sup> Hamilton, *The Formation of An Ethical Professional Identity in the Peer-Review Professions*, *supra* note 6, at 361.

<sup>89</sup> Hamilton, *Fostering Professional Formation (Professionalism)*, *supra* note 6, at 775.

<sup>90</sup> Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, *supra* note 6 at, 482–83.

<sup>91</sup> Hamilton & Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, *supra* note 6, at 143–51 (citing JAMES REST, MORAL DEVELOPMENT: ADVANCES IN RESEARCH AND THEORY (1986)).

<sup>92</sup> *Id.* at 146.

<sup>93</sup> Hamilton & Organ, *supra* note 6, at 860.

<sup>94</sup> *Id.* at 861 (citing JEFFREY ARNETT, CLARK UNIVERSITY POLL OF EMERGING ADULTS 4 (2012)).

people,” leading the researcher to conclude “emerging adults . . . are so focused on themselves, especially on learning how to stand on their own two feet, that they seem incapable of thinking more broadly about community involvement [and] good citizenship[.]”<sup>95</sup> These findings seem consistent with the surveys that concluded students did not appreciate that their pro bono work was intrinsically beneficial for advancing social justice, in the absence of reflection.<sup>96</sup>

Professor Hamilton also relies upon “Robert Kegan’s constructive-developmental theory of lifespan growth,”<sup>97</sup> the basic premise of which is that “adults can become increasingly self-aware of both egocentric views and hidden assumptions that might block our attempts to change, hamper our ability to empathize with others, or limit our potential effectively to interact with others from an internalized, authentic source of authority.”<sup>98</sup> Hamilton also cites lifespan developmental psychologist, James Rest, as recognizing that an individual’s sense of self can evolve over the lifespan, with self-interest being dominant in childhood and more other-oriented ways of thought later in life.<sup>99</sup> Given that growth is possible, Hamilton argues that the content of an effective curriculum should take into account that students are at different developmental stages, provide “repeated opportunities for reflection, . . . emphasize that experiential learning, feedback on the student’s performance, and reflection are very effective; [and] emphasize coaching. . . .”<sup>100</sup>

The findings here are entirely consistent with this literature. Students were using their “technical professional skills with the public purpose” of advising needy clients. Their participation evidenced their “devotion to serving the client.” However, the students appeared to be at different “developmental stages” in terms of “integrating an internalized deep responsibility to clients” as evidenced by the transcripts. Only one student framed the consultation in a client-centered way. Only three students expressed empathy in response to clients sharing upsetting accounts or emotions. The informal language used by a few students suggests discomfort with presenting themselves in a professional role. Most of the law students focused on themselves as prime actors, emphasizing that they will “ask, . . . analyze . . . find out” rather than “listen and try to understand.” Many students also expressed frustration with their need to seek attorney guidance, some speaking as if they were in control of the lawyers. This frustration itself suggests a focus on themselves rather than an understanding and appreciation for the duties the program owed to the clients.

Nevertheless, the richness of these findings suggests that pro bono projects are excellent vehicles for law students to begin to develop their professional identities—provided that adequate instruction and reflection opportunities are made available to them.

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<sup>95</sup> *Id.* at 862 (quoting CHRISTIAN SMITH WITH PATRICIA SNELL, SOULS IN TRANSITION: THE RELIGIOUS AND SPIRITUAL LIVES OF EMERGING ADULTS 33, 71 (2009)).

<sup>96</sup> *See supra* note 26.

<sup>97</sup> Hamilton & Organ, *supra* note 6, at 863 (citing ROBERT KEGAN & LISA LASKOW LAHEY, IMMUNITY TO CHANGE: HOW TO OVERCOME IT AND UNLOCK THE POTENTIAL IN YOURSELF AND YOUR ORGANIZATION at xii, 11–14 (2009)).

<sup>98</sup> *Id.*

<sup>99</sup> Hamilton & Organ, *supra* note 6, at 874.

<sup>100</sup> *Id.* at 874.



