
COMMUNITY BASED RESEARCH: INTRODUCING STUDENTS
TO THE LAWYER’S PUBLIC CITIZEN ROLE

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Law faculty teach, produce scholarship, and may engage in legal practice through clinical supervision or pro bono work. This article argues that by engaging students in community based research, law faculty will not only enhance the quality of justice available in their communities, but will also present law students with a good model of the “public citizen” role that all attorneys are called upon to assume. The article then shares my adventure in community based research with my law school’s pro bono program and community partners as an illustration of the pitfalls and promise of community based research.

I. INTRODUCTION – WHAT IS COMMUNITY BASED RESEARCH?

Many universities have undertaken community outreach in response to criticisms that higher education is insensitive to the challenges faced by urban neighbors, that scholarship of the professorate is too narrow and is irrelevant to society’s concerns, and that students graduate both unmotivated and poorly equipped to take an active role in civic life.¹

One manner in which universities have engaged communities is through “Community Based Research.” Community Based Research (hereinafter “CBR”) “is a partnership of students, faculty, and community members who collaboratively engage in research with the purpose of solving a pressing community problem or effecting social change.”² The “community” may be local, regional, national or local; however, in every case the community is comprised of the “oppressed, powerless, economically deprived or disenfranchised . . . who are disadvantaged by existing social, political or economic arrangements.”³ This definition ensures that the CBR is “working for social and economic justice.”⁴

¹ See generally Kerry Strand et al., *Principles of Best Practice for Community-Based Research*, MICH. J. CMTY. SERV. LEARNING 5, 5 (Spring 2003) (discussing Ernest Boyer’s *Scholarship Reconsidered* (1990) principle that the “scholarship of discovery” should not be the only scholarship valued because others are potentially relevant and useful to society) (hereinafter Strand et al., *Principles*).

² KERRY STRAND ET AL., *COMMUNITY-BASED RESEARCH AND HIGHER EDUCATION: PRINCIPLES AND PRACTICES* 3 (2003) (hereinafter, STRAND ET AL., *CBR*).

³ *Id.*

⁴ *Id.* at 4.

Various terms have been used to describe this sort of research – action research, popular education, participatory research, and participatory action research – and CBR traces its history to several movements.⁵ “Action research” has roots from the 1940s through Kirk Lewin’s work;⁶ it involves a program’s clients participating in the research with the goal of developing solutions and actions for the program’s problems as well as new knowledge.⁷ Popular education has a number of sources that have combined adult education with adults researching their society’s problems, with the goal of addressing them.⁸ Participatory research arose in the 1960s and 1970s due to criticisms concerning positivistic research where researchers failed to value the insights and methods of the disadvantaged subjects that they were studying.⁹ This approach was adopted as part of Third World development efforts and in North America with respect to various groups of disenfranchised persons (e.g., persons with disabilities, aboriginal persons) as well as on mental health and women’s issues.¹⁰ Non-profit programs, rather than academics, often conducted participatory research.¹¹

Because CBR draws from the aforementioned three traditions, it has been guided by the following three core principles:

[1] CBR is a collaborative enterprise between academic researchers (professors and students) and community members. [2] CBR validates multiple sources of knowledge and promotes the use of multiple methods of discovery and dissemination of the knowledge produced. [3] CBR has as its goal social action and social change for the purpose of achieving social justice.¹²

⁵ *Id.*

⁶ PATRICIA MAGUIRE, *DOING PARTICIPATORY RESEARCH: A FEMINIST APPROACH*, viii (1987).

⁷ *Id.*

⁸ STRAND ET AL., *CBR*, *supra* note 2, at 4–6 (discussing specific community research projects developed by Highlander Research and Education Center and the effects the research had on the community).

⁹ *Id.* at 6–8 (comparing the statistical focused research methods of social scientists to the “community sharing of knowledge” methods of the student researchers).

¹⁰ *Id.*

¹¹ *Id.* at 8.

¹² *Id.*

II. WHY CLINICAL AND PRO BONO PROGRAMS ARE GOOD LAUNCH PADS FOR CBR

Leading clinical faculty have urged that clinical scholarship be broadly defined to advance the justice mission.¹³ Professor Dinerstein suggests that such scholarship would benefit from multi-disciplinary approaches; moreover, he suggests that not only would poverty be a worthy topic for such study, but the lawyer-client relationship and the structure of such practice would, as well.¹⁴ Professor Colbert suggests, “[E]ngaging in reform and community work before committing to write the conventional article makes sense to most activists and clinicians.”¹⁵ In the past, I have collected and reported on the rich diversity of ongoing civically engaged scholarship in law school clinics and classes as of 2004.¹⁶ There, I argued that externships are a good base for civic engagement because of their relationships with the community.¹⁷ While students often seek extern placements in order to acquire skills and experience, they may become interested in the problems faced by the clients or agencies for which they work.¹⁸ Moreover, if supervising faculty “endeavor to learn about the large issues faced” by the community in which the students are placed, faculty members may develop research projects that the students may then carry out.¹⁹ Indeed, the fact that extern programs often have long-standing and mutually supportive relationships with non-profit agencies serving the disadvantaged should make extern programs ideal launch pads for CBR: agencies and law schools partner to provide the student with educational

¹³ See Linda F. Smith, *Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research*, 10 CLINICAL L. REV. 723, 735–39 (2004) (discussing these sources and examples of social justice scholarship) (hereinafter “Smith, *Clinical Programs*”). See generally EQUAL JUSTICE PROJECT ASS’N OF AM. LAW SCHS., PURSUING EQUAL JUSTICE: LAW SCHOOLS AND THE PROVISION OF LEGAL SERVICES (2002) (exploring ways law schools can become more effective through the use of clinics); Douglas L. Colbert, *Broadening Scholarship: Embracing Law Reform and Justice*, 52 J. LEGAL EDUC. 540 (2002) (discussing how scholarship can be used to improve the quality of justice by “writing the wrongs” and fixing issues in both the criminal and civil justice system); Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469 (1992) (exploring the positive relationship between clinical scholarship and the justice mission).

¹⁴ Dinerstein, *supra* note 13, at 470, 472.

¹⁵ Colbert, *supra* note 13, at 555.

¹⁶ Smith, *Clinical Programs*, *supra* note 13, at 740–52.

¹⁷ *Id.* at 752–53.

¹⁸ *Id.*

¹⁹ *Id.* at 752.

experiences and the student provides the agency with creditable legal work. Offering the agency and/or the agency's clients the research capacity of the academy could be a welcome adjunct to the relationship.

Similarly, now that all law schools must provide pro bono opportunities,²⁰ the relationships forged with agencies serving as sites for students' pro bono work might be further developed. Such pro bono sites might welcome the availability of programmatic research in order to benefit their clientele or the agency itself.

The agency and its clientele could enjoy advantages such as data to support grant requests or fundraising. The law faculty and/or law students could write reports based upon this data, which would relieve the agency of doing so. The agency and its clientele could also receive data and written work product that could assist the agency in seeking legislative change, procedural change, or even favorable interpretations of the law beneficial to its clients. Finally, the agency could also obtain programmatic evaluations through such a partnership to enhance its service delivery.

III. THE PUBLIC CITIZEN ROLE OF ATTORNEYS

The Preamble to the American Bar Association Model Rules of Professional Conduct teaches lawyers that their job is threefold: to be “a representative of clients, an officer of the legal system, and a *public citizen having special responsibility for the quality of justice*.”²¹ The Preamble discusses the lawyer's role as a public citizen seeking “improvement” in four important areas: “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.”²² It then states, “As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education.”²³

²⁰ 2016–2017 STANDARDS FOR APPROVAL OF LAW SCH., STANDARD 303(b)(2) (AM. BAR. ASS'N).

²¹ MODEL RULES OF PROF'L CONDUCT preamble ¶ 1 (AM. BAR ASS'N 1983) (emphasis added).

²² *Id.* at preamble ¶ 6.

