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**INTEROFFICE MEMORANDUM**

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**TO: AALS CLINICAL TEACHERS CONFERENCE**

**FROM: MARIA ARIAS, MARGARET BARRY, BERYL BLAUSTONE & SHEILA VELEZ**

**RE: REFLECTING ON APPROACHES, PURPOSES, SUCCESSES AND DIFFICULTIES  
IN GIVING FEEDBACK**

NEW YORK LAW:

DOMESTIC VIOLENCE IS A FACTOR THAT COURTS CAN TAKE INTO ACCOUNT IN CUSTODY/VISITATION DETERMINATIONS. IT IS NOT DISPOSITIVE. THE PRACTICE IS THAT VISITATION WILL OCCUR BETWEEN THE NON-CUSTODIAL PARENT AND CHILD/REN UNLESS THE CUSTODIAL PARENT CAN DEMONSTRATE THAT IT WILL BE HARMFUL FOR THE CHILD TO HAVE CONTACT WITH NON-CUSTODIAL PARENT.

**Fact Pattern - Background:**

Ms. Jones; our client; has a temporary restraining order. She filed a petition for the restraining order with the Queens County Family Court. On the same day of the filing in an ex-parte proceeding she received the temporary order. She has one child, Laura Jones. Laura is 7 years old and is a first grader. The father, Mr. Jones, has moved out of household. Ms. Jones lives with the child. Mr. Jones has been out of the household for about a month. He filed a petition in Queens County Family Court seeking visitation with Laura. He has had phone contact with Laura since he moved out. Laura has also visited with him. While she has not spent the night at her father's home, she has had day visits and has seen him for dinner a few times.

She is scheduled to return to court on the issue of visitation and the student lawyer met with Ms. Jones to prepare her for the court appearance. This preparation included discussing her goals, her desired outcomes for court, and counseling her on the applicable law and likely outcomes at court. Ms. Jones absolutely does not want the father to have visitation. No evidence exists in this case that identifies any specific harm that has occurred between the father and Laura. There is a child protective service report that says that Mr. Jones' home has space for a child and that Laura wants overnight visits with her father at his place.

**Counseling session between the Student Lawyer and Ms. Jones focused on visitation issue:**

In the counseling session, Ms. Jones is adamant that she does not want the father to have visitation because of the previous abuse to herself. Also she states that Mr. Jones did not want her to have the baby and had wanted her to have an abortion. She states that some of the abuse occurred while she was pregnant with Laura. Mr. Jones wants alternate weekend visitation as is customary—he has been told by his attorney that he can get alternate weekend visits as well as a mid-week visit and alternate holiday visits. There has been an exchange of phone calls followed by letters between Mr. Jones’ Attorney, Laura’s Law Guardian and the Student Lawyer in which the Law Guardian represented that she supports Mr. Jones’ application for alternate weekend visitation.

**Challenges of the counseling session for the Student Lawyer:**

The Student Lawyer, using a client centered approach, wants to get Ms. Jones what she wants. From an emotional/psychological perspective, the Student Lawyer appreciates the client’s position about not wanting Mr. Jones to have any access to Laura and wanting to limit the father’s visitation rights. The Student Lawyer has limited experience in court and is not accustomed to predicting for the client how likely or unlikely it is that she will obtain her desired goal. It was extremely difficult for this Student Lawyer to tell Ms. Jones that her goal is highly unlikely because Ms. Jones had a strong negative reaction to this news. At this point, Ms. Jones erupted into an emotional outburst with the Student Lawyer. The Student Lawyer struggled with explaining that the client’s goal is inconsistent with the legal standard.

All the information in this memo sets forth the scenario of what has occurred prior to the feedback session that you are about to see on the video between the Student Lawyer and the Supervisor.