### B. Recommendations for Pro Bono Pro Se Projects

In light of these findings and the prior research about law student pro bono,<sup>101</sup> a few recommendations are in order. These recommendations are relevant for the project studied here, but should also be relevant for any law school pro bono program that includes brief advice or student-client interviewing/counseling where students' self-interest should become "over-balanced by devotion to serving the client."<sup>102</sup> Although pro bono brief advice programs offer rich opportunities to foster professional identity formation, these may be lost opportunities in the absence of structure and instruction at the outset and mediated reflection afterwards. Such structural support will not only better support students' evolving professional identities but will also enhance the services the program provides to clients as well. Here is a brief summary of the recommendations that are elaborated upon below:

- Pro Se Pro Bono Programs should provide a script for introductions
- Students should receive instruction in client interviewing and counseling skills
  - Including how and when to express empathy
  - Including feedback about their performances
- Students should receive instruction regarding professional responsibility
  - Including the nature of the attorney-client relationship and duties to clients
  - Including the supervisory obligations of attorneys
  - Including the obligation of pro bono and the public citizen role
- Students should have opportunities for guided reflection about their pro bono experiences
  - Including opportunities to process their feelings about their evolving professional identities and relations with supervisors and clients

#### 1. Programs Should Provide a Script for Introductions

Projects providing brief advice to clients should be encouraged to consider a model script for introductions. Such a script should avoid the misstatements many of the students made. It also presents an opportunity to frame the program's services and the law students' crucial role in the best way possible.<sup>103</sup> There is no reason students need emphasize what they cannot do as opposed to promise what they will do. Such a script should provide a positive model for the students' emerging professional identities.

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<sup>101</sup> See *supra* note 26.

<sup>102</sup> Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, *supra* note 6 at, 482–83.

<sup>103</sup> Here is a possible script for the project studied here: Welcome to the Family Law Project, Ms./Mr. \_\_\_\_\_. I am \_\_\_\_\_ [name] and I'm one of the law student volunteers. Let me describe what we'll do tonight. Although I've read your Intake Form I'd like to listen to you tell me what has been going on. Help me understand what you'd like help with. If you have documents, please share them with us. Let me know what needs and questions you have. I'll take notes so that I can remember what you tell me. Then, I'll consult with one of our attorney volunteers. The attorney will either come advise you personally or let me know what advice I should pass on to you. Shall we get started?

## 2. Pro Bono Students Should Receive Instruction in Client Interviewing and Counseling Skills (Including How and When to Express Empathy) and Feedback About Their Performances

ABA accreditation standards regulate all “experiential courses,” including law clinics and field placements.<sup>104</sup> These courses must “integrate doctrine, theory, skills and legal ethics” as well as “develop concepts underlying the professional skills.”<sup>105</sup> Students must not only have “multiple opportunities for performance” but receive “feedback” from a supervisor.<sup>106</sup> It is not clear why pro bono experiences that call upon students to use interactive skills such as interviewing and counseling should not be subject to the same requirements for instruction and feedback. Indeed, the requirement to offer pro bono experiences divorced from any credit-earning opportunity<sup>107</sup> seems counter to best practices in teaching skills or supporting professional identity formation.

ABA Standards closely regulate when law schools may give credit for field placement courses, and require a “method for selecting, training, evaluating and communicating with site supervisors.”<sup>108</sup> It should not be impossible for law schools to similarly confirm that pro bono attorneys who supervise pro bono law students could be exposed to training, so that feedback will be consistent with law school instruction. Alternatively, law school faculty and staff might participate in the pro bono projects to ensure appropriate feedback is available.

Comprehensive assessment of the law students’ skills at client interviewing and counseling is beyond the scope of this Article. However, instruction in skills or professionalism should touch upon the importance of engaging in “client-centered” lawyering in light of the students’ natural focus on themselves. Similarly, the transcripts revealed how rarely students employed any empathy skills. Medical literature teaches us both the importance of expressing empathy to clients and the likelihood that this skill will not be acquired absent explicit instruction.<sup>109</sup> Accordingly, the skills of reflection, active listening, and other expressions of empathy should be taught to students interacting directly with clients through pro bono programs.