²³ *Id.*

The role of public citizen includes the role of community educator: “[i]n addition, a lawyer should further the public’s understanding of, and confidence in, the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”²⁴ However, the public educator function does not suggest that the attorney should be an apologist for a flawed system:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.²⁵

Note that the Preamble does not simply call for “pro bono services”²⁶ to address unmet legal needs but also enjoins us to “use civic influence” to address this problem and to employ our knowledge “in reform of the law.”²⁷ This section of the Preamble concludes, “[a] lawyer should aid the legal profession in pursuing these objectives”²⁸

While clinical programs themselves may engage in the public citizen role—going beyond client representation to seeking improvement of the law or the administration of justice—there is no guarantee that the role of public citizen will be fully explored during a single clinical semester.²⁹ It is even less likely that students participating in an externship or engaging in pro bono services will be exposed to the attorney’s obligation to assume the role of public citizen in seeking to improve the law, the administration of justice, or the practice of law. Accordingly, it should be salubrious if faculty would launch research projects to study how the law or legal services might be improved at a clinic, externship site, or pro bono site. Such research should drive home to the law

²⁴ *Id.*

²⁵ *Id.*

²⁶ *But see* MODEL RULES OF PROF’L CONDUCT r. 6.1 (AM. BAR ASS’N 1983) (“Every lawyer has a professional responsibility to provide legal services to those unable to pay.”).

²⁷ *See id.* at preamble ¶ 6.

²⁸ *Id.*

²⁹ *See generally* Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383 (2009) (arguing that a democratic lawyer should resist the individualistic culture that manifests a focus on clinical work in law school).

students that part of the attorney's responsibility includes seeking to improve the law, the administration of justice, and the practice of law.

A faculty member could carry out such research independently; however, it might be even more useful for students and faculty to jointly conduct CBR, perhaps as part of a community research-based seminar.³⁰ If students are not part of the research team, they should, at a minimum, be subjects of the research, where the faculty answers questions about how services could be more effectively delivered or what legal processes would benefit the clientele.³¹

IV. MY EXPERIMENT & EXPERIENCE

The remainder of this article reports on my attempts to engage in CBR together with the law school's pro bono program for students, local agencies, and a pro bono program of the bar.

A. Establishing Community Connections

Establishing community connections for CBR was the easy part. The externship program that I oversaw placed students in local non-profit agencies that represented low income and other disadvantaged clients. I worked with Utah Legal Services, Inc. (hereinafter "ULS") and the Legal Aid Society of Salt Lake (hereinafter "LAS") as regular extern placements for decades. Both agencies also partner with the law school's Pro Bono Initiative and the Family Law Section of the Utah State Bar to offer a brief advice clinic on family law (hereinafter the "Family Law Clinic").³² Twice per month, law student volunteers and pro bono lawyer volunteers interview and advise clients in this clinic, while ULS provides administrative support and insurance and the LAS provides office space and forms.³³

³⁰ See Smith, *Clinical Programs*, *supra* note 13, at 744–75.

³¹ See generally *id.* (discussing "community based research").

³² Pro Bono Initiative: Free Brief Advice Legal Clinics, THE U. OF UTAH S.J. QUINNEY C. OF L., <https://www.law.utah.edu/pro-bono-initiative/free-legal-clinics/> (last visited Jan. 14, 2017, 9:03 PM).

³³ After we concluded the study, Utah Legal Services Inc. ceased sponsoring the clinic for reasons internal to its operations and the Legal Aid Society picked up the role of sponsor, providing administrative support and insurance.

For three years prior to the study, I participated as a pro bono lawyer in the Family Law Clinic together with our law student volunteers. Over these three years, the number of clients grew, which raised challenges for the volunteers and the supporting agencies. Should we limit the clinic to people eligible for free legal services from these agencies? Should we try to “instruct” clients with similar issues in small groups rather than advise them individually? Could we make the consultations more efficient by improving the forms where clients could describe their questions and concerns in writing? Are there other service delivery mechanisms (e.g. telephone consultations at other times) that might be equally effective? Are clients getting equivalent service no matter who interviews and advises them (e.g., expert family lawyer or law student with supervision)? Are some types of cases and some legal needs better served in this clinic (and other types less well served)? Are we actually helping the clients with the most difficult problems?

We attempted certain innovations: we developed an introductory lecture for clients about the court’s website and we redrafted the intake forms.³⁴ Other ideas, such as group counseling sessions, were rejected.³⁵ However, the numbers continued to increase (from 30 to 60 clients in an evening).³⁶ In Utah, as many as 49% of petitioners and 81% of respondents in divorce cases were unrepresented.³⁷ The need for brief advice or limited-scope representation continued to grow while many questions about providing brief advice to this clientele remained. Ultimately, I proposed that I design and conduct a study of the clinic that would provide data to guide the clinic’s evolution.

B. Developing a Plan for the Research with Community Partners

Here is where I failed as a community based researcher. After various informal conversations with different representatives of the agencies about a study, I proceeded to design the study and presented the

³⁴ See Linda F. Smith & Barry Stratford, *DIY in Family Law: A Case Study of a Brief Advice Clinic for Pro Se Litigants*, 14 J. L. & FAM. STUD. 167, 181 (2012).

³⁵ *Id.*

³⁶ *Id.*

³⁷ JOHN BAXTER, UTAH JUDICIARY COUNCIL, FINAL REPORT: 2006 SURVEY OF SELF-REPRESENTED PARTIES IN THE UTAH STATE COURTS 2 (2006), <https://www.utcourts.gov/survey/FinalSurveyReptToCouncilfrJVB2006-11-01.pdf>. See also Linda F. Smith, *Access to Justice in Utah: Time for A Comprehensive Plan*, 2006 UTAH L. REV. 1117 (2006) (highlighting the need for states to ensure that all residents have access to justice).

proposed documents to them.³⁸ On one hand, I thought that I would have to cease making suggestions month after month if I disciplined myself to study the clinic, but on the other hand, I thought that the results of the study could truly be useful to the sponsoring agencies in seeking funding and in making decisions about the service delivery system. As I wrote to the sponsoring agencies:

As you will see from reading this entire packet, I propose to survey both clients and volunteer lawyers immediately following the Clinic consultation about the consultation and to obtain copies of ULS records for clients who consent. I also propose to survey clients some months later about how useful the consultation proved. Finally, some of the consultations will be tape recorded and reviewed thereafter by me.

I believe that this study will most fully protect clients' confidentiality and privilege if I am conducting this study as an of-counsel volunteer consultant to Utah Legal Services, Inc. Since I have been volunteering as a lawyer at the Clinic for over two years, I think that having access to client materials for research as well as client advising purposes will have no adverse impact on attorney-client privilege. If you agree we can enter into a contract to that effect. I have drafted some proposed language which is also enclosed.

Obviously one of the goals in this research is to discover how best to operate the Clinic. The study might also yield data showing that some set of clients are not adequately assisted through a brief advice clinic, and could support funding requests for more comprehensive services. I would, of course, agree to provide data and reports to you of this nature.³⁹

The agencies were open to the study and ULS signed the agreement. However the agencies and the Family Law Section did not become true partners with me, fully invested in conducting the study. I failed to make this a maximally "collaborative enterprise" with the lawyers and agencies that sponsored the clinic.

The collaboration in CBR distinguishes it from "conventional academic research," in which the community serves as a laboratory and the researcher is an outside expert who uses the community to acquire

³⁸ I drafted the protocol, questionnaires, and consent forms for the University's Institutional Review Board, and mailed them to the heads of each partner (Utah Legal Services, Inc., the Legal Aid Society of Salt Lake, and the Family Law Section of the Utah State Bar) asking for a signed agreement that could be submitted to the IRB.

³⁹ Letter from Linda F. Smith, Professor & Clinical Program Dir., S.J. Quinney College of Law, Univ. of Utah, to Anne Milne, Exec. Dir., Utah Legal Servs., Inc. (June 8, 2009) (on file with author). A similar letter was mailed to the director of the Legal Aid Society and chair of the Family Law Section of the Bar.

knowledge but fails to give anything back.⁴⁰ Because I was a member of the community of pro bono lawyers and because I committed to giving the sponsoring agencies the results of my study, I did not think of myself as an outside expert simply using the clinic for my academic purposes.

Moreover, one might argue that the clients comprise the community that is served. As long as I designed the research in a way to give back to the client community, perhaps full collaboration with the legal agencies was unnecessary. Finally, there were aspects of the study's protocol that tapped into the expertise of the clients, the law students, and the lawyer volunteers, which honors the CBR principles of "multiple sources of knowledge" and "multiple methods of discovery."⁴¹

C. The Research Plan

Rather than meeting with my community partners about the study, I reviewed the literature about attorney-client interviewing and counseling. My goal was to gather data that I could compare to that found in similar studies. I relied on social science studies of brief advice programs and attorney-client consultations.⁴²

While I informally consulted with social scientist faculty colleagues regarding the research design, unfortunately, their own research agendas precluded them from becoming co-researchers. However, my colleagues

⁴⁰ STRAND ET AL., CBR, *supra* note 2, at 10.

