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# Interdisciplinary Clinical Teaching of Child Welfare Practice to Law and Social Work Students When World Views Collide

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# INTERDISCIPLINARY CLINICAL TEACHING OF CHILD WELFARE PRACTICE TO LAW AND SOCIAL WORK STUDENTS: WHEN WORLD VIEWS COLLIDE

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*Because child welfare cases in the world of professional practice require interdisciplinary collaboration, it would seem to follow that graduate students, who will become child welfare professionals, should be trained together, both in the classroom and in clinical settings. However, the implementation of interdisciplinary training is far from straightforward. In this Article, we focus on law and social work students. First, we describe the roles of lawyers and social worker in child welfare work. Next we argue that interdisciplinary classroom teaching is easier than clinical teaching, proposing a series of topics to be covered in an interdisciplinary course. Finally, we describe the challenges of clinical training of lawyers and social workers together, noting that they have different roles in child welfare cases, different ethical guidelines, different approaches and methods of intervention, and different social statuses, each of which affect how they approach casework in child welfare cases.*

## INTRODUCTION

Child welfare cases, even the most seemingly straightforward ones, present numerous and complex questions of law and fact. The factual situations in these cases demand a basic understanding of allied disciplines. Lawyers need to know something about social work practice, about the medical issues presented by child abuse and neglect, and about the psychology of child maltreatment.<sup>1</sup>

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1. This point is illustrated in several multidisciplinary treatises that have been published in an effort to educate the allied disciplines. See *THE BATTERED CHILD 2* (Mary Edna Helfer et al. eds., 5th ed. 1997) ("The cross-cultural, economic, sociological, ecological, legal, and psychiatric perspectives outlined here will provide the reader with a useful background in which to consider the volume's sections on assessment, intervention and treatment, and prevention ahead. The wise student of this subject will immediately recognize that looking at the problem from only one of these perspectives will hamper a true understanding of how we might address all the individual, family and societal effects of child maltreatment."). See generally *CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES* (Marvin Ventrell & Donald N. Duquette eds., 2005) (providing guidance for attorneys with chapters on the physical, medical and mental health impacts of child maltreatment).

Similarly, social workers involved in child welfare must understand medical findings and mental health dynamics, as well as the legal process through which cases must proceed.<sup>2</sup>

While a number of professions have a stake in the proper handling of child welfare cases, none of them own the child welfare problem, and none alone can solve the multifaceted conundrum presented by any single case.<sup>3</sup> Thus, interdisciplinary work is necessary to the successful practice of child welfare law and necessary for social work practice in child welfare. Because interdisciplinary practice is necessary for the demands of a career in child welfare, it would seem to follow that law students and social work students should be trained together, both in the classroom and in clinical settings. Like much in child welfare, however, articulating the goal is considerably easier than achieving it in practice. Especially complex is clinical teaching with an interdisciplinary group of students.

This Article considers the use of interdisciplinary collaborations in teaching child welfare practice to graduate students in social work and law, describing such endeavors and their challenges. We draw upon thirty years of collaborative educational endeavors at the University of Michigan involving the Law School, the School of Social Work, and the Medical School. Our focus is on the challenges of educating law and social work students together, but similar dilemmas are found with educating doctors and psychologists with other disciplines. Social workers and lawyers have different roles in child welfare cases, different ethical guidelines, different approaches and methods of intervention, and different social statuses, each of which affect how they approach casework in child welfare cases.

We argue that while interdisciplinary teaching is very much needed, it is much more easily implemented in the classroom than in clinical or applied settings. At the same time, case-based teaching in clinical settings is enormously instructive for law and social work students because it prepares nascent professionals for the future collisions between their very different world views. Didactic presentations about the differences between the professions are instructive and can lead to enlightening debates, but are not the

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2. Jini L. Roby, *Child Welfare Workers in the Legal Arena: What Works, What Doesn't*, 30 CHILD & YOUTH CARE FORUM 305, 306 (2001) (“[C]hild welfare workers must possess not only good child welfare knowledge and skills but also a working knowledge of the laws and the legal system.”). See generally CHILD WELFARE FOR THE 21ST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS (Gerald P. Mallon & Peg McCartt Hess eds., 2005) (providing guidance for social workers with chapters on various interdisciplinary issues).

3. See generally Donald N. Duquette & Kathleen C. Faller, *Interdisciplinary Teams in Professional Schools: A Case Study*, in THE NEW CHILD PROTECTION TEAM HANDBOOK 535 (Donald C. Bross et al. eds., 1988).

same as the experiential learning that results from law and social work students working together in a clinical setting on cases. Given these different world views, we challenge the presumption that interdisciplinary training is, by definition, a positive experience for both law and social work students, noting in particular challenges presented for social work students.

In Section I, we highlight the history of lawyer involvement in child welfare cases, examine the roles lawyers play in child welfare proceedings, and discuss the process of legal education. In Section II, we describe the history of social workers in child welfare, examine their core roles in this field, and discuss social work education. In Section III, we discuss interdisciplinary classroom teaching and propose an interdisciplinary classroom curriculum based upon our experiences of teaching in both the Law School and the School of Social Work at the University of Michigan. In Section IV, we discuss interdisciplinary clinical teaching with a focus on the differences in lawyers' and social workers' training, personalities, core roles, ethics, and statuses. These differences present both challenges and learning opportunities for law and social work students.<sup>4</sup> Finally, we provide some concluding remarks.

## I. LAWYERS IN CHILD WELFARE

The American juvenile court was established at the turn of the twentieth century. As originally conceived and operated, it was a social welfare institution concerned with protecting children's well-being rather than a court of law concerned with procedural and substantive justice.<sup>5</sup> Lawyers were not routinely involved in

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4. Even the task of interdisciplinary writing of an article is challenging. Law and social work use different formatting conventions for writing. See PUBLICATION MANUAL OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION 202, 216 (5th ed. 2001). Furthermore, legal writing involves putting much of the argument in footnotes, while social workers and other mental health disciplines discourage the use of footnotes, admonishing authors that if the material cannot be incorporated into the text of the article, it probably should not be included. For example, see the instructions for authors found in CHILD ABUSE & NEGLECT: THE INTERNATIONAL JOURNAL. Because this article appears in a law journal, it conforms to the demands of a legal article.

5. See Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119–20 (1909) (discussing the role of the juvenile court judge); Sanford J. Fox, *The Early History of the Court*, 6 THE FUTURE OF CHILDREN 29, 34 (1996) (noting that early juvenile court hearing “had little, if anything, to do with adjudicating the facts” and noting that witnesses were rarely called to testify); L. Mara Dodge, “*Our Juvenile Court Has Become More Like a Criminal Court*”: A Century of Reform at the Cook County (Chicago) Juvenile Court, MICH. HIST. REV., Fall 2000, at 58 (discussing the “quasi-legal” status of the juvenile court and noting that as late as 1973 only 85% of juvenile court judges had law degrees); Walter H. Beckham, *Helpful Practices in Juvenile*

delinquency or child protection matters,<sup>6</sup> largely because it was believed that the child's parents and the court's probation staff would protect the interests of the child.<sup>7</sup> Some further thought that the presence of lawyers would be a detriment to the handling of children's cases.<sup>8</sup> Rather than lawyers, social reformers who were interested in the welfare of children played a primary role in the early years of the juvenile court's child protection work.<sup>9</sup>

The United States Supreme Court ushered in a revolution in the handling of juvenile court cases with its 1967 decision in *In re Gault*.<sup>10</sup> In *Gault*, the Court held that the basic requirements of due process are applicable to juvenile delinquency proceedings.<sup>11</sup> This "constitutional domestication"<sup>12</sup> of some juvenile court proceedings introduced lawyers consistently into the juvenile court for the first time.<sup>13</sup> The presence of lawyers in delinquency proceedings quickly expanded into child protective proceedings.<sup>14</sup>

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*Court Hearings*, FED. PROBATION, June 1949, at 10 (noting that juvenile court was "more a court of human relations than a court of law.").

6. JOHN E. B. MYERS, CHILD PROTECTION IN AMERICA 206 (2006); Robin Russel, *Role Perceptions of Attorneys and Caseworkers in Child Abuse Cases In Juvenile Court*, 67 CHILD WELFARE 205, 205 (1988) ("Traditionally, children appearing in juvenile court in these cases have been unrepresented by counsel."); Beckham, *supra* note 5, at 13 ("In most juvenile proceedings lawyers are not required and the majority of cases are heard without them."); Dodge, *supra* note 5, at 68 (noting that in Illinois a child had no right to legal representation until 1965).

7. *In re Gault*, 387 U.S. 1, 35 (1967). Although *Gault* requires that the rudiments of due process be available to individual juveniles charged with crimes, the notion persists that children's interests will be protected by their parents and lawyers, which has been a rationale to deprive the juveniles themselves of the right to actively participate in and direct their legal representation. See, e.g., *In re Whittaker*, 607 N.W.2d 387, 389 (1999) (finding that a full panoply of rights are not available to the juvenile himself; jury trial need not be waived in open court by minor; minor speaks through attorney, who was allowed to waive the juvenile's right to jury over the juvenile's objection).

8. MYERS, *supra* note 6, at 206.

9. Marvin Ventrell, *From Cause to Profession: The Development of Children's Law and Practice*, *Colo. Law.*, January 2003, at 65, 66. See generally, Brenda G. McGowan, *Historical Evolution of Child Welfare Services*, in CHILD WELFARE FOR THE 21ST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS 10, 14-28 (Gerald P. Mallon & Peg McCartt Hess eds., 2005).

10. *Gault* crystallized a growing trend toward the recognition of the need for increased procedural regularity in juvenile court proceedings. *In re Gault*, 387 U.S. at 62 (Black, J., concurring).

11. *Id.* at 30-31. A detailed discussion of the impact of *Gault* is beyond the scope of this Article.

12. See BARRY C. FELD, CASES AND MATERIALS ON JUVENILE JUSTICE ADMINISTRATION 20-30 (2000) (discussing the "constitutional domestication" of juvenile delinquency proceedings).

13. See Russel, *supra* note 6, at 205; MARTIN R. GARDNER, UNDERSTANDING JUVENILE LAW 249 (2d ed., 2002) (noting that after the *Gault* decision "many state legislatures enacted statutes affording a right to counsel").

14. MYERS, *supra* note 6, at 206-07; see also Marie Weil, *Research on Issues in Collaboration Between Social Workers and Lawyers*, 56 SOC. SERV. REV. 393, 394 (1982).

### A. Lawyer Roles in Child Welfare

Modern child welfare proceedings typically involve three parties: the state, usually acting through its human services agency, which brings the case in an effort to protect the child from some alleged harm;<sup>15</sup> the parents who are the respondents, alleged to have committed some act or omission that has resulted in harm to their child; and the child who is alleged to be a victim of maltreatment at the hands of his or her parent, guardian, or legal custodian.<sup>16</sup>

#### 1. The Agency's Lawyer

State child welfare agencies may be represented by state attorneys, prosecutors, or private attorneys.<sup>17</sup> The precise role of the agency's attorney is not always clear. In some jurisdictions, the agency's representative fulfills the role of an attorney in the traditional sense.<sup>18</sup> In those jurisdictions, the client articulates the goal of the representation, and the attorney utilizes his or her skills as an advocate to achieve that articulated goal. In other jurisdictions, the agency's attorney may represent something other than the position articulated by the child welfare caseworker.<sup>19</sup> For example, if represented by the prosecuting attorney, the attorney may take the position that he or she represents "the people" rather than the agency. The lack of clarity regarding the role of the agency's attorney can lead to disagreement about who—the lawyer or the caseworker—speaks for the agency.<sup>20</sup> Regardless of whether the

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15. Some states' laws permit a broader class of persons or entities to petition the court to protect a child. See, e.g., MICH. COMP. LAWS ANN. § 712A.11 (West 2002) ("[A] person may give information to the court.").

16. See, e.g., MICH. CT. R. 3.903(A)(18)(b) (defining a "party" for purposes of child protective proceedings as "petitioner, child, respondent, and parent, guardian, or legal custodian").

17. Mark Hardin, *Role of the Legal and Judicial System for Children, Youth, and Families in Foster Care*, in CHILD WELFARE FOR THE 21ST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS 687, 692 (Gerald P. Mallon & Peg McCart Hess eds., 2005); Mimi Laver, *Agency Attorneys and Caseworkers: Working Well Together*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 431-42 (Marvin Ventrell & Donald N. Duquette eds., 2005).

18. Laver, *supra* note 17, at 432-33.

19. *Id.*

20. See David J. Herring, *Legal Representation for the State Child Welfare Agency in Civil Child Protection Proceedings: A Comparative Study*, 24 U. TOL. L. REV. 603, 609-10 (1993) (discussing roles of agency attorneys or prosecutors and explaining that these lawyers sometimes undermine their social worker clients); Roby, *supra* note 2, at 314-15 (discussing the power struggles that sometimes result from a lack of clarity as to the attorney's role and suggesting ways of improving the attorney-client relationship).

agency attorney takes direction from the caseworker or develops his or her position in some other way, that lawyer will likely be in a position adverse to the parent's lawyer and may be adverse to the position of the child's attorney.