## 3. Students Should Receive Instruction Regarding Professional Responsibility

While all law schools are required to provide at least two credits of instruction in professional responsibility,<sup>110</sup> and the motivation for requiring pro bono programs at law schools was anchored in a desire to enhance students’ healthy development of a professional identity, it seems anomalous that pro bono experiences and instruction

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<sup>104</sup> ABA STANDARDS, *supra* note 19, at 304.

<sup>105</sup> *Id.* at 304(a)(1)-(2).

<sup>106</sup> *Id.* at 304(a)(3)-(4).

<sup>107</sup> *Id.* at 303-3.

<sup>108</sup> *Id.* at 304(d)(ii).

<sup>109</sup> See FORTIN IV ET AL., *supra* note 44, at 21; SILVERMAN ET AL., *supra* note 43, at 137–40.

<sup>110</sup> ABA STANDARD, *supra* note 19, at 303(a)(1).

about the rules of professional conduct and the values of the profession should not have to be coordinated. They should be.

If it is otherwise, students are at risk of misunderstanding the nature of their professional responsibilities, as a quarter of these volunteers appeared to do.

While it may not be wise to insist that the required course be taken before volunteering for pro bono experiences, training focused on the professionalism issues that will arise in the setting should be provided. For a brief advice program, this should include the nature of the attorney-client relationship, duties owed to clients, the supervisory obligations of attorneys, the obligation to do pro bono work, and the public citizen role.

#### 4. Students Should Have Opportunities for Guided Reflection About Their Pro Bono Experiences

A bedrock principle of experiential learning is that reflection is necessary to enhance learning from experience. Accordingly, the ABA Standards require that experiential courses include “on-going, contemporaneous, faculty-guided reflection.”<sup>111</sup> Including guided reflection will guarantee that students will be able to process their feelings about their evolving professional identities and their relations with supervisors and clients.

In coaching and mentoring, the students’ feelings of disempowerment should be addressed head-on in the hopes of altering their perspective. While it is true that students should not give legal advice without approval of an attorney—and that doing so violates the rules of professional conduct and may constitute the unauthorized practice of law—that is NOT what they need to hear. It is also true that any lawyer will do a better job of counseling a client after the lawyer has conducted a thorough interview and planned the best way to approach the advice-giving. Lawyers in a brief advice program may need to segue from interview to advice without optimal time to plan and organize their thoughts. Students have the fortunate excuse of needing to check with an attorney and thus being able to have the advice organized and planned. If students could come to see this as a consultation between legal professionals to enhance the services of the program, they might not feel the need to focus on what they are not allowed to do. They might thus be empowered to focus more upon the client who has needs and whom the program hopes to serve in the best way possible.

This study provides support for the Carnegie Report’s call for law schools to do more to assist students to develop healthy professional identities. Providing a site to do volunteer work is an excellent beginning. But we need to do more in supporting students by providing relevant instruction and opportunities to reflect upon and learn from the volunteer experiences.

#### *C. Recommendations for Further Study*

The fine-grained analysis of transcripts from one student-staffed brief advice program raises topics for further study. A similar study could be mounted at other law schools, ideally including schools where preparation for pro bono engagement is more robust. With additional instruction, do pro bono law students use more empathic skills? More accurately describe the nature of the attorney-client relationship? Present themselves as more client-centered? Express less tension surrounding their roles as

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<sup>111</sup> *Id.* at 304(a)(5).

students requiring supervision? If any of these differences are noted, can they be traced to particular instructional strategies? Or to opportunities for guided reflection?

Since students in law clinics are instructed prior to interacting with clients and have on-going faculty guided reflection experiences, recordings of their interactions with clients might reveal differences in the expression of their professional identity that could be traced to the different educational structure. Are clinic students similarly conflicted as to their roles? Or does the emphasis on clinic students controlling their own cases ameliorate students' simultaneous feelings of powerfulness and powerlessness? Do clinic students employ empathy skills as they have been taught? Do they use standard English or do some slip in to informal, colloquial language?

Conversation Analysis can provide a window into law students' developing professional identities. With further data about how law students present themselves as they adopt professional responsibilities, we can enhance their education to support their evolving professional identities.