⁴¹ *Id.* at 11.

⁴² See JESSICA PEARSON & LANAE DAVIS, CENTER FOR POLICY RESEARCH, THE HOTLINE ASSESSMENT STUDY FINAL REPORT—PHASE III: FULL-SCALE TELEPHONE SURVEY (2002), <http://legalaidresearch.org/wp-content/uploads/cpr-hotline-outcome-assessment-study-final-report-phase-iii-2002.pdf>; Karen Barton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 CLINICAL L. REV. 1 (2006); Michael Millemann, Nathalie Gilfrich, & Richard Granat, *Limited-Service Representation and Access to Justice: An Experiment*, 11 AM. J. FAM. L. 1 (1997); Michael Millemann, Nathalie Gilfrich, & Richard Granat, *Rethinking the Full-Service Legal Representation Model: A Maryland Experiment*, 30 CLEARINGHOUSE REV. 1178 (1997); Carroll Seron, Gregg Van Ryzin, Martin Frankel & Jean Kovath, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 L. & SOC'Y REV. 419, 419–34 (2001); Avrom Sherr, *Lawyers and Clients: The First Meeting*, 49 MOD. L. REV. 323 (1986); Avrom Sherr, *The Value of Experience in Legal Competence*, 7 INT'L J. LEGAL PROF. 95 (2000).

were very helpful as unpaid consultants. With their assistance, I was able to develop an appropriate protocol.

The study involved three survey instruments: one given to clients at the clinic immediately after the consultation, a follow-up telephone survey of clients some months later, and a questionnaire given to the lawyer or law student advisor after the consultation.⁴³ In order to gauge the overall helpfulness of the clinic, I asked the clients a series of evaluative questions regarding how well the interviewer listened, how well they understood the advisor, and the likelihood that they would recommend this advisor to others.⁴⁴ I also asked clients how helpful different services were (e.g. help understanding a document, drafting a document, getting general information, receiving targeted legal advice.) I similarly asked the advisors how helpful they thought the clinic was and how helpful they felt the different services were to the client.⁴⁵ Both the clients and the lawyers were asked to identify why the clinic may not have been helpful.⁴⁶ The client telephone survey followed up with the same questions after the client had time to take action.⁴⁷

In addition to completing the questionnaires, the client also agreed I could use the intake form to record the client's description of the legal situation and demographic information.⁴⁸

The goals for the survey portion of the study were to identify:

- the characteristics of clients best suited (and least suited) to *pro se* representation through a brief advice court annexed family law clinic;
- the characteristics of legal claims best suited (and least suited) to *pro se*
- representation through a brief advice court annexed family law clinic;

⁴³ See Smith & Stratford, *supra* note 34, at 215–19 for the “Client Questionnaire,” “Client Follow-Up Questionnaire,” and “Attorney Questionnaire.”

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See *infra* Appendix A.

- the characteristics of the client's need (e.g. general information, document preparation, advice) best suited (and least suited) to *pro se* representation through a brief advice court annexed family law clinic;
- the degree to which attorneys' assessment of the appropriateness of *pro se* representation correlate with clients' assessment of their capacities for *pro se* representation; and
- the degree to which the clients' post-consultation assessment of the appropriateness of *pro se* representation correlate with clients' later report of success.⁴⁹

The study also involved audio recording some of the consultations, which were then reviewed by me and/or by one of the senior lawyers who established the clinic.⁵⁰ The research goals of the recordings included identifying:

- the qualities of legal interviewing and counseling best suited (and least well suited) to support successful *pro se* representation;
- the indicia of excellent (and poor) attorney-client conferences, relying upon survey results as well as conversation analysis.⁵¹

I thought that having various recorded consultations might allow me to identify different dynamics in consultations by attorneys and by law students.

Because I had been volunteering as a lawyer in the clinic for a number of years, I proposed to listen to the recordings within two weeks and provide clients with any additional information or advice that I thought might benefit them. In this way, I continued my role as a volunteer *pro bono* advisor, at least with respect to these clients, even as I undertook this study.

⁴⁹ See Smith & Stratford, *supra* note 34, at 215–19 for the “Questionnaire for Clients Immediately Following Clinic Advice” and “Questionnaire for Clients Months.”

⁵⁰ See e-mail from Linda F. Smith, Professor & Clinical Program Dir., S.J. Quinney College of Law, Univ. of Utah, to Anne Milne, Exec. Dir., Utah Legal Servs. (Jan. 6, 2010, 10:36 AM) (on file with author).

⁵¹ *Id.*

D. Getting IRB Approval

Once the research plan was in place, I needed to obtain the approval of my university's Institutional Review Board (hereinafter IRB).⁵² The process included the IRB's review and approval of the research protocol and any consent documents that would be used.⁵³ Had I planned only to survey clients, the research might have been declared "exempt" from the need to obtain informed consent.⁵⁴ However, because I was collecting identifiable information about the clients, each client would need to provide written informed consent.⁵⁵ The IRB required that risks to the clients be minimized and that confidentiality be protected.⁵⁶

One significant risk identified in studying attorney-client consultation is the loss of privilege when the attorney gives the researcher a recording of the consultation.⁵⁷ I believed that my long-standing participation as an attorney at the clinic, and my continuing obligation to provide additional advice to the client after listening to the recording, eliminated this concern. My continuing dual capacity as attorney and researcher permitted me to assure the clients ongoing confidentiality and privilege. (It also allowed me to offer the benefit of a second opinion, perhaps enhancing their willingness to be recorded.)⁵⁸ The IRB approved the Client Informed Consent form.⁵⁹ The ULS's director also confirmed that my review of the recordings was part of the service given to the clients, and was thus protected by attorney-client privilege and covered by ULS's insurance.⁶⁰

⁵² Federal law requires that an Institutional Review Board approve all research conducted on human subjects. See 45 C.F.R. §§ 46.101–.505 (2015).

⁵³ § 46.109(a)–(c).

⁵⁴ §§ 46.101(b)(2), 46.116.

⁵⁵ §§ 46.101(b)(2)(i), 46.116.

⁵⁶ See § 46.111.

⁵⁷ See Brenda Danet, Kenneth B. Hoffman & Nicole C. Kermish, *Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure*, 14 L. & SOC'Y REV. 905, 909 (1980) ("The presence of persons reasonably necessary for a lawyer to conduct the interview is not considered to destroy the attorney-client privilege. Secretaries, investigators, and interpreters are among those covered by the privilege. It is an open question, however, whether researchers are also within the privilege.").

⁵⁸ See *infra* Appendix A (Consent Documents).

⁵⁹ See *id.*

⁶⁰ See e-mail from Anne Milne, Exec. Dir., Utah Legal Servs., to Linda F. Smith, Professor & Clinical Program Dir., S.J. Quinney College of Law, Univ. of Utah (Jan. 5, 2010, 10:36 AM) (on file with author).

However, I had further complicated the study by deeming the attorneys and the law students to be subjects. I thought that this was necessary for any attorney or student who would be recorded, since I would have that personal and identifiable recording. In order to see whether the following characteristics made any difference in client satisfaction or in assessment by the advisor, I also wanted to record the attorney's years in practice, whether family law was an area of expertise, and time volunteering at the clinic.

As with the client's informed consent document, the attorney document needed to set forth both the benefits and the risks of the study.⁶¹ However, unlike with the clients, there would be no possible benefit to the individual lawyer or student and there could be some risk. The following language from the Attorney and Student Informed Consent forms provides:

Finally, a random sample of clients each night will have their consultations recorded. That recording will be given to Professor Smith. She or one of the most experienced lawyer volunteers in the Clinic will listen to the recording within a week. If the lawyer identifies advice that the client was not, but could have been given, the lawyer will telephone the client and follow-up with that advice. If a recording is made, it may later be transcribed and analyzed to understand what makes a good or a poor consultation.

RISKS

The risks or discomforts of this study should be no greater than the risks or discomforts you face every day. It might make you nervous or embarrassed that the client is commenting on and another lawyer is reviewing your legal consultation. However, your confidentiality will be protected. All research personnel (students and expert lawyers) will keep confidential any information about any participant. No one will be identified by name in any reports or article. Most of the reports will contain only aggregate data and no one should be identifiable in those reports. For the consultations that are recorded, the researcher will change names and certain identifying information about the client and the case in any article written about it to protect confidentiality. However, it may be possible that you will recognize the case as one in which you were the advising lawyer and may feel some embarrassment if your work is criticized.⁶²

The thoroughness with which I identified the process and the risks was successful in obtaining the IRB's approval, but would prove problematic in recruiting attorneys to participate in the study.