## 2. The Parent's Lawyer

The United States Constitution's Due Process Clause does not guarantee a parent a right to an attorney in an abuse or neglect proceeding.<sup>21</sup> However, a number of state appellate courts have read their state constitutions' due process clauses to require that an attorney be appointed to represent a parent who is unable to afford counsel either at the initial dependency stage in the proceeding or in a subsequent termination of parental rights proceeding.<sup>22</sup> Additionally, many states now provide statutorily for the appointment of legal counsel for indigent parents.<sup>23</sup> When a parent responding to a child protection proceeding has counsel, that lawyer's role is clear: to take direction from the adult client and to seek to achieve the client's articulated goals by all legitimate means provided by the legal system. The attorney will very often be adverse to the child welfare worker, and by implication the agency's attorney, and may be in a position adverse to the child's legal representative. As is the case with both children and state agencies, there are questions regarding the competency and effectiveness of the lawyers who represent parents in protective proceedings.<sup>24</sup>

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21. *Lassiter v. Dep't of Soc. Serv. of Durham County*, 452 U.S. 18, 31 (1981) (holding that a parent in a termination of parental rights proceeding does not have a due process right to appointment of counsel at public expense).

22. *See, e.g., Ex parte Shuttleworth*, 410 So. 2d 896 (Ala. 1981); *V.F. v. State*, 666 P.2d 42 (Alaska 1983); *S.B. v. Dep't of Children and Families*, 851 So. 2d 689 (Fla. 2003); *In re Interest of Cooper*, 631 P.2d 632 (Kan. 1981); *In re Interest of Johnson*, 465 So. 2d 134 (La. Ct. App. 1985); *In re Kafia M.*, 742 A.2d 919 (Me. 1999); *In re Adoption of Olivia*, 761 N.E.2d 536 (Mass. App. Ct. 2002); *Reist v. Bay County Circuit Judge*, 241 N.W.2d 55 (Mich. 1976).

23. *See* Bruce A. Boyer, *Justice, Access to the Courts, and the Right to Free Legal Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 36 LOY. U. CHI. L.J. 363, 367 (2005) (noting that most states either by court decision or by statute provide for the appointment of counsel to represent an indigent parent in termination of parental rights proceedings).

24. William Wesley Patton, *Standards of Appellate Review for Denial of Counsel and Ineffective Assistance of Counsel in Child Protection and Parental Severance Cases*, 27 LOY. U. CHI. L.J. 195, 225 (1996) ("A great deal of marginal lawyering takes place in child protection court for a variety of reasons."). *See generally* Michele R. Forte, Note, *Making the Case for Effective Assistance of Counsel in Involuntary Termination of Parental Rights Proceedings*, 28 NOVA L. REV. 193 (2003) (arguing for a right to effective assistance of counsel in state initiated termination of parental rights cases in Florida).

### 3. The Child's Lawyer

Seven years after the Supreme Court's decision in *Gault*, on January 31, 1974, the Child Abuse Prevention and Treatment Act ("CAPTA") was signed into law.<sup>25</sup> As originally enacted, CAPTA required that "in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child."<sup>26</sup> While CAPTA did not mandate that the guardian ad litem be a lawyer, today most states' laws provide for the appointment of a lawyer to represent the interests of the child in a protective proceeding.<sup>27</sup> However, it is not at all clear thirty years after the enactment of CAPTA that children are, in fact, routinely provided legal representation.<sup>28</sup>

Even when children have lawyers, there remain two crucially important issues. First, the role of the child's legal representative—to advocate for the child's best interests or her expressed wishes—has long been the subject of debate, as evidenced by its selection as the topic for two major law school symposia convened a decade apart.<sup>29</sup> Second, however the role of the child's lawyer is defined, it is questionable whether children receive competent representation. It is axiomatic that the right to counsel is the right to effective assistance

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25. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974-75).

26. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, § 4(b)(2)(G) (emphasis added). CAPTA has been amended several times in the ensuing years, most recently in 2003. Keeping Children & Families Safe Act of 2003, Pub. L. No. 108-36, 117 Stat. 800 (2003). Each time the basic requirement for the appointment of an advocate for the child, when there are judicial proceedings, has remained intact. The current law requires that a state's plan have in place:

provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—

- (I) to obtain first-hand, a clear understanding of the situation and the needs of the child; and
- (II) to make recommendations to the court concerning the best interests of the child.

42 U.S.C. § 5106a(b)(2)(A)(xiii) (2003).

27. Gerald F. Glynn, *The Child's Representation Under CAPTA: It is Time For Enforcement*, 5 NEV. L.J. 1250, 1253 (2006) (noting that thirty-one states have laws requiring the appointment of lawyers to represent children in child protective proceedings).

28. *Id.* at 1253-57.

29. Symposium, *Proceedings on the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1279 (1996); Symposium, *Legal Representation of Children: Proceedings of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Fordham*, 6 NEV. L.J. 571 (2006).

of counsel.<sup>30</sup> Too often, children's lawyers simply do not see their young clients or are so overwhelmed with cases that it is impossible for them to provide competent representation.<sup>31</sup> This is a larger issue with children than with agencies or parents because children lack the ability of institutional or adult clients to hold their lawyers accountable for their inadequate performance.

### B. A Lawyer's Training

Lawyers are trained—and indeed take pride—in their ability to argue any side of a case. The primary approach to legal education, the Langdell case method, is designed to encourage law students to consider every conflict from the perspective of all the disputants.<sup>32</sup> This has led to the oft-quoted legal idiom, “Give me a side, any side.”<sup>33</sup>

This lawyerly approach to case selection and the moral issues presented by child maltreatment litigation have informed the practice of the University of Michigan Law School's Child Advocacy Law Clinic (“CALC”) for its thirty years of training nascent lawyers. CALC is a seven-credit course in which students receive three credits for a classroom-based seminar component and four credits for the case-handling portion of the course. In the seminar component, students are presented information about substantive child welfare law and trial practice skills. In the clinical component of the course, student-lawyers handle child protection cases under the supervision of clinical faculty. CALC has always assigned students to represent children in some child protection cases, parents in other

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30. Kenny A. *ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353, 1361 (N.D. Ga. 2005) (“The right to counsel, of course, means the right to *effective* counsel.”) (citations omitted).

31. Howard Davidson & Erik S. Pitchal, *Case Loads Must be Controlled So All Child Clients Can Receive Competent Lawyering* (Oct. 2006), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=943059](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=943059) (last visited Aug. 24, 2007) (reporting on a survey of lawyers who represent children and providing evidence that large caseloads diminish the time a lawyer has to spend on any given case); *see also* Kenny A., 356 F. Supp. 2d at 1363 (noting that some children's lawyers in Fulton and DeKalb Counties in Georgia do not meet with their child clients before hearings because of overwhelming caseloads and that one lawyer testified that she had failed to meet with and speak to ninety percent of her child clients).

32. *See generally* Peter L. Strauss, *Transsystemia—Are We Approaching a New Langdellian Moment? Is McGill Leading the Way?* (2006), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=879767](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=879767) (last visited Aug. 24, 2007) (discussing the history of the Langdell case method of teaching).

33. It is appropriate to note here that the founder and current director of the University of Michigan's Child Advocacy Law Clinic, Donald N. Duquette, is one who frequently espouses this phrase when illustrating the role of lawyers in the Child Advocacy Law Clinic.

matters, and the state child welfare agency in still others.<sup>34</sup> There are two teaching purposes for this approach to its clinical educational undertaking. First, the primary goal of CALC is to train law students to become the best lawyers they can be, and part of that training is to learn to analyze a case from the perspective of each of the parties. Second, assigning a single student to represent parties on all three sides of child protection cases provides them with a much more sophisticated understanding of the workings and challenges of the child welfare system.

From time to time, our students have struggled with their role as advocates for a position with which they personally disagree or for a client that, at least in the abstract, they find repugnant. For several years, CALC students were asked to keep journals regarding their experiences in the clinic, especially relating to the personal and professional ethical challenges they confronted. I recall distinctly a well-written journal entry that, for much of that period, we included in the course materials as an example of a well-written examination of a question that arose. In that piece, the student was assigned to represent a father who was alleged to have molested his child. Before meeting the client, the student expressed great uncertainty about whether he could actually represent the man. Indeed, in his mind, he imagined the client would be a monster. The student wrote of his surprise when the client turned out to be quite grandfatherly, although the client proved challenging throughout the representation, demanding that if necessary, the student lawyers vigorously cross-examine his daughter to prove her a liar. While in the end the student was able to represent the client and saw the opportunity to do so as building his lawyering skills, he was never able to shake completely the personal sense of revulsion he felt in advocating for the father. From a pedagogical perspective, of course, this case was an excellent learning experience for the student.

## II. SOCIAL WORKERS IN CHILD WELFARE

Long before lawyers were routinely involved in child protection cases, social workers were influential in the juvenile court's work. Social workers have been practicing in child welfare for over one

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34. Donald N. Duquette, *Developing a Child Advocacy Clinic: A Law School Clinical Legal Education Opportunity*, 31 U. MICH. J.L. REFORM 1, 7 (1997).

hundred years.<sup>35</sup> It is important to note that social work practice, however, is not the same as child welfare practice. Indeed, many child welfare workers are not social work trained.<sup>36</sup>

In the United States, the 1875 case of Mary Ellen Wilson, a foster child who was starved, poorly clad, and stabbed in the feet with scissors by her foster mother, marks the beginning of child protection.<sup>37</sup> Etta Wheeler, who was a “friendly visitor,” the precursor to social workers, learned of Mary Ellen’s situation and tried to find professionals to rescue her.<sup>38</sup> Eventually she was able to appeal to Henry Bergh, the founder of the Society for the Prevention of Cruelty to Animals, arguing that Mary Ellen was a little animal<sup>39</sup>—statutory protection existed for animals but not children.<sup>40</sup> The case eventually led to community-based Societies for the Prevention of Cruelty to Children.<sup>41</sup>

The Mary Ellen case is illustrative of the early focus of child welfare work. Initially, child welfare social workers focused on the child and not on the child’s family, and child protection workers were involved in removing children from poor, abusive, and neglectful families.<sup>42</sup> Child protection workers first placed children in almshouses and later in foster homes.<sup>43</sup> In the early 1900s, however, family preservation and family support became a part of the social

35. Stephen Antler, *The Rediscovery of Child Abuse, in THE SOCIAL CONTEXT OF CHILD ABUSE AND NEGLECT* 39–54 (Leroy H. Pelton ed., 1981); JOHN E. B. MYERS, *A HISTORY OF CHILD PROTECTION IN AMERICA* 82–85 (2004).

36. Of the thirty-nine states responding to a question about educational requirements for child welfare workers on a recent Child Welfare League of America survey, only four (10.3%) required social work education for caseworkers, and only eight (20.5%) required it for supervisors. CHILD WELFARE LEAGUE OF AMERICA, *CHILD WELFARE WORKFORCE, NATIONAL DATA ANALYSIS SYSTEM BRIEF REPORT 1* (2007), [http://ndas.cwla.org/include/pdf/Workforce\\_Final\\_IB.pdf](http://ndas.cwla.org/include/pdf/Workforce_Final_IB.pdf). This is a modest improvement over requirements in 1999, when no state required a master’s degree for a child protection workers and only six required a master’s degree for child protection supervisors. GARY CYPHERS, *AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION, REPORT FROM THE CHILD WELFARE WORKFORCE SURVEY: STATE AND COUNTY DATA AND FINDINGS 9* (2001), <http://www.aphsa.org/policy/Doc/cwvsurvey.pdf>. In a study involving over 600 child welfare workers in Michigan, 30% had a social work degree at either the bachelor’s or master’s level. Srinka Jayaratne, Kathleen Coulborn Faller, Robert M. Ortega & Frank Vandervort, *African American And White Child Welfare Workers’ Attitudes Towards Policies Involving Race And Sexual Orientation*, CHILDREN AND YOUTH SERVICES REVIEW (forthcoming).

37. See MYERS, *supra* note 6, at 27–34 (providing a more detailed description of Mary Ellen’s case).

38. MYERS, *supra* note 6, at 162–64.

39. *Id.* at 131.

40. *Id.* at 133.

41. *Id.* at 129–36.

42. ALFRED KADUSHIN & JUDITH A. MARTIN, *CHILD WELFARE SERVICES* 222 (4th ed. 1988).

43. *Id.* at 347; MYERS, *supra* note 35, at 210.

work role in child welfare cases.<sup>44</sup> The tension between child rescue and family support and preservation has persisted throughout the involvement of social workers in child welfare work. With successive changes in federal statutes, the pendulum of child welfare policy and practice has swung between the two.<sup>45</sup> This pendulum swing derives from the reality that, for most children, safety, permanency, and well-being are best provided by their families.<sup>46</sup>

The present goals of the child welfare system are defined as child safety, permanency, and well-being.<sup>47</sup> The child is first in terms of priority, but families are also to be preserved.<sup>48</sup> Thus, the job of a child welfare worker is, like many social work jobs, a combination of care and control—that is, providing support to and empowerment of families and at the same time requiring families to meet minimum standards of child care. Because social workers have the two related priorities of child welfare and family preservation, they do not view themselves on one side or the other in a child welfare case. They often have the perspective that everyone involved in a child welfare case has the same goal: what is best for the child, with an addendum that usually that is to stay with or return to the family.<sup>49</sup>

### *A. Social Work Roles in Child Welfare*

In child welfare work, social work roles are divided based upon where the child is in the child welfare service delivery system, rather than by party as with lawyers. Most public child welfare agencies divide roles roughly according to where the child is living—for example, in his/her own home, in foster care, or in an adoptive home—to make child welfare workers' job responsibilities more manageable.<sup>50</sup> Thus, a public child welfare worker may act as

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44. KADUSHIN & MARTIN, *supra* note 42, at 221–22.

45. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974–75); Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980); Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2116 (1997).

46. PETER J. PECORA ET AL., *THE CHILD WELFARE CHALLENGE* 9 (2000).

47. See generally DEPARTMENT OF HEALTH AND HUMAN SERVICES, *CHILD WELFARE POLICY MANUAL*, [http://www.acf.hhs.gov/j2ee/programs/cb/laws\\_policies/laws/cwpm/index.jsp](http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/index.jsp) (last visited Aug. 24, 2007).

48. PECORA ET AL., *supra* note 46, at 4–13.

49. *Id.* at 330.

50. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *CHILD MALTREATMENT 2005 5* (2007), <http://www.acf.hhs.gov/programs/cb/pubs/cm05/cm05.pdf>; Jane D. Downing, *Gatekeeping in Child Protective Services: A Survey of Screening Policies*, 69 *CHILD WELFARE* 357 (1990).

a preventive services worker, a child protection worker, a foster care worker, or an adoption worker. In addition, social workers employed by other agencies, such as a community mental health center or a voluntary agency, may provide services to children and families identified by the child welfare system.<sup>51</sup> Often, public child welfare agencies contract with private agencies to provide services.<sup>52</sup>

### 1. Prevention Worker

The social work profession has long recognized the importance of preventive and supportive services for families at risk for child maltreatment.<sup>53</sup> Most recently, in 1993, Congress passed and the President signed into law the Family Preservation and Support Services Program, which set aside funds for prevention services.<sup>54</sup> Prevention workers provide supportive services to families at risk for maltreating their children or families who have been reported to child protective services, but whose maltreatment is not considered so severe as to warrant opening a child protection case.<sup>55</sup> Prevention workers go to families' homes and provide and coordinate services to strengthen parenting and the families' quality of life.<sup>56</sup> In some communities, workers who provide preventive services are differentiated from other public child welfare workers, but generally, prevention continues to play a minor role in child welfare service delivery because of resource constraints in the child welfare system.<sup>57</sup>

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51. Joan Shireman & Katherine Cahn, *The Child Welfare Service System*, in CRITICAL ISSUES IN CHILD WELFARE 89 (2003) (Joan Shireman ed. 2003).

52. See generally Margaret G. Rosenthal, *Public or Private Children's Services? Privatization in Retrospect*, 74 SOC. SERV. REV. 281 (2000).

53. See generally Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974-75); KADUSHIN & MARTIN, *supra* note 42, at 83-91.

54. Pub. L. No. 103-66. Enacted as part of the Omnibus Budget Reconciliation Act of 1993, this program amended Title IV-B of the Social Security Act, 42 U.S.C. § 620 et seq. *Id.*

55. See generally Jeanette Harder, *Prevention of Child Abuse and Neglect: An Evaluation of a Home Visitation Parent Aide Program Using Recidivism Data*, 15 RES. ON SOC. WORK PRAC. 246 (2005).

56. KADUSHIN & MARTIN, *supra* note 42, at 84-85.

57. Child Welfare Information Gateway, *Funding for Child Abuse and Neglect Prevention*, [http://www.acf.hhs.gov/programs/cb/programs\\_fund/state\\_tribal/ss\\_act2.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/state_tribal/ss_act2.htm) ("These funds, along with the Child Welfare Services funds are a small but integral part of State social service systems for children and families who need assistance in order to keep their families together.") (last visited May 26, 2007).

## 2. Protective Services Worker

With the passage of the Child Abuse Prevention and Treatment Act in 1974,<sup>58</sup> child protection moved to center stage in child welfare work. Child protection workers are charged with investigating over three million complaints that are made to public child welfare agencies annually.<sup>59</sup> When a report of child maltreatment comes in to a county-based child welfare office, it is assigned to a child protection worker, and the worker goes out to investigate. Workers arrive at hospitals, interview children at school without parental consent, and show up at family homes without an appointment to gather information about the complaint.<sup>60</sup> They have a few days in which to conduct their investigation and make their determination about the probability of maltreatment.<sup>61</sup> Presently, most child protection agencies use some sort of structured risk and safety assessment.<sup>62</sup> Once they arrive at a decision, they may close the case, offer services (for example, parenting classes, counseling, or concrete services, such as emergency funding), or seek court authority to remove the child.<sup>63</sup> Their intervention is intended to be short term.<sup>64</sup>

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58. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4.

59. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CHILD MALTREATMENT 2005 6 (2007), <http://www.acf.hhs.gov/programs/cb/pubs/cm05/cm05.pdf>.

60. CHILD WELFARE LEAGUE OF AMERICA, CWLA STANDARDS OF EXCELLENCE FOR SERVICES FOR ABUSED OR NEGLECTED CHILDREN AND THEIR FAMILIES 36 (rev. ed. 1999) [hereinafter STANDARDS OF EXCELLENCE].

61. See generally DIANE DEPANFILIS & MARSHA K. SALUS, CHILD PROTECTIVE SERVICES: A GUIDE FOR CASEWORKERS (2003); Susan Zuravin & Diane DePanfilis, *Predictors of Child Protective Service Intake Decisions: Case Closure, Referral to Continuing Services, or Foster Care Placement*, in THE FOSTER CARE CRISIS: TRANSLATING RESEARCH INTO POLICY AND PRACTICE 63 (Patrick A. Curtis et al. eds., 1999) (discussing research on predictors of these decisions).

62. See generally Diane DePanfilis & Maria Scannapieco, *Assessing the Safety of Children at Risk of Maltreatment: Decision-Making Models*, 73 CHILD WELFARE J. 229 (1994); Diane DePanfilis & Susan J. Zuravin, *Assessing Risk to Determine the Need for Services*, 23 CHILD. AND YOUTH SERVICES REV. 3 (2001).

63. STANDARDS OF EXCELLENCE, *supra* note 60, at 37.

64. See the services suggested in STANDARDS OF EXCELLENCE, *supra* note 60, at 50. See generally Kathleen Coulborn Faller, *The Child Welfare System*, in SOCIAL WORK WITH ABUSED AND NEGLECTED CHILDREN: A MANUAL OF INTERDISCIPLINARY PRACTICE 97, 107 (Kathleen Coulborn Faller ed., 1981) [hereinafter *Social Work with Abused and Neglected Children*]; Kathleen Coulborn Faller, *Child Maltreatment and Protection in the United States*, 2 J. OF AGGRESSION, TRAUMA, & MALTREATMENT 1 (2000); CHARMAINE BRITTAIN & DEBORAH ESQUIBEL HUNT, *HELPING IN CHILD PROTECTIVE SERVICES* 438 (2d ed. 2004).

### 3. Foster Care Worker

If the child is removed from the family home, the case is usually transferred to a new worker, the foster care worker.<sup>65</sup> The child may be placed with a relative, in a licensed foster home, or, in some communities or in some cases, in a shelter facility or home.<sup>66</sup> More recently, some agencies have endorsed placing children with “fictive kin,” individuals with whom the family and child have a relationship but who are neither blood relatives nor licensed foster parents.<sup>67</sup> The foster care worker has responsibilities to the child, to the child’s family, and to the child’s current caretaker. She or he relies upon the same sorts of services the protective services worker uses, but interventions may focus on more serious problems, such as substance abuse and mental illness, that led to a child being removed from a parent’s care. Except in serious maltreatment cases, the initial goal of the foster care worker is to shore up the family so the child can return home.<sup>68</sup> But there is a limit to the time the parent has to improve—usually, a year to fifteen months.<sup>69</sup> If the parent is unable to progress, the foster care worker typically must seek termination of the parent’s rights.<sup>70</sup> Annually, approximately eighteen percent of children in foster care have their parents’ rights terminated.<sup>71</sup>

### 4. Adoption Worker

Children whose parents’ rights have been terminated and children whose parents release their parental rights usually then become the responsibility of an adoption worker. Adoption workers study potential adoptive parents and children free for adoption

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65. *Social Work with Abused and Neglected Children*, *supra* note 64, at 104, 112.

66. ADMINISTRATION ON CHILDREN AND FAMILIES, THE AFCARS REPORT (June 2006), [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tar/report10.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report10.htm) (last visited Apr. 24, 2007) [hereinafter *AFCARS 2006*].

67. Linda M. Chatters, Robert Joseph Taylor, & Rukmalie Jayakody, *Fictive Kinship Relations in Black Extended Families* 25 J. COMP. FAM. STUD. 297 (1994).

68. JILL GOLDMAN ET AL., A COORDINATED RESPONSE TO CHILD ABUSE AND NEGLECT: THE FOUNDATION FOR PRACTICE 10–11 (2003).

69. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, § 103(a)(3)(E), 111 Stat. 2115, 2120 (codified as amended at 42 U.S.C. 675(5)(E)) (2007) (requiring that where a child has been in foster care for fifteen of the most recent twenty-two months, the state must typically seek termination of parental rights).

70. *Id.*

71. *AFCARS 2006*, *supra* note 66.

to match a child to a permanent home. Priority is given to relatives and current foster parents.<sup>72</sup>

## 5. Social Workers Providing Services to Child Welfare Clients

Social workers may also provide ameliorative services, such as parenting classes, trauma treatment, substance abuse counseling, and parent guidance, to caretakers and children in the child welfare system. Most states have a system of care in which prevention, protection, foster care, and adoption workers manage child welfare cases and refer children and families to other agencies for services.<sup>73</sup> Social workers are the majority of the service providers at these other agencies, which may be private (e.g., a private psychologist) or public (e.g., a local community mental health agency).<sup>74</sup>

### *B. A Social Worker's Training*

Although the majority of social workers in child welfare hold a bachelor's degree and sometimes specifically a Bachelor's in Social Work,<sup>75</sup> the preferred degree for child welfare workers is a Master's in Social Work.<sup>76</sup> The M.S.W. is a two-year, four-term degree during which most students study a method (level of intervention) as well as an area of concentration, such as child welfare.<sup>77</sup>

Social work students intending to become child welfare professionals both take classes and work in the field, usually in public or voluntary child welfare agencies. Importantly, a clinical or field experience is central to their professional training.<sup>78</sup> Unlike law

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72. See, e.g., MICHIGAN DEPARTMENT OF HUMAN SERVICES, ADOPTION PROGRAM STATEMENT 1-2 (2006), [http://www.michigan.gov/documents/FIA-AdoptPub255\\_12962\\_7.pdf](http://www.michigan.gov/documents/FIA-AdoptPub255_12962_7.pdf).

73. Rosenthal, *supra* note 52, at 281. In 1998, the Child Welfare League of America surveyed states and found that twenty-nine had a state policy of contracting out child welfare services to voluntary agencies. Shireman & Cahn, *supra* note 51, at 104.

74. GOLDMAN ET AL., *supra* note 68, at 75.

75. CHILD WELFARE LEAGUE OF AMERICA, NATIONAL DATA ANALYSIS SYSTEM (2004), [http://ndas.cwla.org/data\\_stats/access/predefined/](http://ndas.cwla.org/data_stats/access/predefined/) (last visited Apr. 26, 2007) (providing access to data about the child welfare workforce, including the requirements by state for child welfare workers).

76. Barbara Rittner & John S. Wodarski, *Differential Uses for BSW and MSW Educated Social Workers in Child Welfare Services*, 21 CHILD. & YOUTH SERV. REV. 217 (1999).

77. COUNCIL ON SOCIAL WORK EDUCATION, EDUCATIONAL POLICY AND ACCREDITATION STANDARDS 10 (2004), <http://www.cswa.org/NR/rdonlyres/111833A0-C4F5-475C-8FEB-EA740FF4D9F1/0/EPAS.pdf>.

78. *Id.* at 10-11.

students, who in most schools can graduate without having gained any practical or clinical experience,<sup>79</sup> approximately half of social work students' education is an internship, which is in a social work agency or other context in which social work is practiced.<sup>80</sup>

The University of Michigan's interdisciplinary faculty from law, social work and medicine has experimented with ways of providing social work students with clinical experiences which develop core social work skills. For example, we have placed students with workers in a public child welfare agency, co-supervised them, and provided a seminar series at the agency and an interdisciplinary team to consult with them as well as with child welfare workers on difficult child welfare cases. Presently, we have a separate clinic, the Family Assessment Clinic, where M.S.W. Child Welfare Fellows and Social Work Doctoral Students may intern.<sup>81</sup> This clinic provides services to public child welfare agencies and courts on complex child welfare cases.<sup>82</sup> It includes a legal consultant, an educational consultant, a psychiatric consultant, a pediatrician, and a psychologist, as well as several social work staff and faculty with various areas of expertise. Students are afforded the opportunity to conduct assessments and provide treatment, thus learning the core skills of child welfare workers. Social work students also can enroll in the seminar series that is part of the University of Michigan Law School's Child Advocacy Law Clinic. Social work students engage in trial simulation exercises with law students and work as part of law student teams on cases. This experience does not serve as their social work internship or field experience, however, for reasons described below.