⁶¹ See *infra* Appendix A.

⁶² See *infra* Appendix A.

E. Getting Funded

Because I was attempting to conduct social science research without a social scientist as a co-researcher, I believed that I needed to obtain some funding to pay for the necessary social science expertise, data entry, and transcription of recordings. My application to my university for a “seed grant” set forth these needs. The three reviewers had widely differing views on the quality of the proposal, with one voting “Fund,” one voting “Fund if Possible,” and one voting “Not Fundable.” The negative vote expressly disapproved funding for social science experts, explaining that, “[i]t also would likely behoove the PI to do her own statistics, as well. . . . The PI needs to be doing pretty much everything she has assigned to the ‘social science expert.’”⁶³

This drives home the difficulty for law faculty, not trained as social scientists, to engage in the social science research that CBR contemplates.

A second difficulty in obtaining funding goes to the heart of CBR research; it is not enough to undertake a research project that will improve a local social problem—the research must lead to new knowledge.⁶⁴ As the negative vote explained, “This does not seem like a piece of research that would lead to additional research. It is a stand-alone piece of research.”⁶⁵ All three reviewers noted that the study only looked to process factors and not outcome factors, suggesting that the study would be improved by looking to the ultimate outcomes of the cases.⁶⁶

My attempt to receive support from the law school was more successful, as I was assigned two different law student fellows as research assistants over a two-year period, one of whom had a master’s degree in public policy. The research assistants helped with follow-up surveys of clients, data analysis, and writing the reports. The law school also purchased SPSS software to perform social science data analysis.

⁶³ Reviewer # 1, University of Utah Research Foundation: Funding Incentive Seed Grant Program, Proposal Evaluation Form, Reviews of Smith Family Law Clinic Study Proposal (Apr. 2010) (unpublished manuscript) (on file with author).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

Moreover, I acquired an undergraduate volunteer to help with telephone surveys and greeting clients at the clinic.

I applied to the Litigation Research Fund established by the American Bar Association Section of Litigation that advertised funding from \$5,000 to \$20,000:

to support original and practical scholarly work that significantly advances the understanding of civil litigation in the United States. This research fund supports research and writing projects in two broad areas: First, scholarship relevant to litigation policy (e.g., on issues important to rule makers, legislators, or courts, or helpful to the organized bar in developing guidelines and formulating positions); and second, scholarship bearing on litigation practice (such as writings addressing trial skills or other aspects of how litigators conduct their work). Funded scholarship may relate to judicial administration; judicial independence; rules and standards relating to litigation (e.g., ethics rules, rules of evidence, and rules of civil procedure); the assistance of counsel; trial and discovery practice; or the jury process, among others. Projects addressing issues of low-income individuals' access to civil justice are particularly welcome. . . . Legal academics as well as social scientists and scholars from other disciplines are invited to apply.⁶⁷

I was fortunate to receive a \$5,000 grant used to purchase any social science expertise I needed to assist with statistical analysis and to pay for the transcription of many of the recordings.

F. Beginning the Research—Soliciting Informed Consent from Attorneys

After receiving IRB approval and consent of the sponsoring agencies, I solicited the participation of the attorneys and law students who were volunteering at the clinic. I made the mistake of doing that by e-mailing them and attaching the Informed Consent forms.⁶⁸ The cover e-mail provided additional description of my plans for the study

⁶⁷ See American Bar Ass'n, *Defending Liberty Pursuing Justice, Section of Litigation*, AMERICANBAR.ORG, <http://www.americanbar.org/groups/litigation.html> (last visited Oct. 13, 2016); see also American Bar Ass'n, *Task Force on Expert Witness Code of Ethics*, AMERICANBAR.ORG (Sept. 10, 2010), <http://www.americanbar.org/content/dam/aba/administrative/litigation/leadership-portal/annual-plans/2010-2011-Annual-Plan-DIVISION-VIII.authcheckdam.pdf>.

⁶⁸ Federal regulations require that a researcher seek "consent only under circumstances that provide the prospective subject . . . sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence." 45 C.F.R. § 46.116 (2015). For this reason, sending e-mails to participating attorneys prior to a clinic seemed a sensible approach.

and I offered to meet with anyone who had questions about the study. Only one person approached me with concerns and we discussed the possible benefits to the clients and the agencies. No one else called, e-mailed, or came to the clinic early to ask questions. I sent e-mails on three separate occasions to inform the lawyers and students. The third e-mail stated that I would begin collecting survey data that week. On that night, (the Wednesday before Labor Day Weekend), only three of the ten scheduled lawyers arrived.

Immediately the concern surfaced that the study was deterring attorneys from participating as pro bono volunteers. Some attorneys had told other attorneys that they did not want to participate in the study and felt pressured to do so. However, others managing the Clinic thought it unlikely that the study was the problem.⁶⁹ Here is where my failure to be adequately collaborative in the planning phase hurt the project. The study was clearly seen as “my” study not “our” study, and the prospect of being judged or critiqued by Professor Smith again (something many of the volunteers endured during law school) was certainly an issue for some.

At that point, my agency and pro bono partners had to decide whether to go forward. One partner volunteered to contact attorneys who had committed to come but then failed to arrive. They also agreed to solicit more volunteers for future weeks. They instructed me not to e-mail anything more to volunteers, as it could deter them further. Additionally, they decided to invite all volunteers to form a committee to consider the clinic and appointed a chair of the committee.

I was initially surprised, since I had not anticipated that any of the lawyers would be hesitant to complete the questionnaires. The only apparent risks that the survey presented to the lawyers was that I might learn that certain attorneys were less popular with clients and that I might share that information with others. However, I had not realized how much this made them feel as though I was judging them as former students.

I knew that my interaction with these hesitant potential subjects must be guided by federal regulations and by the Informed Consent document that must state: “participation is voluntary, refusal to

⁶⁹ Interview with JoLynn Spruance, Dir., Pro Bono Board, S.J. Quinney Coll. of Law, Univ. of Utah, in Salt Lake City, Utah (October 12, 2016).

participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.”⁷⁰ The regulations further require that consent should only be sought “under circumstances that . . . minimize the possibility of coercion or undue influence.”⁷¹ Accordingly, I committed not only to sending no further solicitations for the study, but also to being friendly to all participants, even those who (inexplicably, in my view) didn’t agree to complete questionnaires.

I did raise a concern about how new lawyer volunteers would learn of the study in sufficient time to be able to consider it. The sponsoring agency agreed to mention the study in the regular e-mail soliciting volunteers and to attach my description to that e-mail.

I had initially imagined that some attorneys would not want to be audio-taped. In accordance with federal regulations, they could sign a comprehensive consent and then simply decline to be recorded.⁷² However, since I had not been able to meet and discuss the study with any of the lawyers, they might fail to grasp that option. Accordingly, I decided that I should offer attorneys the express option of signing an Informed Consent Form that only agreed to complete the Questionnaire. This involved drafting such a form and getting it approved by the IRB.⁷³

Thus, in working through the crisis of inadequate volunteers and the possible deterrent effect of the study, we began to develop a collaborative relationship in going forward. Additional recruiting efforts occurred the following week and enough volunteer attorneys arrived to handle the press of clients. While many attorneys agreed to complete the survey forms, various attorneys declined to complete the surveys and I endeavored to be neutral regarding participation. Interestingly, all of the student volunteers consented to the study.

The agencies also made it clear that they did not want the study to create more work for them. Accordingly, I agreed to collect all the Intake

⁷⁰ § 46.116.

⁷¹ *Id.*

⁷² *See, e.g., id.* (allowing participants to sign a comprehensive consent form and then refuse to participate in a specific portion of the study).

⁷³ *See generally infra* Appendix A (“Attorney Consent Document”).

Forms, make copies of those that pertained to client participation, and delivered the entire packet to the agency thereafter.

G. Beginning the Research with Clients–Consent & Data Collection

The study collected survey information twice each month from September through June. Problems with attorney attendance were substantially addressed and the existence of the study ceased to be seen as a problem. We offered clients the Consent Form together with the Intake Form and I presented an oral description of the study to the clients waiting to be seen at least twice every evening and offered to answer any questions. Clients, who rarely had questions or concerns about the survey, completed the questionnaire privately after the consultation and left it in a closed box. Client participation rates hovered around 25%, with those declining to participate typically eager to leave after having waited over an hour to be seen.