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79. The American Bar Association's Standards for Approval of Law Schools require that schools provide students opportunities to engage in clinical practice but they do not require individual students to participate in clinical or practical coursework. American Bar Association Standards for Approval of Law Schools 17-18 (2006), [http://www.abanet.org/legaled/standards/20062007standardsWebContent/B.Chapter%203\\_2006100515125.pdf](http://www.abanet.org/legaled/standards/20062007standardsWebContent/B.Chapter%203_2006100515125.pdf).

80. The Council on Social Work Education, the accrediting body for social work programs, requires that M.S.W. programs include at least nine hundred field placement hours, about 15 credit hours. COUNCIL ON SOCIAL WORK EDUCATION, *supra* note 77, at 13. The total number of credit hours for master's programs (MSW) is either 56 or 60. *See, e.g.*, University of Michigan School of Social Work Requirements <http://www.ssw.umich.edu/studentGuide/2008/page.html?id=3.08>.

81. *See* University of Michigan Family Assessment Clinic, <http://www.ssw.umich.edu/FAC/>. Law students may also work on Family Assessment Clinic cases under the supervision of the legal consultant. *Id.*

82. Because of the large number of students needing child welfare placements, the School of Social Work uses many other agencies as placement sites as well. *See* University of Michigan School of Social Work, Office of Field Instruction Placement Listings, <http://www.ssw.umich.edu/offi/slots/>.

### III. WORKING TOGETHER: AN INTERDISCIPLINARY CLASSROOM CURRICULUM

As we have discussed, lawyers and social workers differ substantially in their history, roles, and training in child welfare. Understanding those differences is essential for professional collaboration. Teaching them in a classroom setting is reasonably straightforward. In this Section, we propose an interdisciplinary classroom curriculum that covers the spectrum of substantive aspects of child welfare practice. The focus is on content that assists students in a clearer understanding of their own roles in child welfare and those of other disciplines. There are at least three reasons for this focus. As students, participants usually have a general grasp of the activities of their profession by the time they take an interdisciplinary seminar, but not the specific activities as they apply to child welfare. Second, students need to have knowledge about the other professions working in the child welfare field and what these professions have to offer. A third and related point is that this focus will facilitate interdisciplinary collaboration.

The topics we suggest are based upon our thirty years of collaborative experience but do not represent the actual curriculum in any one of our programs. Many of these classroom discussions can be enlivened by the use of case examples. Moreover, teaching using simulations can be very effective. For example, in a mock trial, law students engage in witness preparation, examination, and cross-examination, while social work students play the role of child welfare witness or an expert mental health witness. In these simulations, law students learn direct- and cross-examination skills, and social work students learn to cope with the demands of the formalism of the courtroom and the stress of cross-examination during which their professional competence may be aggressively tested.

Proposed class sessions are as follows:

#### *History of legal representation in child welfare*

This session places legal representation in child welfare cases in the context of the development and evolution of the juvenile court in both child protection and delinquency proceedings and compares the relationship of legal representation in delinquency proceedings to the more recent legal role in child welfare proceedings, beginning first with representation for the child.

*History of social work practice in child welfare*

This session situates child welfare practice in the development of social work as a profession. It describes the two threads in social work/child welfare—the ecological<sup>83</sup> versus the intrapersonal.

*Definitions of child maltreatment*

In this session, students are introduced to the several perspectives on child maltreatment: legal, mental health, and medical. The differences are best illustrated by taking a case example and demonstrating how the various professionals would approach the case. The disciplinary definitions highlight how each profession approaches child maltreatment.

### 1. Legal

Legal definitions of child maltreatment derive from federal and state statutes. Most state child protection laws cover physical abuse, physical neglect, emotional maltreatment, and sexual abuse.<sup>84</sup> Some also address the issue of substance addicted infants.<sup>85</sup>

### 2. Mental health

Although definitions provided in the mental health literature vary, the emphasis is usually on the impact of a parent's behavior on a child's physical and emotional well-being and intellectual growth and development. For example, the Child Welfare League of America defines child maltreatment as when the child is:

- a. malnourished, without proper shelter or sleeping arrangements
- b. without supervision or unattended
- c. ill and lacking essential medical care

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83. See Jay Belsky, *Attachment Theory and Research in Ecological Perspective: Insights from the Pennsylvania Infant and Family Development Project and the NICHD Study of Early Child Care*, in *ATTACHMENT FROM INFANCY TO ADULTHOOD: THE MAJOR LONGITUDINAL STUDIES* 71 (Klaus E. Grossmann et al. eds., 2005) (discussing an ecological perspective). A similar conceptual framework, the person-in-environment which is very central to social work, is found in James M. Karls and Karin E. Wandrei, *PERSON-IN-ENVIRONMENT SYSTEM* (James M. Karls & Karin E. Wandrei eds., 1994).

84. See Child Abuse Prevention and Treatment Act (CAPTA) Pub. L. No. 93-247, 88 Stat. 4 (1974).

85. See MICH. COMP. LAWS ANN. § 722.623a (West 1975) (requiring medical professionals to report suspected maltreatment where an infant is suspected of being born with alcohol, a controlled substance, or a metabolite of a controlled substance in the body).

- d. physically abused
- e. sexually abused or exploited
- f. denied normal experiences that produce feelings of being loved, wanted, secure and worthy (emotional neglect)
- g. emotionally disturbed due to continuous friction in the home, marital discord, mentally ill parents
- h. exploited, overworked, exposed to unwholesome and demoralizing circumstances.<sup>86</sup>

### 3. Medical

Medical definitions of child maltreatment reflect the central role of physicians in differentiating accidental from non-accidental injury (child abuse) based on aspects of the child's health status (e.g. height and weight in relationship to developmental norms) and signs of sexual abuse.<sup>87</sup>

#### *Legal ethics*

This session builds upon the legal history session and discusses: the sources of legal ethics (the ABA Model Rules of Professional Conduct as well as state ethical codes); how the two professions define "the client,"<sup>88</sup> and the lawyer's duties of zealous advocacy, loyalty, and confidentiality. It should also include the practical implications of a lawyer's ethical responsibilities to her client such as the lawyer's subjective view of the case—that is, advancing only the interests of her singular client—which contrasts with social workers' goal of objectivity. Finally, the session should reference the relevant American Bar Association Standards of Practice.<sup>89</sup>

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86. CHILD WELFARE LEAGUE OF AMERICA, STANDARDS FOR CHILD PROTECTIVE SERVICE 12 (rev. ed. 1973).

87. See generally Angelo Giardino & Randell Alexander, CHILD MALTREATMENT: A CLINICAL GUIDE AND REFERENCE (Angelo Giardino & Randell Alexander eds., 3d ed. 2005).

88. It is not unusual for a social worker involved in a child protection case to define their client as the child, the biological family, the foster family, and the court. Obviously, this definition of "the client" differs wildly from a lawyer's definition of the client as a single individual. Whereas a lawyer would immediately encounter ethical problems by defining her client as "the family" because of the actual and potential conflicts of interests, social workers must constantly balance the competing considerations of children and parents, and doing so is not an ethical lapse.

89. See generally AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996), [http://www.abanet.org/family/reports/standards\\_abuseneglect.pdf](http://www.abanet.org/family/reports/standards_abuseneglect.pdf); AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, [http://www.das.utah.gov/main/resources/home/Parent\\_Standards\\_HODpassed1\\_1.pdf](http://www.das.utah.gov/main/resources/home/Parent_Standards_HODpassed1_1.pdf).

### *Social work ethics*

This session covers the National Association of Social Work (NASW) Code of Ethics, which strongly emphasizes social justice and ethical duties.<sup>90</sup> In addition, it reviews other codes of ethics that apply to social workers (international, radical, Christian). The class further includes content relating to best practice guidelines for child welfare such as the NASW Standards for Social Work Practice in Child Welfare<sup>91</sup> and the Child Welfare League of America's Standards of Excellence for Services for Abused and Neglected Children and Their Families.<sup>92</sup>

### *Legal roles in child welfare*

This session considers the role of law and lawyers in child welfare practice. In addition to presenting material discussed in Section I of this article, this session addresses the role of law in protecting children. It discusses how statutory enactments such as the Child Abuse Prevention and Treatment Act,<sup>93</sup> Titles IV-B<sup>94</sup> and IV-E<sup>95</sup> of the Social Security Act, and the Multi-Ethnic Placement Act<sup>96</sup> set the broad outline for handling cases. It distinguishes federal funding statutes, such as those just mentioned, from substantive federal law such as the Indian Child Welfare Act.<sup>97</sup> In addition, this session addresses the roles and responsibilities of judges.<sup>98</sup>

### *Social work roles in child welfare*

This session describes the roles that social workers play in child welfare cases, as in Section II of this article. This class session also

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90. NASW CODE OF ETHICS 7 (1999), available at <http://ncsss.cua.edu/Docs/NASWCodeofEthics.pdf>.

91. NASW STANDARDS FOR SOCIAL WORK PRACTICE IN CHILD WELFARE (2005), available at <http://www.socialworkers.org/practice/standards/NASWChildWelfareStandards0905.pdf> (proposing sixteen standards for social workers who practice in child welfare, drawing upon the NASW Code of Ethics as well as the Standards of Practice of the Child Welfare League of America).

92. *Standards of Excellence*, *supra* note 60.

93. 42 U.S.C. §§ 5101–5106g (2000).

94. 42 U.S.C. § 620 (2000).

95. 42 U.S.C. § 670 (2000).

96. See 42 U.S.C. § 620 (2000); 42 U.S.C. § 670 (2000) (codified in various provisions of Titles IV-B and IV-E of the Social Security Act).

97. 25 U.S.C. §§ 1901–4307 (1978).

98. Using a sports analogy, many social workers involved in child protection perceive that the judge's role is to be part of "the team" assembled to protect the child whereas the proper analogy is to the referee, an individual whose job it is to apply the rules objectively without consideration of the outcome of the case.

discusses the impact of high caseloads<sup>99</sup> and high rates of worker turnover,<sup>100</sup> covering how these and other child welfare workforce problems affect the delivery of child welfare services.

*Medical examination and physical signs of child maltreatment*

In this session, students learn about medical identification of child maltreatment. The session involves reviewing slides of children with various types of injuries and conditions. Students learn what medical findings can and cannot reveal about the cause of the child's injury or condition.

*Psychological testing of maltreating parents and maltreated children*

This session describes the use of psychological testing of both children and adults in child welfare cases. It focuses on what issues test findings can and cannot illuminate as well as the importance of considering which tests were employed.

*Parental problems that may be related to child maltreatment*

This session describes the role of parental problems, such as domestic violence, substance abuse, and mental illness, in child maltreatment. Students learn that these underlying problems are often at the root of child abuse and neglect and that intervention must address them if children are to be safely returned to parental custody.<sup>101</sup> The session highlights that the time frames needed to address these problems often conflict with federal permanency guideline time frames because of the difficult and chronic nature of the problems.<sup>102</sup>

*Poverty and its relationship to child maltreatment*

This session covers the role of poverty in child maltreatment, especially in neglect. Students learn that a lack of material resources

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99. In most communities, caseloads are about twice the size recommended by the Child Welfare League of America ("CWLA"). CHILD WELFARE: HHS COULD PLAY A GREATER ROLE IN HELPING CHILD WELFARE AGENCIES RECRUIT AND RETAIN STAFF 14 (2003). The CWLA sets a standard of no more than twelve active report cases and seventeen families for an ongoing CPS worker. *Standards of Excellence*, *supra* note 60, at 137–38. A combined caseload of new reports and ongoing cases in CPS should not exceed fourteen cases. *Id.*

100. See U.S. GEN. ACCOUNTING OFFICE, GAO-03-357, CHILD WELFARE: HHS COULD PLAY A GREATER ROLE IN HELPING CHILD WELFARE AGENCIES RECRUIT AND RETAIN STAFF 5 (2003).

101. See Steven J. Ondersma, *Introduction to the Second Special Section on Substance Abuse and Child Maltreatment*, 12 CHILD MALTREATMENT 111 (2007); H. LEIN BRAGG, CHILD PROTECTION IN FAMILIES EXPERIENCING DOMESTIC VIOLENCE 7 (2003); Kathleen Coulborn Faller & Chyrell D. Bellamy, *Mental Health Problems and Child Maltreatment: Parents with Personality Disorders*, THE SOLUTIONS SERIES 1, 18.

102. *ASFA*, *supra* note 69.

not only plays a role in child maltreatment, but that being poor increases the visibility of families to professionals who are likely to report child maltreatment.<sup>103</sup>

### *Interviewing*

This session presents the theory and practice of interviewing, including the aims of a legal interview with a client or witness, social work interviewing, including forensic interviewing, and interviews conducted by medical professionals for the purpose of taking a medical history. Students learn the necessity of having a plan for the interview. Students also learn the structure of interviewing: the rapport building stage, the information gathering stage, the review stage (where the interviewer checks her or his understanding of what the client or witness has intended to convey), and the closing stage.<sup>104</sup>

### *Evidence*

This session covers practical information and implications of the rules of evidence. Students will learn why the rules of evidence exist, how attorneys think about evidence and its presentation in court, and how to gather and preserve evidence. Several rules of evidence should be discussed in more detail—for example, the different approaches to hearsay by lawyers and social workers. Students are selected to participate in short simulations of the techniques.

## IV. CLINICAL TEACHING CHALLENGES AND CLASHES: DIFFERENCES BETWEEN LAW STUDENTS AND SOCIAL WORK STUDENTS

In contrast to interdisciplinary classroom teaching, which engages the disciplines at an intellectual and academic level, interdisciplinary clinical teaching, with its focus on handling actual cases, poses a number of difficult challenges. In the clinical setting, law and social work students' different world views collide. Ultimately, this collision in the clinical setting reveals the limitations of

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103. See generally James Garbarino, *The Role of Economic Deprivation in the Social Context of Child Maltreatment*, in *THE BATTERED CHILD* 49-60 (Mary Edna Helfer et al. eds., 1997) (discussing the role of poverty in child protection); Sarah H. Ramsey, *The United States child protection system—a triangle of tensions*, 13 *CHILD AND FAMILY LAW Q.* 25 (2001) (discussing poverty as a major factor in the removal of children from their homes for maltreatment).

104. KATHLEEN COULBORN FALLER, *INTERVIEWING CHILDREN ABOUT SEXUAL ABUSE: CONTROVERSIES AND BEST PRACTICE* 66-69 (2007).

using interdisciplinary training to fully overcome the obstacles to interdisciplinary collaboration in practice.

In this Section, we describe some of the differences between law and social work that can impede conjoint clinical training. Among these issues are personality differences between individuals attracted to the professions, differences in education, and different views about knowledge and modes of practice. Moreover, lawyers and social workers have different definitions of "the client," different ethical guidelines, and different social statuses. Gender differences within and across the professions also may play a role in conflict.

Despite these differences, a number of commentators have advocated for the use of interdisciplinary teaching modalities in educating professionals from these allied disciplines to handle child welfare cases.<sup>105</sup> Other commentators, however, have written about the difficulties presented when lawyers and social workers undertake co-joint work with clients in the clinical educational setting,<sup>106</sup> including the ethical challenges interdisciplinary collaboration presents.<sup>107</sup>

### A. Personality Differences

At the most fundamental level, law and social work may attract individuals with very dissimilar personalities. Professor of law Janet Weinstein has written that lawyers are "aggressive, critical, highly competitive, dogmatic and narrow, pedantic, domineering, and control-oriented."<sup>108</sup> She comes to the conclusion that, as a result,

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105. See generally Christina A. Zawisza & Adela Beckerman, *Two Heads Are Better Than One: The Case-Based Rationale For Dual Disciplinary Teaching In Child Advocacy Clinics*, 7 FLA. COASTAL L. REV. 631 (2006); Mary Kay Kisthardt, *Working in the Best Interest of Children: Facilitating the Collaboration of Lawyers and Social Workers in Abuse and Neglect Cases*, 30 RUTGERS L. REC. 1 (2006).

106. See generally Maryann Zavez, *The Ethical and Moral Considerations Presented by Lawyer/Social Worker Interdisciplinary Collaborations*, 5 WHITTIER J. CHILD & FAM. ADVOC. 191 (2005); Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319 (1999).

107. See generally Alexia Anderson, Lynn Barenberg & Paul R. Tremblay, *Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism, and Mandated Reporting*, 13 CLINICAL L. REV. 659 (2007); Jean Koh Peters, *Concrete Strategies for Managing Ethically-Based Conflicts Between Children's Lawyers and Social Workers Who Serve the Same Client*, in REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 637 (Jean Koh Peters ed., 2d ed. 2001).

108. Weinstein, *supra* note 106, at 347-48 ("Individuals who choose to enter law school 'are highly focused on academics, have greater needs for dominance, leadership, and attention, and prefer initiating activity. . . . They may have had good social skills but a low interest in emotions or others' feelings.'") (internal citations omitted).

lawyers may not make good candidates for group work.<sup>109</sup> Given the introspective nature of the social work profession, there are surprisingly few studies of the personalities of social workers and social work students. The studies that do exist, however, have found that social workers are at the extreme in not blaming others, slightly submissive, and have a low prevalence of personal disturbance.<sup>110</sup> Most people who choose the social work profession are focused on helping others, whether they be children, the poor, persons with HIV-Aids, or the frail elderly.<sup>111</sup>

### B. Professional Acculturation

Differences in personality traits are almost certainly magnified by the way in which the two professions acculturate new entrants through professional education.<sup>112</sup> Sarah Taylor, who has studied the pedagogical methods of the two professions at the University of California-Berkeley, has argued that differences in professional education, and therefore, professional acculturation, of social workers and lawyers predictably contribute to their conflicts in practice after their professional education is complete.<sup>113</sup> In the following passage—which will ring true to lawyers reading this Article, while the educational methods of social work will seem foreign if not fanciful to them—she discusses a number of differences in the pedagogy of the two professional schools:

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109. *Id.*

110. The authors of these studies have conjectured that certain personality characteristics and ways of reacting to frustration may be important in both becoming and remaining a social worker. See Alan Bedford & Jackie Bedford, *Personality and Personal Disturbance in Social Workers: A Research Note*, 15 BRIT. J. SOC. WORK 87, 87–90 (1985); Alan Bedford, J. D. Henry & J. R. Crawford, *Personal Disturbance Scale: Factor Structure Confirmed in a Large Nonclinical Sample*, 96 PSYCHOL. REP. 107, 107–08 (2005).

111. See MALCOLM PAYNE, *WHAT IS PROFESSIONAL SOCIAL WORK?* xiii (2d ed. 2006).

112. See Hardin, *supra* note 17, at 689–91; Sarah Taylor, *Educating Future Practitioners of Social Work and Law: Exploring the Origins of Inter-Professional Misunderstanding*, 28 CHILD. & YOUTH SER. REV. 638, 644–48 (2006) (documenting numerous differences in the pedagogies of law and social work including the role of the professor as authority figure, the role of students as more or less participatory in classroom decision-making, the size of classrooms, methodologies utilized in the classroom, and the fixed or moveable nature of classroom furniture).

113. Taylor, *supra* note 112, at 649 (“If, through the socialization experiences of the classroom, lawyers are oriented to the authority of the judge and Socratic process, and social workers are oriented to the collective authority of the group and the collaborative process, then it is not surprising to find them in conflict with each other in the child dependency courtroom.”).

The social work classroom culture de-emphasizes the professor's authority, whereas law culture emphasizes it. This can be seen by the discussion-oriented nature of the social work classroom and the lecture-oriented nature of the law classroom. The social work professor emphasizes "using one another" to elicit information while the law professor provides information by him or herself. Similarly, the social work professor promotes the norm of student involvement in decision-making (e.g., voting about whether or not to break into small groups) while the law professor maintains more control over decision-making in law classes . . . . The social work classrooms were generally smaller and included desks that could be arranged in a variety of different ways. The law classroom featured fixed furniture, and the lecture class took place in a large, multi-level room.<sup>114</sup>

As Taylor's observations suggest, law school education is much more likely to flow in one direction, from professor to student. In a recent series of columns in the *New York Times*, University of Wisconsin Law School Professor, Ann Althouse, advocated strongly for retaining the traditional Langdell case-based, Socratic method of teaching law students.<sup>115</sup> She argued in one of those columns—tellingly entitled '*A Skull Full of Mush*'—that it would be "madness" to make law school classrooms too sensitive to the feelings of law students as some have suggested.<sup>116</sup>

Teaching in social work, on the other hand, is inherently participatory. Although instructors and visiting experts may lecture, the ideal teaching method involves classroom discussion. Most class sessions provide some opportunity for questions and comments from students.<sup>117</sup> In addition, both intellectual and personal reactions to class material are accepted.<sup>118</sup> That is, students' subjective

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114. *Id.*

115. See Ann Althouse, *A Word Too Far*, N.Y. TIMES, Mar. 3, 2007, at A15 [hereinafter *A Word Too Far*]; Ann Althouse, '*A Skull Full of Mush*', N.Y. TIMES, Feb. 20, 2007, at A19 [hereinafter *A Skull Full of Mush*].

116. Althouse, *A Skull Full of Mush*, *supra* note 115.

117. Taylor, *supra* note 112, at 645.

118. See, e.g., Gerard L. Bellefeuille, *Rethinking Reflective Practice Education in Social Work Education: A Blended Constructivist and Objectivist Instructional Design Strategy for a Web-Based Child Welfare Practice Course*, 42 J. SOC. WORK EDUC. 85 (2006); Lynn C. Holley & Sue Steiner, *Safe Space: Student Perspectives on Classroom Environment*, 41 J. SOC. WORK EDUC. 49 (2005); Nigel Leech & Joy Trotter, *Alone and Together: Some Thoughts on Reflective Learning for Work with Adult Survivors of Child Sexual Abuse*, 20 J. SOC. WORK PRAC. 175 (2006); Dennis Saleebey & Edward Scanlon, *Is a Critical Pedagogy for the Profession of Social Work Possible?*, 25 J. TEACHING IN SOC. WORK 1 (2005); Lisa Werkmeister-Rozas, *On Translating Ourselves: Understanding Dialogue and Its Role in Social Work Education*, 74 SMITH C. STUD. IN SOC. WORK 564 (2004).

feelings about course material are a legitimate, even essential, topic of discussion. Contrast this to Professor Althouse's recently published commentary in opposition to considering law students' subjective experience of their work: "Law should connect to the real world. But that doesn't mean we ought to devote our classes to the personal expression of law students."<sup>119</sup>

Moreover, whereas legal education focuses on analysis of statutory and case law, social work course content focuses on empowering disadvantaged populations in society. Both the NASW Code of Ethics<sup>120</sup> and the guidelines from the Council on Social Work Education<sup>121</sup> place great weight on issues of social and economic justice and have an abiding focus on diversity and cultural sensitivity.<sup>122</sup> The NASW Code of Ethics identifies the following domains for its ethical guidelines: service, social justice, dignity and worth of the person, importance of human relationships, integrity, and competence.<sup>123</sup>

### C. Self-Reflection and Self-Consciousness

Law and social work students' training also differs in the type of self-reflection taught. Social workers are trained to be self-reflective in their practice, or to be ever-monitoring their personal, emotional reactions to their clients' situations—what social workers call counter-transference—so that their personal issues do not compromise their professional performance.<sup>124</sup> Although law students

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119. Althouse, *A Skull Full of Mush*, *supra* note 115. Professor Althouse concludes her essay: "The students who come into our law schools are adults who have decided that they are ready to spend a tremendous amount of time and money preparing to enter a profession. We show the greatest respect for their individual autonomy if we deny ourselves the comfort of trying to make them happy and teach them what they came to learn: how to think like lawyers." *Id.*

120. NASW CODE OF ETHICS (1999), available at <http://ncss.cua.edu/Docs/NASWCodeofEthics.pdf>.

121. COUNCIL ON SOCIAL WORK EDUCATION, EDUCATIONAL POLICY AND ACCREDITATION STANDARDS (2004), <http://www.cswe.org/NR/rdonlyres/111833A0-C4F5-475C-8FEB-EA740FF4D9F1/0/EPAS.pdf>.

122. See generally KAREN M. SOWERS & WILLIAM ROWE, SOCIAL WORK PRACTICE AND SOCIAL JUSTICE: FROM LOCAL TO GLOBAL PERSPECTIVES 110 (2007) (discussing poverty and social justice).

123. NASW CODE OF ETHICS, *supra* note 120, at 5.

124. See generally Margaret Arnd-Caddigan, *Transference and Countertransference in the Treatment of Adult Survivors of Abuse with a Somatoform Disorder*, 34 CLINICAL SOC. WORK J. 293 (2006); James Fauth & Jeffrey A. Hayes, *Counselors' Stress Appraisals as Predictors of Countertransference Behavior With Male Clients*, 84 J. COUNSELING & DEV. 430 (2006); Melanie Suchet, *Key Papers on Countertransference*, 75 PSYCHOANALYTIC Q. 913 (2006).

are taught reflective practice,<sup>125</sup> this exercise is meant to challenge them to consider how their performance of a task may have been improved rather than how they *feel* about a client or a situation. For example, a clinical law teacher might ask a student after a trial, “How could you more effectively have anticipated the opponent’s arguments?” or “How might that particular piece of evidence have been used more effectively in your closing argument?”

In the teaching of law, the personal is far from the classroom. A situation encountered by one of us (Faller) and a social work colleague when teaching in a week-long trial practice course at another law school is illustrative. As I was teaching content on child sexual abuse to law and social work students, I noted a woman law student who appeared disheveled, was grimacing, and was talking to herself. Afterward, my colleague and I raised our concerns about the student with the law professor who was responsible for the trial practice course. She said that the student did very well academically and that she was reluctant to intervene in her personal situation. It turned out that the woman’s abuse history was making her extremely uncomfortable with the content and she needed a mental health intervention. The law professor clearly felt that it was a violation of the student’s privacy to even bring up concerns about her mental health.