After a few evenings of data collection, some attorneys and law students pointed out an ambiguity in their questionnaire where they indicated what about the client or the client's matter would likely make the clinic helpful or not helpful.⁷⁴ Indeed, the data that had been submitted in response to these questions was confusing. Accordingly, I re-designed the relevant questions, submitted them for IRB approval, and produced an improved questionnaire. I was pleased that they felt sufficient ownership of the study to make suggestions.

The process of collecting the various forms from clients and attorneys presented some challenges. Sometimes clients completed the Questionnaire but failed to submit the Consent Form. Sometimes the Intake Form was not returned. Often, a participating attorney completed a Questionnaire, but the corresponding client did not; however, because of the way the database was designed, the attorney questionnaire without the client questionnaire could still be used. The problems with the consent and data collection processes going forward smoothly were certainly related to the fact that the clinic itself was a crowded, busy, and sometimes confusing event.

Clients continued to attend in large numbers, with dozens arriving as much as an hour early. In order to distribute the survey and consent forms, I too had been arriving an hour early. This led to my setting up

⁷⁴ See Smith & Stratford, *supra* note 34, at 215–19 (“Client Follow-Up Questionnaire”).

the rooms and distributing the agency Intake Forms, as if I was in charge of the clinic. Some evenings, no attorney or student who spoke Spanish was present; and since I speak Spanish passably well, I stepped out of the role of researcher and into the role of advisor again. Later, I reverted to the role of attorney in the clinic when I had adequate volunteers to assist with the study.

I initially believed that I should serve only as a researcher during the duration of the study; however, the press of clients (and of students needing supervision) motivated me to return to the role of lawyer. Given the principles of collaboration in CBR, this transition was likely appropriate and perhaps my attempt to assume both roles encouraged more attorneys to consent to the study.

H. Audio-recording Begins

The protocol provided that audio recording would begin only after the survey process was well established. Accordingly, by January, I decided that we should attempt to record a handful of conferences each evening. Having learned from my experience of e-mailing my plans to the attorneys, I instead decided to simply approach those attorneys and experienced students who had already consented to the full study and ask if they would be interested in recording that evening. Fortunately, many agreed.

As I had anticipated, many clients were willing and eager to have their consultations recorded. The fact that I was the first person at the clinic (distributing both the Intake Forms and the Client Consent Forms), that I provided a general introduction to the clinic and the study, and that I introduced myself as one of the lawyer volunteers as well as a professor with a study; no doubt convinced the clients that this was a collaborative venture and that allowing me to listen to their consultation would provide more benefit than harm.

I. Providing Results to Community Partners—The Survey

The most important expert consultations that I received involved how to set up and use SPSS, a software program used in social science research.⁷⁵ After installing SPSS⁷⁶ on my computer and reading *SPSS*

⁷⁵ IBM SPSS Software, IBM ANALYTICS, <http://www.ibm.com/analytics/us/en/technology>

for Dummies,⁷⁷ I set up a database into which I could input all my survey data. Even if I had the ability to describe how SPSS works in a way that would be useful to others, there would not be sufficient space to detail all of that information here. Suffice it to say that it is a nifty little program, having a consultant was very useful, and I developed excellent data entry skills.⁷⁸

After the first night of data collection, when too few attorneys volunteered, I provided a short report to the community partners, which summarized the number of clients who attended, were advised, and participated in the study. I also highlighted that clients' comments were favorable about the clinic and the study.⁷⁹

After three weeks of data collection, I provided an interim report to my community partners regarding client demographics, the types of legal problems presented, and the clients' level of satisfaction.⁸⁰ I did not provide any interim report to the participating attorneys or students, so as not to affect how they would answer the questionnaires in the future. Shortly thereafter ULS asked me to draft a letter regarding this data for ULS to provide to a foundation considering their funding request, and I did so.⁸¹ ULS also asked that I conduct additional data collection and

/spss/ (last visited Oct. 28, 2016).

⁷⁶ SPSS used to stand for Statistical Package for the Social Sciences; however, it is now simply referred to as SPSS. See, e.g., *IBM SPSS Software* FAQs, PRESIDION, <http://www.presidion.com/software/ibm-spss-software-faqs/> (last visited Oct. 28, 2016) (explaining that SPSS predictive analytics software offers deeper, more meaningful insights from data and helps predict what will likely happen next); see also, e.g., *IBM SPSS Software*, IBM ANALYTICS, <http://www.ibm.com/analytics/us/en/technology/spss/> (last visited Oct. 28, 2016).

⁷⁷ See, e.g., ARTHUR GRIFFITH, *SPSS FOR DUMMIES* (Wiley Publ'g, Inc. 2007).

⁷⁸ Although I had initially imagined that a research assistant would conduct the data entry, I realized that I was better suited for the task. I instead utilized the research assistants for follow up client telephone surveys.

⁷⁹ See Memorandum from Linda F. Smith, Professor & Clinical Program Dir., S.J. Quinney Coll. of Law, Univ. of Utah, to ULS, LAS, Family Law Section, and PBI (Sept. 2, 2009) (on file with author) (addressing how high levels of satisfaction may have given the community partners ammunition to convince volunteers to continue with the clinic).

⁸⁰ See Memorandum from Linda F. Smith, Professor & Clinical Program Dir., S.J. Quinney Coll. of Law, Univ. of Utah, to ULS, LAS, PBI and Family Law Section (Oct. 20, 2009) (on file with author).

⁸¹ See Letter from Linda F. Smith, Professor & Clinical Program Dir., S.J. Quinney Coll. of Law, Univ. of Utah, to Lisa Eccles, Exec. Dir., George S. & Delores Dore Eccles Found. (Jan. 2010) (on file with author).

analysis relying upon the intake forms, and that I report demographic information (gender, age, income, household size), the type of legal problem presented, and the nature of help requested.⁸²

After six and a half months of data collection, one of my law student Quinney Fellows⁸³ drafted a report⁸⁴ to the community partners, which she later edited into an article for the Utah Bar Journal,⁸⁵ advertising the Clinic and the valuable work that it was doing. After nine months of collecting data at the clinic, we had collected survey data for 393 clients. At this point, we ceased data collection from new clients and focused on follow-up calls for the next few months. The goal was to begin analyzing the data by the end of the year and hopefully publish the results as well as provide them to our community partners.

The easiest analysis involved summaries (e.g., how many clients had a particular problem, what percentage were below the poverty line, etc.) and calculation of the mean client satisfaction with a particular service. The correlations proved more difficult, which entailed looking at what types of cases or help correlated with the highest client satisfaction. My second law student Quinney Fellow, an expert in data analysis, was crucial in helping me with this analysis, and together, we ultimately wrote and published an article that we provided to community partners.⁸⁶

J. Results from the Survey

The study revealed the demographics of the clinic patrons and the nature of their issues. A majority lived below the poverty line and 86%

⁸² See Letter from Anne Milne, Exec. Dir., Utah Legal Servs., to Linda F. Smith, Professor & Clinical Program Dir., S.J. Quinney Coll. of Law, Univ. of Utah (undated) (on file with author).

⁸³ *Fellowship Description*, THE UNIV. OF UTAH S.J. QUINNEY C. OF L., <https://www.law.utah.edu/students/student-resources/awards-fellowships-and-competitions/quinney-student-fellowships/> (last visited Oct. 18, 2016) (explaining that students selected to participate in the Quinney Student Fellowship program at the University of Utah, S.J. Quinney College of Law, “work closely with members of the faculty and others on a range of exciting research, writing, and service projects”).

⁸⁴ See Memorandum from Blakely Neilson to ULS, LAS, PBI and Family Law Section (March 17, 2010) (on file with author).

⁸⁵ Blakely Neilson Denny, *The Family Law Clinic: A Critical Service to Pro Se Litigants*, 24 UTAH B.J. 30, no. 2 (2011).