#### *D. Practice and Knowledge*

Lawyers and social workers also differ in what each discipline regards as appropriate sources of knowledge and methods of practice.

Lawyers look to several sources of knowledge: constitutions, statutes, regulations adopted by administrative agencies, court rules, and precedent.<sup>126</sup> When lawyers engage in legal reasoning, they identify relevant precedent, compare the factual circumstances of the current case with the circumstances in prior cases, and then analogize from what courts have previously decided to the present case.<sup>127</sup> In contrast, social workers rely upon practice principles and social science research as sources of knowledge. Notably, in the last decade, social work practitioners have been

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125. See, e.g., STEFAN H. KRIEGER & RICHARD K. NEUMANN, *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS* 5–6 (2d ed. 2003) (discussing the role of reflective practice in lawyering).

126. See generally THEODORE J. STEIN, *CHILD WELFARE AND THE LAW* 3–5 (rev. ed. 1998) (discussing sources of law).

127. *Id.* at 9.

admonished to engage in evidence-based practice, and not merely rely on practice principles.<sup>128</sup> Further, social work is about social *change*, that is, improving the lives of individual clients and changing society so that it is more equitable and just.<sup>129</sup>

Professor Theodore J. Stein has succinctly articulated the very different perspectives lawyers and social workers bring to case-based reasoning:

Social work reasoning and legal reasoning part company in that social workers are often concerned with both the current status of a case and with predicting the likely outcome of any course of action. When judges follow precedent, they are saying, "What has been done in the past is what will be done in the present." When social workers make decisions, they must ask, "Is what was done in the past useful for the future?"<sup>130</sup>

This difference in orientation—of the law looking to precedent and social work looking to progressive social change—represents a profound difference in thinking. Social work, much more than the law, is willing to eschew what are deemed moribund constraints precisely because a fundamental tenet of the profession is to cast off such constraints that are thought to impede humanitarian progress.

To illustrate this difference, consider how law and social work differ regarding the question of the adoption of foster children by gay or lesbian foster parents. Social workers would ask whether there is any empirical evidence that such an adoptive arrangement would present harm to the child.<sup>131</sup> Unless there are specific, demonstrable reasons why such an arrangement would be harmful, our society's historical distaste for gays and lesbians and our suspicions of them as adequate parents should be no bar to an

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128. See generally Allen Rubin & Danielle Parrish, *Views of Evidence-Based Practice Among Faculty in Master of Social Work Programs: A National Survey*, 17 RES. ON SOC. WORK PRAC. 110 (2007) (describing a survey of 973 faculty members in graduate schools of social work, seventy-three percent of them endorsed the importance of evidence-based practice, although there were differences across faculty in the definition of evidence-based practice); see also RICHARD GRINNELL & YVONNE UNRAU, *SOCIAL WORK RESEARCH AND EVALUATION* 3–21 (7th ed. 2005) (discussing scientific inquiry in social work).

129. See Rich Vodde & J. Paul Gallant, *Bridging the Gap Between Micro and Macro Practice: Large Scale Change and a Unified Model of Narrative-Deconstructive Practice*, 38 J. SOC. WORK EDUC. 439, 446 (2002); Idit Weiss, *Social Work Students and Social Change: On the Link Between Views on Poverty, Social Work Goals and Policy Practice*, 12 INT'L J. SOC. WELFARE 132 (2003).

130. STEIN, *supra* note 126, at 6.

131. See generally, Henry M. W. Bos, Frank van Balen & Dymphna D. van den Boom, *Child Adjustment in Planned Lesbian-Parent Families*, 77 AM. J. ORTHOPSYCHIATRY 38 (2007) (finding that being raised by lesbian parents had no detrimental effects on children).

adoption. Thus, a recent survey of adoption agencies finds that the majority have a policy of allowing gay persons to adopt.<sup>132</sup> By contrast, in such a situation, the law would look to statutory pronouncements, rules of administrative agencies and precedent—in some instances, precedents dating back decades if not centuries<sup>133</sup>—to answer this question. In the absence of a statute directly on point, courts are widely thought to be exercising authority least legitimately when they disregard precedent or overturn what has previously been decided.<sup>134</sup> Even in the face of clear evidence that adoption by gay parents would not present harm to the child who is to be adopted, courts would not declare a statute prohibiting such an adoption as unenforceable because the values it seeks to protect are thought outdated.

Another very real difference in how lawyers and social workers approach their work has to do with each profession's methods of settling on knowledge and determining truth. The law, of course, utilizes the adversarial process, which presumes that two or more parties with differing viewpoints clash and that through vigorous advocacy conducted pursuant to the prescribed rules the truth emerges. When lawyers go to court, they establish knowledge through a process of presenting evidence to a third party who is presumably neutral. Lawyers call witnesses to be examined and cross-examined and present documents and other tangible pieces of evidence in a formal process with elaborate rules about what can and what cannot be considered.

In contrast, for the most part, social workers rely upon research findings and what has been empirically demonstrated as in the

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132. David M. Brodzinsky, Charlotte J. Patterson & Mahnoush Vaziri, *Adoption Agency Perspectives on Lesbian and Gay Prospective Parents: A National Study*, 5 ADOPTION Q. 5 (2002) (describing a recent national study involving responses from 214 adoption agencies and finding that 63% accepted requests for adoptions from gay individuals and 38% had made at least one adoptive placement with a gay individual in the prior two year period; these policies are based upon the research findings that children who live with gay or lesbian parents fare as well as children raised by heterosexual parents).

133. See, e.g., *Lofton v. Sec. of the Dep't of Children and Family Serv.*, 358 F.3d 804 (11th Cir. 2004). *Lofton* involved an unsuccessful challenge by gay and lesbian parents of a Florida statute which prohibits gays and lesbians from adopting. In rejecting the challenge, the court cited precedent dating back at least to the 1920s. *Id.* at 812. The Child Welfare League, a leading social work advocacy organization, filed an amicus brief in support of those challenging the statute. See also *Michael H. v. Gerald D.*, 491 U.S. 110 (1989). The issue in this case was the parental rights of the biological father of a child who was conceived and born while the mother was married to another man. The court considered whether "under the historic practices of our society" a legal relationship between this biological father and daughter was protected and found that it was not. *Id.* at 124. To support its conclusion, the court cited precedent dating back to the 1500s. *Id.*

134. See 20 AM. JUR. 2D *Courts* § 129 (2007) (discussing the rationale and role of stare decisis).

example of gay-lesbian adoption policy.<sup>135</sup> Especially in recent years, as mentioned above, social workers and the child welfare field have been advised to rely upon research rather than intuition or practice knowledge.<sup>136</sup> Social workers are also accustomed to a non-confrontational, problem-solving approach to “truth.”<sup>137</sup>

Moreover, the adversarial process and court appearances are often the most daunting aspect of child welfare practice for social workers. Unfamiliar with the hostility inherent in the adversarial process, they often feel as though their expertise, assessment, conclusions, practices, and sometimes, personal integrity and character, are being called into question in court.<sup>138</sup> This is, of course, most true during cross-examination, when the social worker may be publicly confronted and questioned in an openly hostile manner. In some cases, the social worker’s personal history is brought into court, though it is irrelevant to the issues in the case, in an effort to discredit the social worker or to challenge her credibility.<sup>139</sup>

A third difference in lawyers’ and social workers’ practices is the degree of formalism. Although child welfare proceedings are typically less formal than other legal proceedings, they rely on formalistic processes. Additionally, formalism characterizes all aspects of legal practice, whether it is in the courtroom or the conference room. Legal proceedings and legal relationships are governed by a welter of statutes, rules, and contracts. Conversa-

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135. See generally Michelle L. Kessler, Emmanuelle Gira & John Poertner, *Moving Best Practice to Evidence-Based Practice in Child Welfare*, 86 FAM. IN SOC. 244 (2005) (advising that best practice in child welfare must be based upon evidence or research); MIRIAM P. KLUGER, GINA ALEXANDER & PATRICK A. CURTIS, *WHAT WORKS IN CHILD WELFARE* (2000) (describing the evidence or research for a spectrum of interventions used in child welfare practice); Aron Shlonsky & Dennis Wagner, *The Next Step: Integrating Actuarial Risk Assessment and Clinical Judgment into an Evidence-Based Practice Framework in CPS Case Management*, 27 CHILD. & YOUTH SERV. REV. 409 (2005).

136. See generally KLUGER, ALEXANDER & CURTIS, *supra* note 135.

137. See generally EILEEN GAMBRILL, *SOCIAL WORK PRACTICE: A CRITICAL THINKER’S GUIDE* (2d ed. 2006); Joanne C. Turner & Rose Marie Jaco, *Problem-Solving Theory and Social Work Treatment*, in *SOCIAL WORK TREATMENT: INTERLOCKING THEORETICAL APPROACHES* 503–22 (Francis Joseph Turner, ed., 4th ed. 1996) (discussing problem-solving as an approach).

138. See generally Benyamin Chetkow-Yanoov, Abstract, *Social Work Approaches to Conflict Resolution: Making Fighting Obsolete*, 25 J. CRIM. JUST. 341 (1997) (summarizing approaches to conflict resolution in helping professions).

139. In their practice, the authors have noted an increase in the numbers of social workers who are asked personal questions which, while not relevant to the case at hand, are asked by lawyers in an effort to diminish the social worker’s credibility. For example, in a case of child sexual abuse, it is not uncommon for a lawyer to ask on voir dire or cross-examination whether the social worker has herself experienced sexual abuse. While this is not relevant to a particular case, such questions are sometimes permitted on the ground that they would show bias or prejudice on the part of the social worker.

tions, whether formal or informal, may be peppered with professional jargon that is unfamiliar to most social workers. Even seemingly informal conversations may be used by lawyers to gather information from a social worker to be used against her later when she testifies in court. Social workers, by contrast, are unaccustomed to this type of formality in their practice, as they strive to put clients at ease.

A final difference in lawyers' and social workers' practices is that lawyers are typically most comfortable in their offices or in the courtroom, while social workers learn outreach as a core part of their practice.<sup>140</sup> A model of service delivery that involves going to the client rather than having the client come into the office is both historical and central to child welfare practice.<sup>141</sup> Assessments and many forms of intervention take place in the client's home.<sup>142</sup> When CALC teaches law students to go into clients' homes to visit children or assess the quality of a foster home or relative placement, it is often a novel experience for them, although client visits can be valuable for lawyers. Recently, for instance, a team of students in CALC was representing an infant in a child protection proceeding. The child's mother suffered from a severe mental illness. The child was born prematurely, and the mother and father were unprepared for the child to arrive. The parents did not visit the child regularly while he was in the hospital post-birth, and they were not available to take the child when he was medically prepared for discharge from the hospital. The court authorized an emergency placement, and the boy was placed in a foster home. In a subsequent reflection paper, one of the students assigned to represent this infant reflected on his response to the foster care worker's recommended placement of the child with an adult sibling in light of his ethical responsibility to act diligently on behalf of his client. The student wrote:

[W]hile acting as the [lawyer-guardian *ad litem*] in the Kenny James case, I now realize that personal bias could have threatened this commitment to diligently looking after young Kenny's interests.

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140. See generally MORE DAYS IN THE LIVES OF SOCIAL WORKERS: 35 "REAL-LIFE" STORIES OF ADVOCACY, OUTREACH, AND OTHER INTRIGUING ROLES IN SOCIAL WORK PRACTICE (Lynn Grobman ed., 2006).

141. See KADUSHIN & MARTIN, *supra* note 42, at 83–142 (discussing home-based service provision); JOAN SHIREMAN, *CRITICAL ISSUES IN CHILD WELFARE* 185 (2003).

142. See KLUGER, ALEXANDER & CURTIS, *supra* note 135, at 1–117 (discussing a spectrum of home-based interventions that are supported by research).

It might be best to begin with the case's background. Kenny James is only a few months old. He was born to Tanya and Michael, who are not married. Tanya has been diagnosed with schizophrenia; she has hallucinations, and is on a high dosage of medication. Michael has had children before with other women, though this was a while ago and his past girlfriends have done the bulk of the child rearing. When we entered the case at the pretrial hearing, Kenny had already been placed with a third-party foster parent who was a stranger to Michael and Tanya. At the hearing we met the foster-care worker, Peter Snyder, and Michael's daughter, Alicia (34 yrs.).

Peter was urging that we support a foster-care home switch for Kenny, so that he could be raised by Alicia. This would be especially convenient for Michael and Tanya since they live close by. When we asked Peter about Alicia, it did not sound like his suggestion was a good one. She had 9 children, 8 of them currently lived with her. She is a single parent, and earns a few thousand dollars a month. She works part time as a Head Start bus counselor and substitute teacher. When would Alicia have the time and money to raise an infant? We told Peter that we would like to see Alicia's home before making a decision on a change in Kenny's foster care placement.

When we visited Alicia's home the following week, I realized that my demographic bias had blinded me. It quickly became apparent that despite her single parent status, large number of children and low income, she would be a fantastic foster mom. Alicia's communal living arrangement is very different than mine, and I was initially biased against it because of my unfamiliarity. When asked how she will monetarily support Kenny, and how she will watch him when she has to go to work, Alicia told us of her sister and other family members who are readily available to watch him, and it seems as if her extended family helps with her income as well. Otherwise, she seemed incredibly attuned to her children's feeling and told us in great detail about some of the moving and open conversations she has had with them on the topics of school, sex and drugs. She has also immaculately prepared for Kenny's arrival with many toys, diapers, baby food, clothes, and a crib.