⁸⁶ See Smith & Stratford, *supra* note 34.

lived below 200% of the poverty line; 63% were women.⁸⁷ Many clients presented more than one legal issue; while custody was the predominant issue (52%), a full range of issues were presented: divorce (41%), child support (37%), visitation (34%), paternity (20%), alimony (16%), child abuse (10%), spousal abuse (8%), guardianship of a child (6%), parental termination (4%), adoption (4%), guardianship of an adult (2%).⁸⁸ Clients did not present “simple” matters, and many needed to change an order (28%) or enforce an order (14%).⁸⁹

Clients were surveyed as they exited the consultation and then again a few months later.⁹⁰ The advisors participating in the clinic were also surveyed about whether they thought the consultation had been helpful.⁹¹

The exit survey results were very positive: overall client satisfaction was high, as the clients felt that their advisors had listened to them, and they believed that they had understood their advisors.⁹²

Exit Questions to Clients	Somewhat	Very	Combined positive
Overall, how helpful was the clinic?	15%	80.7%	95.7%
How well did the interviewer listen to you?	6.1%	92.7%	98.8%
How well did you understand what your advisor told you?	10.0%	88.4%	98.4%

The advisors (attorneys and law students) also assessed the consultations favorably but somewhat less optimistically.⁹³

⁸⁷ *Id.* at 186.

⁸⁸ *Id.* at 187.

⁸⁹ *Id.*

⁹⁰ *Id.* at 183.

⁹¹ *Id.* at 185–86.

⁹² *Id.* at 190, 192.

⁹³ *Id.* at 210.

Exit Questions to Attorneys	Somewhat	Very	Combined positive
Overall, how helpful was the clinic for the client?	31.2%	61.3%	92.5%
How well did the client understand the advice?	30.1%	66.4%	96.5%

The follow-up survey resulted in clients being less satisfied. While many clients were still very positive, the overall positive scores dipped lower than the advisors had imagined.⁹⁴

Follow-up Survey Questions	Somewhat	Very	Combined positive
If you had a new legal problem, how likely would you be to return to the person who advised you?	13.3%	74.6%	87.9%
How likely would you be to recommend the Family Law Clinic to someone else?	7.5%	84.5%	92.0%

The clients appreciated the interpersonal dynamics (felt listened to, believed they understood the advice) and were nearly as satisfied with the student consultations as they were with the attorney consultations.⁹⁵ The data regarding which cases were most successful was inconclusive; however, clients were generally more satisfied when they presented with predictable legal issues (e.g., child support or parent-time), and they were less satisfied when they presented with less predictable legal issues (e.g., alimony or custody).⁹⁶ Overall client satisfaction was also related to demographics—the poorer the client, the less satisfied they were.⁹⁷

⁹⁴ *Id.* at 193.

⁹⁵ *Id.* at 191–92.

⁹⁶ *Id.* at 193–96.

⁹⁷ *Id.* at 204.

What the client thought would be helpful in the exit survey changed in the follow-up survey.⁹⁸ “Initially, clients thought referrals to legal aid agencies and to sources of additional information would be most helpful. In the follow-up survey, referrals to legal aid agencies were deemed unhelpful.”⁹⁹ In the exit survey, clients indicated that a form would be one of the most helpful services, but later rated this as one of the least helpful services.¹⁰⁰ Finally, the clients originally saw “general information” as only average amongst the various services; in the follow-up survey it was seen as the most helpful service.¹⁰¹ These correlations suggest that we should be doing more for many of these clients.

K. Analysis of Attorney-Client Consultations

We made recordings over a four-month period and recorded sixty-three consultations.¹⁰² Twenty recorded consultations were with attorneys and forty-three were with students¹⁰³ I listened to the recordings within two weeks of each clinic and, as promised called clients when I discovered that there was additional information or advice that could be provided.¹⁰⁴ Of the sixty-three recorded consultations, I called only a handful of clients because the advice given had generally been correct and thorough. I orally reported this to the host agencies. After reviewing all of the recordings, I selected four attorney consultations and four law student consultations for a more comprehensive analysis.

The four attorney consultations were generally successful in that correct and fairly comprehensive legal advice was conveyed to the clients. These consultations were also generally representative of the range of consultations conducted at the clinic, given that each consultation presented different legal issues, and that three of the four clients lived below the poverty level.¹⁰⁵ These consulting attorneys specialized in family law and had been practicing between five and eighteen years, so

⁹⁸ *Id.* at 213.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 213.

¹⁰² This quantitative research was conducted by the author and is on file with author.

¹⁰³ Smith & Stratford, *supra* note 34, at 213.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

they had the capacity to provide excellent advice.¹⁰⁶ I also considered that the four student consultations were representative of the student recordings, two of which I considered to be “good,” and two of which were “weak.”

We transcribed each of the eight consultations using a modified conversation analysis approach to transcription.¹⁰⁷ Two of the family law experts, representatives of the community partners (LAS and Family Law Section), joined me listening to all eight recordings, giving the community partners a concrete understanding of the nature of the consultations. The experts noted which consultations were most successful and which could be improved. One expert commented that the attorneys were trying to convey so much information, that the clients must have felt they were “drinking from a fire hose.” I later completed a more thorough analysis of the attorney consultations, which is a forthcoming publication.¹⁰⁸ I provided the community partners with the draft article prior to submitting it for publication.

I drew various conclusions from the conversation analysis of the attorney consultations. Where the survey results suggested that clients often asked about more than one legal issue, an analysis of the consultations demonstrated just how complex these cases were, making it crucial that the advisors were highly experienced family law practitioners. The consultations were improved when the clients utilized the intake form to introduce their matters and when the attorneys consulted and relied upon the intake form. Typically, attorneys did not invite a client narrative, but instead reviewed client documents and asked narrow questions. Usually the attorneys turned to provide advice very quickly. In most cases, we could have improved the consultation by eliciting a client narrative, or asking additional questions before giving advice. Where the survey results showed client satisfaction declined between the exit survey and the follow-up telephone survey, the study of the recorded consultations demonstrated why that might be the case. Both the

¹⁰⁶ *Id.*

¹⁰⁷ See Alexa Hepburn & Galina B. Bolden, *The Conversation Analytic Approach to Transcription*, in THE HANDBOOK OF CONVERSATION ANALYSIS 57–67 (Jack Sidnell & Tanya Stivers eds., 2013); see also H. Sacks, E. A. Schegloff & G. Jefferson, *A Simplest Systematics for the Organization of Turn-Taking for Conversation* 50 LANGUAGE 696 (1974) (analyzing and explaining the organization of turn-taking in conversation).

¹⁰⁸ Linda F. Smith, *Drinking from a Fire Hose: Conversation Analysis of Consultations in a Brief Advice Clinic*, 43 OHIO N. L. REV. 63 (2017).

community partners and I thought it unlikely that these clients could remember and act on all the accurate advice that had been conveyed. It was clear that clients needed “take away” instruction forms. Similarly, we thought that ongoing limited-scope representation might be superior to the one-shot brief counseling the clinic provided.

V. IMPACT OF THE STUDY

As a result of my on-going reports to the community partners, we implemented various changes at different stages of the analysis. Early in the process, ULS expressed an interest in the demographic data and asked me to analyze the demographics of all clinic clients—not just study participants—over a period of time.¹⁰⁹ I did so, and reported the results: 66% had income below 125% of the poverty level and were thus eligible for free legal services from ULS.¹¹⁰ Following a review conducted by the Legal Services Corporation, ULS decided that it would no longer be a sponsor for the clinic. The LAS, which serves people identified as falling under 200% of the poverty line, stepped in to be the sole non-profit sponsor.¹¹¹ LAS, PBI and the Family Law Section all agreed that the clinic would give preference to clients who qualified for LAS services. Moreover, we would see over-income clients only at the end of the evening, time permitting. By making this change, we were able to better accommodate the large numbers of clients seeking our services.

Similarly, our review of the recordings resulted in various changes to clinic protocol. First, because attorneys were inclined to tightly control the interview, ask narrow questions, and begin giving advice as early as possible, we agreed that this did not model good interviewing skills for the students to employ. Accordingly, new students began to observe experienced students rather than the attorneys. Our goal was for the students to complete a thorough interview. One of the experienced students worked with me to develop interview questions to ask in various types of cases. We then provided these interview templates for student volunteers to use.

¹⁰⁹ Letter from Anne Milne, Exec. Dir., Utah Legal Servs., to Linda F. Smith, Professor, S.J. Quinney Coll. of Law, Univ. of Utah (Jan. 6, 2010) (on file with author).

¹¹⁰ *Id.*; Smith & Stratford, *supra* note 34, at 186.

¹¹¹ Eighty-six percent of the clients had incomes below 200% of poverty. See Smith & Stratford, *supra* note 34, at 186.

We also noted the difference between experienced students and new students in giving advice to clients. We agreed that new students could interview the client and convey the client's concerns and/or story to an attorney volunteer, but then the attorney volunteer should advise the client while the student observed. This process allowed the attorney to model good counseling techniques and helped the students learn the law.

There were a few instances where a client was a victim of domestic violence and the student did not appreciate the gravity of the client's situation. We agreed that an attorney would participate in the counseling process whenever a client was a victim of domestic violence. We also encouraged students to seek attorney participation in counseling sessions involving particularly complex or confusing matters. We began to identify attorney volunteers who were best suited to work with the students and asked them to make themselves available for student supervision. Other attorney volunteers were encouraged to handle their own clients.

The partners worked together to redraft the Intake Form because we regarded it as a potentially very helpful tool. We asked the student staffing the reception desk to encourage the clients to fill out the Intake Form as completely as they were able. Similarly, because the consultations were often complex, the partners developed an Exit Form for the advisors to complete for each client. The Exit Form outlined the client's next steps, the documents the client needed, and other resources the client might consult.

The Clinic Study may have had a broader impact than just the management of the "brief advice" clinic. The LAS had long provided full service representation to low-income clients in a wide variety of family law matters as well as representation to obtain a protective order for any victim of domestic violence.¹¹² However, there was often a long wait for full representation in a divorce or parentage action.¹¹³ Recently, LAS has begun to provide limited scope representation by interviewing the client, assessing the case, advising the client what documents to complete and how to complete them,¹¹⁴ and directing the client to the court's web page for a wide array of document preparation

¹¹² *Id.* at 180.

¹¹³ Domestic Relations Programs, LEGAL AID SOCIETY OF SALT LAKE, <http://www.legalaid.societyofsaltlake.org/domestic-relations> (last visited Oct. 16, 2016).

¹¹⁴ Smith & Stratford, *supra* note 34, at 180–81.

services.¹¹⁵ LAS then reviews the documents for these clients.¹¹⁶ LAS also appears with these clients for hearings on temporary motions, as well as for mediation and trial.¹¹⁷ This new approach to offering limited-scope representation addresses the concern that many clients might be unable to follow the advice given at the clinic, and the recommendation that we should offer more ongoing, limited-scope services.¹¹⁸

Similarly, LAS, the Salt Lake City Domestic Relations Commissioners, the courts' Self Help Center, and the Utah State Bar have together launched a limited-scope service where the courts hear all pro se motions on a particular day each week.¹¹⁹ LAS and pro bono attorneys provide limited scope representation for that day where they interview, advise, negotiate and if necessary argue the case on behalf of the clients.¹²⁰ While clients still need to complete sufficient paperwork to get into court, this service has also addressed the need for more ongoing limited scope representation.

VI. LESSONS ABOUT COMMUNITY BASED RESEARCH

One significant lesson revealed by this study is the importance of conducting community-based research as a truly collaborative enterprise. Failure to facilitate mutual understanding regarding what is being studied—and why—can result in both suspicion and a lack of participation. However, unless the project originates entirely with the community partner, there may be difficulties in achieving full collaboration. Agencies that receive funding to deliver a particular service may not welcome evaluative data, while agencies and volunteers serving the needy may not care to attend meetings to discuss research strategies. Although I failed to establish a collaborative trusting relationship at the outset, such relationship developed as I began to provide information and analysis to the agency partners, as they participated in the analysis, and as we made changes based on what we learned.

¹¹⁵ See generally *id.* (describing the Online Court Assistance Program website).

¹¹⁶ *Id.* at 181, 214.

¹¹⁷ Domestic Relations Programs, *supra* note 113.

¹¹⁸ See Smith & Stratford, *supra* note 34, at 191–92.

¹¹⁹ *Id.* at 171–72.

¹²⁰ *Id.* at 170–72.

A related challenge, I believe, is conducting CBR while complying with IRB protocols in recruiting research subjects and obtaining informed consent. The distant, non-coercive way in which I solicited participation by e-mail and fully informed subjects of every possible risk seemed to create, rather than prevent, distrust and suspicion. Had I been free to chat about the project with every volunteer attorney one-on-one, I imagine that the initial stages of the project would have gone more smoothly. However, I do not see any way around the formalities created by the requirements of federal law to protect human subjects.¹²¹

Because CBR validates multiple sources of knowledge and promotes multiple methods of discovery, the researcher must be open to re-designing the study in consultation with the community partners as it goes forward.¹²² Lawyers suggested changes in certain questions that benefitted this research. I now realize that I failed to include any focus groups or open interviews about the clinic with any of the subjects (e.g., lawyers, students or clients). A focus group might have usefully expanded the inquiry to consider not just the clinic, but how these clients might best be served.

Proponents of CBR raise concerns about inadequate respect for this sort of research in the academy.¹²³ My experience bears that out. I did not get funding from my institution in part because the project would not “lead to additional research.” I was also unable to attract a social science co-researcher, as these professors typically have research projects that rarely dove-tail with a problem in the community that deserves to be studied.

Such difficulties suggest that CBR might best be undertaken as a class project rather than independent professorial research. By having a class undertake the CBR, the teaching function would be just as important as the research function. The students would personally experience how the attorney’s role as “public citizen” might be effectively carried out. They would also learn how social science can effectively be implemented to study a problem or challenge in access to justice. This model would serve students well as they become

¹²¹ 45 C.F.R. § 46 (2015).

¹²² STRAND ET AL., CBR, *supra* note 2, at 8.

¹²³ See, e.g., Michael Polanyi & Lynn Cockburn, *Opportunities and Pitfalls of Community-Based Research: A Case Study*, 9 MICH. J. CMTY. SERV. LEARNING 16 (2003).

responsible for policy decision-making as attorney members of committees or boards.

While my two Quinney Fellows were able to participate directly in the research, most of the law students involved were subjects of the study. As we began to ascertain results, however, student directors of the Family Law Pro Bono Initiative Clinic have been able to take the findings into account as they manage the Clinic each semester.

Through this study, we introduced many law students to an attorney's responsibility as "a public citizen having special responsibility for the quality of justice"¹²⁴ and to research seeking "improvement of . . . access to the legal system, and . . . the quality of service rendered by the legal profession."¹²⁵ Ideally, CBR will not only improve the quality of justice but also provide a model for students to rely upon in the future.

¹²⁴ MODEL RULES OF PROF'L CONDUCT preamble ¶ 1 (AM. BAR ASS'N 1983).

¹²⁵ *Id.* at preamble ¶ 6.

APPENDIX A - CONSENT DOCUMENTS

Client Consent Document

BACKGROUND

You are being asked to take part in a research study of the Family Law Clinic. The study is being conducted by Linda F. Smith, a University of Utah Professor of Law and one of the lawyer volunteers at the clinic. She has agreed to do this study for the law offices that sponsor this clinic. The goal is to find out what sorts of clients and what sorts of cases are best helped in a brief advice clinic, and to understand what the best attorney-client consultations sound like.

STUDY PROCEDURE

If you agree to participate, a research assistant will ask you some survey questions about the clinic when your consultation with the lawyer is over, or you can complete the survey questions in writing yourself. This should only take about 5 minutes. The research assistant will also ask the lawyer who advised you to complete a questionnaire about your consultation. Then, a month or so later, the research assistant will telephone you with a short (less than 5 minutes) follow-up survey about how the advice worked out. You are also giving permission for the researcher, Professor Smith, to get a copy of the Utah Legal Service forms that you and the lawyer complete here tonight.

Finally, a random sample of clients each night will have their consultations recorded. That recording will be given to Professor Smith. She or one of the most experienced lawyer volunteers in the Clinic will listen to the recording within a week. If the lawyer identifies advice that you were not, but could have been given, the lawyer will telephone you and follow-up with that advice. If a recording is made, it may later be transcribed and analyzed to understand what makes a good or a poor consultation.

RISKS

The risks or discomforts of this study should be no greater than the risks or discomfort you face every day. It might make you upset thinking a little more about your legal issue and how you will solve it. There is some risk that the documents from the study could be read or obtained by

another person. However, the steps we are taking below should protect your confidentiality.

There is some risk that the follow-up telephone call will be answered by someone else and some risk that the survey will be overheard. To minimize any risk, the research assistant will tell anyone else who answers the telephone only that s/he is calling to do a follow-up survey. You can help minimize any risk by giving us only telephone numbers that are safe to call or by asking us to call later or by declining to participate in the survey if it might be overheard.