The point of this reflection is to raise my own awareness of the many racial, socioeconomic and other demographic biases that have the potential to interfere with the diligent and thoughtful representation of a client's best interests. I believe that such awareness is the first step in combating such biases.<sup>143</sup>

### *E. Evidence*

Another area of contrast between lawyers and social workers is in the role of hearsay evidence in decision-making. Lawyers are trained to be highly skeptical of the reliability of hearsay evidence in practice and to always seek out the individual that made the original statement so that that person's perceptions and motivations can be tested through the adversary process. In general, of course, the use of hearsay is prohibited in the courtroom.<sup>144</sup> Social workers, on the other hand, are much less skeptical of hearsay, and often rely on these statements in their work, particularly when it relates to issues or areas that are less central to the work that they do.<sup>145</sup> An illustration may help to explain how social workers use hearsay and the problems that its use may cause in the legal setting.

The social worker-author of this article is the Director of the University of Michigan School of Social Work's Family Assessment Clinic ("FAC"). The lawyer-author is FAC's legal consultant. FAC conducts multidisciplinary assessments in complex child welfare cases. FAC recently evaluated a case in which the parent, the child's mother, suffered from dissociative identity disorder.<sup>146</sup> The mother admitted to abusive behavior and a wish to bury her daughter in

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143. Aaron Krawitz (March 27, 2006) (unpublished student reflection paper) (on file with author). We wish to thank Winter 2007 CALC student, Aaron Krawitz, for his permission to quote from his thoughtful paper. The authors of this article have changed the names of the parties to protect confidentiality.

144. See FED. R. EVID. 802.

145. See Sol Gothard, *Rules of Testimony and Evidence for Social Workers Who Appear as Expert Witnesses in Courts of Law*, 3 J. INDEP. SOC. WORK 7 (1989) (admonishing social workers that they cannot rely on hearsay used in case decision-making when they serve as expert witnesses in court).

146. Dissociative Identity Disorder is a psychiatric diagnosis in which the individual has two or more identities or personality states that at different times take control of the individual's behavior. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL 529 (4th ed. 2000) [hereinafter *DSM-IV-TR*]. The individual also has an inability to recall important personal experiences and information that is too extensive to be explained by ordinary forgetfulness. *Id.* Further, these disturbances are not the direct effects of substance abuse or a medical condition. *Id.*

the back yard, but attributed these behaviors and wishes to her alters, who did not like her daughter. The child had been in foster care for some time while the mother worked on a treatment plan to regain custody. FAC was asked to evaluate the mother's progress ahead of a permanency planning hearing. During the consultation meeting at which the professionals who were involved in the evaluation discussed the case and came to consensus regarding recommendations, the foster care worker reported that a witness had seen the mother in a shopping mall "as a man." That is, the mother, in an altered psychological state, was wearing men's clothing and had otherwise altered her appearance to appear to be a man. She spoke in a deeper voice and, but for the witness's knowledge that she was a woman, would have been taken as a male. This statement by the foster care worker was taken as evidence that the mother's alters were still present—the social workers working on this case assumed both that the caseworker's report of the information as well as the witness's observations were accurate and that there was no motive to fabricate or provide only partial information.<sup>147</sup> As a result, the foster care worker's report was considered as part of the evidence for decision-making about the mother's mental health. By contrast, such information could not be used in legal decision-making unless the witness who actually saw the mother in the shopping mall was brought to court and subjected to questioning and cross-examination.

This illustration is but one example of social workers' use of hearsay evidence in doing their work. Social workers routinely rely upon material such as police reports, witness statements and the contents of prior evaluations without undertaking the sort of testing of their credibility that would be typical of a lawyer.

### *F. Social Justice Versus Individual Justice*

As previously noted, one of the core values of the social work profession is social justice.<sup>148</sup> Social work ethics derive most importantly from the NASW Code of Ethics, and NASW has developed guidelines that are specific to child welfare practice.<sup>149</sup> In addition,

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147. There was no evidence in this case that the mother had gender identity confusion. Rather, her diagnosis for sixteen years had been Multiple Personality Disorder, and later, Dissociative Identity Disorder, when the diagnosis was re-named in the current *DSM-IV-TR*.

148. NASW CODE OF ETHICS, *supra* note 120, at 7.

149. See generally NATIONAL ASSOCIATION OF SOCIAL WORKERS, STANDARDS OF PRACTICE FOR CHILD WELFARE (2005), <http://www.socialworkers.org/practice/standards/NASWChildWelfareStandards0905.pdf> [hereinafter *Standards of Practice for Child Welfare*].

the Child Welfare League of America, whose membership exceeds one thousand child welfare organizations, has guidelines for child welfare practice.<sup>150</sup> The NASW Code of Ethics explicitly embraces a social justice mission for the profession and makes clear that “[s]ocial workers challenge social injustice.”<sup>151</sup> Social workers typically address the needs of populations who are disadvantaged and discriminated against. Their responsibility is to empower these stigmatized populations.<sup>152</sup>

Conversely, despite recent entreats to embrace more explicitly a social justice mission,<sup>153</sup> most law practice remains focused on vindicating the rights of individual clients rather than on pursuing a broader agenda of social justice. Indeed, in many circumstances, as when a lawyer represents a factually guilty client in a criminal proceeding, or when a lawyer represents a parent who has sexually abused his or her child in a child protective proceeding, lawyers may represent clients whose interests are very different from, if not diametrically opposed to, a broader social justice mission.

### G. Defining the Client

Interprofessional stresses between lawyers and social workers are rooted deeply in different professional orientations: social workers work with a whole family; a lawyer represents an individual client.<sup>154</sup> While a social worker may be required to place the needs of others or society at large ahead of the needs of his or her client’s,<sup>155</sup> lawyers’ duty of loyalty to the individual client is nearly sacrosanct.

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150. See generally *Standards of Excellence*, *supra* note 60.

151. NASW CODE OF ETHICS, *supra* note 120, at 7. The social justice Ethical Principle provides:

“Social workers pursue social change, particularly on behalf of vulnerable and oppressed individuals and groups of people. Social workers’ social change efforts are focused primarily on issues of poverty, unemployment, discrimination, and other forms of social injustice . . . . Social workers strive to ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people.”

*Id.*

152. Janet L. Finn & Maxine Jacobson, *Just Practice: Steps Toward a New Social Work Paradigm*, 38 J. SOC. WORK EDUC. 57 (2003).

153. Jane Aiken & Stephen Wizner, *Law As Social Work*, 11 WASH. U.J.L. & POL’Y 63, 73 (2003).

154. THEODORE STEIN, *CHILD WELFARE AND THE LAW* 9 (1991).

155. NASW CODE OF ETHICS, *supra* note 120. Ethical Standard 1.01 states: “Social workers’ primary responsibility is to promote the well-being of clients. In general, clients’ interests are primary. However, social workers’ responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients . . . .” *Id.*

Moreover, social workers are generally trained to “start where the client is” and to respect the perspectives of others.<sup>156</sup> Lawyers may struggle to remain humble and to confine themselves to the lawyer’s proper role.<sup>157</sup>

As noted above, although the history of child protection involves child rescue,<sup>158</sup> the present social work role in child welfare is more balanced and addresses the child’s needs from an ecological perspective.<sup>159</sup> The child is an individual who usually lives in a family, in a neighborhood, and in a community. Thus, social workers tend to take a more holistic view than lawyers and attempt to address the needs of the child within the context of the family. Although there are times that child safety must trump family preservation,<sup>160</sup> one of the core values of the NASW Code of Ethics is the importance of human relationships.<sup>161</sup> Consequently, siblings, family, school mates, and friends to the child are considered important.

In part because considerations beyond those of the individual child client may place the lawyer in a conflict situation, the role of a child’s relationships has not always played a central role in lawyering on the behalf of children. Only relatively recently has the legal profession begun to recognize the importance for children of

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156. Carleton Pilsecker, *Starting Where the Client Is*, 75 FAMILIES-IN-SOCIETY 447. Pilsecker writes in a classic essay about this social work guideline:

Start where the client is. That injunction has been chiseled into social work’s rule book from the profession’s earliest days. We must understand, from our clients’ point of view, the troubles and frustrations that bring them to us, what gives them hope, the resources that sustain them, the perceived limitations that distress them. But we must not stop there. We must strive to comprehend fully their inner stirrings and their external world, listen carefully, and keenly observe their nonverbal signals. In so doing, we build a picture of person-in-context. And sometimes we understand.

Id. Holody, writing from the perspective of a white, middle class male, discusses translating the admonition “start where the client is” into the social work classroom with students of diverse backgrounds. Richard Holody, *Encounters With Privilege and Multiculturalism*, 4 REFLECTIONS 17 (1998).

157. Erik Pitchal, *Buzz in the Brain and Humility in the Heart: Doing it All, Without Doing Too Much, on Behalf of Children*, 6 NEV. L.J. 1350, 1352 (2006).

158. KADUSHIN & MARTIN, *supra* note 42, at 222.

159. See Belsky, *supra* note 83, at 71; Sharon Kish & Frank Maidman, *Child Welfare Problems and Practice: An Ecological Perspective*, in CHILD WELFARE: A SOURCEBOOK OF KNOWLEDGE AND PRACTICE 1 (Frank Maidman ed., 1984). An ecological perspective in child welfare involves considering the child as an individual, but within a family, an extended family, a school, a neighborhood, a race, a culture and so forth. In legal discussions, this concept is sometimes discussed as “child in context.” Yale Law School Professor Jean Koh Peters has been a leading proponent of representation of children in context. See generally JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTION PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSION (1997).

160. PECORA ET AL., *supra* note 46, at 9.

161. NASW CODE OF ETHICS, *supra* note 120, at 8.

continuing relationships, and begun to expect lawyers to understand child development and the child in context.<sup>162</sup> As lawyers adopt a more ecological approach to representation of children, they will need to be aware of and avoid potential conflicts of interest.

### H. Mandated Reporting

Few areas of interdisciplinary law and social work practice have received more attention in the legal literature than the necessity for social workers to report suspected child maltreatment.<sup>163</sup> Social workers are mandated reporters of child maltreatment in every state.<sup>164</sup> Moreover, the NASW Standards for Social Work Practice in Child Welfare demand that social workers practice in compliance with the NASW Code of Ethics,<sup>165</sup> which in turn requires social workers to disclose confidential information when necessary "for compelling professional reasons."<sup>166</sup>

Although state statutes may not specifically require social work students to report, pedagogically, social work faculty will want students to make reports of maltreatment when appropriate, and agencies providing students with field placements will require reporting. Mandated reporting may become an issue in interdisciplinary education when social work students are collaborating with law students who represent an abusive parent or a child who has been maltreated, but does not want the maltreatment re-

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162. See *Legal Representation of Children: Proceedings of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Fordham, Report of the Working Group on the Role of Age and Stage of Development*, 6 NEV. L.J. 623 (2006); PETERS, *supra* note 159, at 1-16, 1369-75 (citations omitted).

163. Anderson, Barenberg & Tremblay, *supra* note 107, at 690-709; Zavez, *supra* note 106, at 192-95, 209-12.

164. See, e.g., CHILD WELFARE INFORMATION GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT: SUMMARY OF STATE LAWS (March 2005), [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/mandaall.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/mandaall.pdf); CHILD WELFARE INFORMATION GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT: STATE STATUTES SERIES (2005), [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/manda.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm); see also MICH. COMP. LAWS ANN. § 722.623 (West 2002). For example, the following categories of social workers are required to report in Michigan under the Michigan Child Protection Law of 1975 as amended: social worker, licensed master's social worker, licensed bachelor's, registered social service technician, and social service technician. *Id.* § 3(1)(a). Notably, social work students are no longer specified as mandated reporters. *Id.*

165. *Standards of Practice for Child Welfare*, *supra* note 149, at 10 ("Standard 1. Ethics and Values, Social workers in child welfare shall demonstrate a commitment to the values and ethics of the social work profession, emphasizing client empowerment and self-determination, and shall use the NASW Code of Ethics (1999) as a guide to ethical decision-making.").

166. NASW CODE OF ETHICS, *supra* note 120, at 11.

ported. This is one of the fundamental challenges of interdisciplinary clinical teaching. Designing an interdisciplinary program in child welfare demands that law and social work faculty carefully consider the various ways a program can address this issue.<sup>167</sup>

Unfortunately, limited structures exist to address this ethical dilemma. Professor Zavez has written about four models considered by Vermont Law School in establishing a law and social work interdisciplinary collaboration involving student attorneys and student social workers: the consultant model, the employee model, the consent model, and the confidentiality wall model.<sup>168</sup> Three of these models—consultant, employee and confidentiality wall—provide less than optimal educational opportunities for social work students. In each, the social work student is provided only limited access to information about the case or is assigned limited tasks and acts as an adjunct to the law students. Obviously, under these models, while social work students can derive some educational benefit from their involvement in the case, their experience is necessarily limited. The fourth model—consent—is unlikely to ever be used because under such a structure the social worker would gain access to potentially reportable information, which would be ethically untenable from the legal perspective.<sup>169</sup>

Pedagogically, then, such collaborations cannot be optimal for social work students because they may be denied access to information essential to their undertaking the core educational function of fully assessing a client's needs and taking action with and on behalf of the client consistent with that assessment. In some circumstances, social work faculty may deem such arrangements to be too compromising to their students' learning experiences to be of value.