BENEFITS

The survey part of the study will not give you any direct benefit. We hope that the information we get from this study will help us operate the Clinic in the best way possible in the future. So, if you come back to the Clinic, you might benefit in that way. If your consultation is recorded, you will get the benefit of a second experienced lawyer reviewing your legal matter. You may get the benefit of that second lawyer's consultation by phone if that lawyer thinks you might benefit by some additional advice.

CONFIDENTIALITY

The data we get from you will be kept confidential. All records will be stored in Professor Smith's private office or the office of her assistant. Once the follow-up telephone survey has been completed, we will remove your name from all the documents and replace it with a number that will link both of your surveys to your Utah Legal Service records and your attorney's survey. The reports that will be written up will contain summaries of the data, where no client could be identified.

If your consultation is recorded, we will remove your name from the outside of the recording once the attorney has reviewed it. However, we cannot erase names from the recording itself; you may want to use only first names to keep information as confidential as possible. If we transcribe the consultation we will change any names in the transcript to be false names. If we write up a report or article relying on the interview transcript, we will also change facts (e.g. number of children, city of

residence, age, job) so that you could not be identified by anyone. Because the researcher is also an attorney volunteer at the Clinic and is doing this study for the sponsoring agencies, all of the documents should be “privileged” so during the short period of time that your name is on the documents and recording, there is very little risk that any document could be gotten by the other party. However, if you disclose actual or suspected abuse, neglect, or exploitation of a child, or disabled or elderly adult, the researcher or any member of the study staff must, and will, report this to Child Protective Services (CPS), Adult Protective Services (APS) or the nearest law enforcement agency.

PERSON TO CONTACT

If you have questions, complaints or concerns about this study, or you feel you have been harmed as a result of participation, you can contact Prof. Linda F. Smith at linda.smith@law.utah.edu or (801) 581-4077 during weekday business hours.

Institutional Review Board: Contact the Institutional Review Board (IRB) if you have questions regarding your rights as a research participant. Also, contact the IRB if you have questions, complaints or concerns which you do not feel you can discuss with the investigator. The University of Utah IRB may be reached by phone at (801) 581-3655 or by e-mail at irb@hsc.utah.edu.

Research Participant Advocate: You may also contact the Research Participant Advocate (RPA) by phone at (801) 581-3803 or by e-mail at participant.advocate@hsc.utah.edu.

VOLUNTARY PARTICIPATION

It is up to you to decide whether to participate in this study or not. The lawyers will interview and advise you the same, whether or not you agree to the study. It is your right to stop participating in the study at any time. If you sign this Consent, you can still decide not to stay and answer the survey questions; you can stop the survey at any time; and you can refuse to answer the follow-up telephone survey questions. If your interview is being recorded, you can say you want to stop the recording

and the recording will be erased and the consultation will not be reviewed.

Refusal to participate or the decision to withdraw from this study will involve no penalty or loss of benefits to which you are otherwise entitled.

COSTS AND COMPENSATION TO PARTICIPANTS

There are not costs to you to be in this study.

CONSENT

By signing this consent form, I confirm I have read the information in this consent form and have had the opportunity to ask questions. I have been given a second copy of this consent form. I voluntarily agree to take part in this study.

Printed Name of Participant

Signature of Participant

Date

Printed Name of Researcher or Staff

Signature of Researcher or Staff

Date

Attorney Consent Document

BACKGROUND

You are being asked to take part in a research study of the Family Law Clinic. The study is being conducted by Linda F. Smith, a University of Utah Professor of Law and one of the lawyer volunteers at the clinic. She has agreed to do this study for the law offices that sponsor this clinic. The goal is to find out what sorts of clients and what sorts of cases are best helped in a brief advice clinic, and to understand what the best attorney-client consultations sound like.

STUDY PROCEDURE

If you agree to participate, the researcher will collect some demographic information (years in practice, area of practice) from you. The Study will continue for up to one year, taking place each evening that the Family Law Clinic is in session.

Each evening the Family Law Clinic is in session the researcher will also obtain demographic information from each client who agrees to participate. A research assistant will ask the client some survey questions about the clinic and the client's satisfaction with the consultation when your consultation with the client is over. Then, a month or so later, the research assistant will telephone the client with a short follow-up survey about how the advice worked out. The researcher will also get a copy of the Utah Legal Service forms that the client and you complete here tonight.

At the conclusion of each consultation, or shortly thereafter, the research assistant will also ask you some questions about the consultation and how effective you thought it was for the particular client and the particular problem. This will take less than five minutes.

Finally, a random sample of clients each night will have their consultations recorded. That recording will be given to Professor Smith. She or one of the most experienced lawyer volunteers in the Clinic will listen to the recording within a week. If the lawyer identifies advice that the client was not, but could have been given, the lawyer will telephone the client and follow-up with that advice. If a recording is made, it may

later be transcribed and analyzed to understand what makes a good or a poor consultation.

RISKS

The risks or discomforts of this study should be no greater than the risks or discomforts you face every day. It might make you nervous or embarrassed that the client is commenting on and another lawyer is reviewing your legal consultation. However, your confidentiality will be protected. All research personnel (students and expert lawyers) will keep confidential any information about any participant. No one will be identified by name in any reports or article.

Most of the reports will contain only aggregate data and no one should be identifiable in those reports. For the consultations that are recorded, the researcher will change names and certain identifying information about the client and the case in any article written about it to protect confidentiality. However, it may be possible that you will recognize the case as one in which you were the advising lawyer and may feel some embarrassment if your work is criticized.

BENEFITS

The survey part of the study will not give you any direct benefit. We hope that the information we get from this study will help us operate the Clinic in the best way possible in the future. So, if you continue to volunteer in the Clinic, you might benefit from a better-run clinic. You may feel pride if you recognize your consultation as one praised by the researcher in any article or report written based on the recorded and transcribed interviews.

CONFIDENTIALITY

The data we get from you will be kept confidential. All records will be stored in Professor Smith's private office or the office of her assistant. Once the follow-up telephone survey has been completed, we will remove the client's name from all the documents and replace it with a number that will link both of the client surveys to the Utah Legal Service

records and your attorney survey. At that point your name will be removed for any paperwork. The reports that will be written up will contain summaries of the data, where no client or attorney could be identified.

If your consultation is recorded, we cannot erase names from the recording itself; you may want to use only first names to keep information as confidential as possible. If we transcribe the consultation we will change any names in the transcript to be false names. If we write up a report or article relying on the interview transcript, we will also change facts (e.g. number of children, city of residence, age, job) so that the client could not be identified by anyone.

Because the researcher is also an attorney volunteer at the Clinic and is doing this study for the sponsoring agencies, all of the documents should be “privileged” so during the short period of time that names are on the documents and recordings, there is very little risk that any document could be gotten by the other party. However, if anyone discloses actual or suspected abuse, neglect, or exploitation of a child, or disabled or elderly adult, the researcher or any member of the study staff must, and will, report this to Child Protective Services (CPS), Adult Protective Services (APS) or the nearest law enforcement agency.

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VOLUNTARY PARTICIPATION

Participation is voluntary. You may discontinue participation at any time. Your refusal to participate or decision to withdraw from this research will involve no penalty or loss of benefits to which you are otherwise entitled. This will not affect your relationship with the investigator.

COSTS AND COMPENSATION TO PARTICIPANTS

There are not costs to you to be in this study.

CONSENT

By signing this consent form, I confirm I have read the information in this consent form and have had the opportunity to ask questions. I will be given a signed copy of this consent form. I voluntarily agree to take part in this study.

Printed Name of Participant

Signature of Participant

Date

Printed Name of Researcher or Staff

Signature of Researcher or Staff

Date

Student Consent Document

BACKGROUND

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RISKS

The risks or discomforts of this study should be no greater than the risks or discomforts you face every day. It might make you nervous or embarrassed that the client is commenting on and another lawyer is reviewing your legal consultation and that another law student is serving as a research assistant conducting this survey. However, your confidentiality will be protected. No one will be identified by name in any reports or articles. All research personnel (students and expert lawyers) will keep confidential any information about any participant. Most of the reports will contain only aggregate data and no one should be identifiable in those reports. For the consultations that are recorded, the researcher will change names and certain identifying information about the client and the case in any article written about it to protect confidentiality. However, it may be possible that you will recognize the case as one in which you were involved interviewing and advising the client and may feel some embarrassment if your work is criticized.

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Signature of Participant

Date

Printed Name of Researcher or Staff

Signature of Researcher or Staff

Date