### *I. Social Status Differences between Lawyers and Social Workers*

That lawyers and social workers perceive themselves and the proper approach to their work very differently has not been lost on practitioners in the field. Nor has it changed over time. More than thirty-five years ago, Professor Franklin B. Fogelson published a

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167. See Zavez, *supra* note 106, at 217–22 (discussing the various options one law school clinic involved in interdisciplinary law and social work practice considered and structured to address the conflicting ethical duties of lawyers and social workers to report suspected child maltreatment).

168. *Id.* at 217–18 (discussing four potential models for structuring such a clinic: a consultant model, an employee model, the consent model and the confidentiality wall model).

169. *Id.* at 218 (noting that soliciting a client's consent under this model may violate ethical rules for lawyer because "consent may lead to adverse repercussions for the client").

study of social workers' perceptions of lawyers.<sup>170</sup> At that time, while social workers viewed lawyers generally in positive terms, "they suggested that the lawyer's role, as contrasted with the social worker's, was authoritarian, judgmental, restricted in scope, and somewhat mechanistic."<sup>171</sup> Lawyers have historically had little respect for social workers, perceiving them as "inferior and less professional" and questioning their commitment to the client rather than to the agency that employs them.<sup>172</sup> Differences in the regard social workers and lawyers have for one another relate, in part, to differences in social statuses. Social status differences are rarely spoken of in the classroom, but almost always are encountered in practice. Professional status in American society is reflected in large part by earning power or pay. By this measure, social workers have lower status than lawyers, although lawyers engaged in child advocacy are usually not all that well paid.<sup>173</sup>

Nevertheless, social work students, in contrast to most law students, usually have had direct experience with the client population that child advocacy law clinics serve, because some practical experience is usually an admission requirement to social work school. Thus, to the extent that status is also based upon expertise, social workers should have greater status. The status differences between social workers and lawyers are typically encountered when lawyer-social worker teams engage in case planning and decision-making.

Social status complicates the interdisciplinary training experiences of social work students with law students in two other ways. First, social workers also have a lower status than other mental health professionals, psychologists, and psychiatrists. Although this status differential may not be communicated in their social work classrooms, social work students quickly learn about this in interdisciplinary clinical training and in the context of child welfare. Their perceived lesser status may undermine their ability to behave as equals with law students.

Being at the bottom of the mental health hierarchy is, in part, a function of years of education, which in turn relates to income.

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170. Franklin B. Fogelson, *How Social Workers Perceive Lawyers*, 51 SOC. CASEWORK 95 (1970).

171. *Id.* at 97.

172. James L. Scherrer, *How Social Workers Help Lawyers*, 21 SOC. WORK 279, 280 (1976).

173. The mean and median child welfare workers' salaries in 2004, based on data from thirty-six states, were \$30,990 and \$29,583; the lowest salary was \$23,472 (N. Dakota) and the highest \$52,890 (Connecticut). See CHILD WELFARE LEAGUE OF AMERICA, NATIONAL DATA ANALYSIS SYSTEM (2004), [http://ndas.cwla.org/data\\_stats/access/predefined/](http://ndas.cwla.org/data_stats/access/predefined/) (last visited Apr. 26, 2007). These findings do not differentiate salaries based upon the number of years of experience. *Id.*

Social workers may have a bachelor's or master's degree, whereas many psychologists hold Ph.D.s, and psychiatrists are M.D.s with additional specialty training. Thus, even a psychiatrist working at a community mental health clinic makes more money than a social worker.<sup>174</sup> Moreover, the populations social workers are supposed to serve are the disadvantaged and the poor. Servicing these target populations not only decreases the status of social workers but also means the income of most social workers is dependent upon public beneficence—what federal, state and local governments allocate for services to these populations.

Second, social work students may feel responsible or blamed for the sub-standard practice of child welfare caseworkers, who may lack social work education and may not live up to social work ethical and practice standards. Only three states require a Bachelor's of Social Work degree for child welfare workers, and only the District of Columbia requires a Master's of Social Work degree.<sup>175</sup> Although some child welfare workers engage in exemplary practice, because of lack of training, high caseloads, and agency practices and constraints, many social work students encounter sub-standard child welfare practice when they are involved in child advocacy casework.<sup>176</sup> Social work educators seek to provide training experiences where social workers are not demeaned in terms of status.

Law students may encounter comparable examples of malpractice on the part of court-appointed attorneys in child welfare cases. It is widely recognized that children and parents involved in our child welfare system receive inadequate legal representation.<sup>177</sup> Not only do these attorneys often have such high caseloads that they cannot provide minimally competent representation to their clients,<sup>178</sup> they tend to be underpaid on a per case basis for their professional services.<sup>179</sup> Moreover, some payment systems are actu-

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174. *Id.*

175. *Id.*

176. *See, e.g.,* Dwayne B. v. Granholm, No. 2: 06-CV-13548 (E.D. Mich. filed Aug. 8, 2007), available at <http://www.childrensrights.org/pdfs/Dwayne%20B%20Web%20Update%20Aug%2006.pdf>. This is a lawsuit against the State of Michigan and its child welfare system for failure to provide adequate services to children in foster care. *Id.*

177. *See* DONALD N. DUQUETTE & MARK HARDIN, GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN VII-1 (1999) ("In many courts . . . legal counsel for children, parents, and agencies does not achieve a minimal threshold of performance, much less the higher standard of legal representation that would be optimal.").

178. *Id.* at VII-2.

179. *Id.*

ally constructed to provide financial incentives to lawyers that discourage aggressive advocacy on behalf of clients.<sup>180</sup>

### *J. Gender Differences in Law and Social Work*

Although the legal field is changing substantially in terms of its gender distribution, historically and currently, law is a male-dominated field.<sup>181</sup> In contrast, historically and currently, approximately eighty percent of social workers are female.<sup>182</sup> Additionally, the males who are in the social work profession are more likely to concentrate in “macro practice,” that is management, community organization, or social policy, rather than in direct services.<sup>183</sup>

Given that males have traditionally been accorded higher social status, the fact that the law is a male-dominated field implies greater social status to lawyers as compared to social workers. In interdisciplinary clinical programs, these status differences become apparent. For example, in each of the models of representation discussed by Professor Zavez,<sup>184</sup> the social work student (statistically probably a female student) was in a disadvantaged position vis-à-vis the law student (statistically probably male).<sup>185</sup> In most such programs, the social workers are described as working for the lawyers, rather than being fully equal members of the client’s team of professionals, or are intentionally excluded from having access to all case information.<sup>186</sup>

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180. For example, some courts pay attorneys a flat fee for handling a case or for handling a particular hearing regardless of whether the attorney spends an hour or ten hours working on the case. See MICHIGAN COURT IMPROVEMENT PROGRAM REASSESSMENT 144–45 (2005), <http://courts.michigan.gov/scao/resources/publications/reports/CIPAssessmentReport090605.pdf>.

181. AMERICAN BAR ASSOCIATION, CHARTING OUR PROGRESS: THE STATUS OF WOMEN IN THE PROFESSION TODAY 4 (2006), <http://www.abanet.org/women/ChartingOurProgress.pdf> (noting that in 2003, only 29.1% of lawyers were women although 50% of law school entrants were women, representing increases of, respectively, 23% and 45% since 1994 and that while improvements are being made, women continue to be seriously underrepresented as tenured members of law school faculties, on the bench, as general counsels to major corporations, and as partners in leading law firms).

182. CENTER FOR WORKFORCE STUDIES, 2004 NATIONAL STUDY OF LICENSED SOCIAL WORKERS DEMOGRAPHIC FACTSHEET (2004), [http://workforce.socialworkers.org/studies/demo\\_fact\\_female.asp](http://workforce.socialworkers.org/studies/demo_fact_female.asp) (last visited May 1, 2007).

183. CENTER FOR WORKFORCE STUDIES, 2004 NATIONAL STUDY OF LICENSED SOCIAL WORKERS DEMOGRAPHIC FACTSHEET—MALE SOCIAL WORKERS (2004), [http://workforce.socialworkers.org/studies/demo\\_fact\\_male.asp](http://workforce.socialworkers.org/studies/demo_fact_male.asp) (last visited May 1, 2007).

184. See *supra* text accompanying notes 163–169.

185. Zavez, *supra* note 106, at 218. See the discussion of mandated reporting *supra* Part IV.H.

186. Anderson, Barenberg & Tremblay, *supra* note 107, at 699–701. When discussing the social worker’s mandate to report suspected child maltreatment, the authors of this article

*K. Opportunities to Practice Core Roles*

Ideally, interdisciplinary clinical education in child welfare should provide opportunities for all students to engage in their core practice roles. Our thirty years of experience at the University of Michigan has taught us that providing these practice opportunities for all disciplines, while working on the same case, is far from straightforward.

There are two direct challenges to practice situations in which lawyers and social workers are working together on the same case: simultaneously taking into account the ethics of each profession, and ensuring opportunities for each to learn core skills. If a lawyer and a social worker are working together on a parent case in which the parent should not get or retain custody of a child according to social work best practice, the lawyer's ethical duty to zealously advocate for his client may be compromised if the social worker follows her ethical duty. Alternatively, the social worker's ethical duty to the child's best interest and mandated reporting responsibility may be compromised if the lawyer observes his duty to advocate for his client. Although much can be learned by students in such situations, an important question is, given the limited number of lessons that can be learned in an internship, is the lesson that professionals sometimes have to compromise their ethics one of the lessons to be taught in a clinical internship? This challenge may be avoided through case selection—for example, not taking parent cases and only working on child cases. That strategy, however, deprives law students of a lesson about the right to counsel and defeats the goal of teaching law students the skills to advocate for any side, even an unpopular one. Although these difficult situations often appear to be finessed in clinical training by case selection, the conflicts are real and will be encountered in the real world of interdisciplinary child welfare practice.

As discussed in Section II.B, opportunities to employ social work skills are central to social work students' clinical experience for child welfare. A challenge of training social workers in a child welfare law clinic is ensuring that social work students have an

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discuss two basic approaches to interdisciplinary team representation 'walls' to deter access by any mandated reporter to the kind of disclosures which might trigger his reporting duty. *Id.* These commentators, however, conclude that neither of these approaches are necessary because the social worker can be deemed an employee of the lawyer and that, in this arrangement, the rules of legal ethics trump the social worker's duty to report. *Id.* However, the authors concede that "the arguments supporting this proposition are not without considerable doubt." *Id.*; see also *Zavez*, *supra* note 106, at 217–22.

opportunity to practice their core skills and do not merely act as assistants to law students. The following case example is illustrative.

At the University of Michigan, students from the School of Social Work sometimes take the Law School's Child Advocacy Law Clinic. Most often, social work students work on the cases in ways that are directed by the student-lawyers on the team assigned to a particular case. In a recent case, at the behest of the student-lawyers, in consultation with their clinical supervisor, a social work student was asked to go to the home of a client, a grandfather seeking to adopt his grandson after the child's mother had passed away, and conduct an assessment of the child's interaction with the grandfather. The purpose of this was not to conduct a truly objective assessment, but to counter a somewhat negative assessment that had been made by a social worker for the court. Before asking the social work student to undertake the assignment, the law students and their clinical supervisor discussed outside her presence whether to ask that she complete this assignment, covering whether the social work student might discover information that would require her to make a referral to child protective services and similar issues. It was determined that the law students would ask the social work student to make the home call and assess the situation. When she provided her written assessment of the home visit, the report was edited by the law students under the supervision of their clinical supervisor to ensure that the information contained in the report was presented in the light most favorable to the client. The report was then reviewed by the social work student to ensure that she agreed to the edits. While such an experience provides some opportunity for the social work student to practice her skills, from the perspective of social work pedagogy, it is hardly optimal.

### CONCLUSION

The recently published consensus recommendations from the UNLV Conference on the Legal Representation of Children in Families support the need for lawyers to work across disciplines to provide the highest quality of services to children and families involved in child welfare proceedings.<sup>187</sup> As one commentator on these recommendations noted:

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187. Marsha Levick et al., *Report of the Working Group on Representing the Whole Child*, 6 *NEV. L.J.* 665, 667 (2006).

All institutional providers of legal services to children should have social workers on their staff, and these organizations must develop a coherent theory of interdisciplinary advocacy in their practice. Advocacy is strengthened when other professionals are brought into the effort, and it is weakened when lawyers do what they are not trained to do.<sup>188</sup>

We concur with the importance of working together in practice. Each discipline needs access to the expertise of the others (e.g., law, social work, medicine) to provide the best service to children and their families. Moreover, interdisciplinary classroom teaching enriches and broadens the understanding of all students and also of faculty. It is essential to preparation of professionals for the real world of practice. Specifically, interdisciplinary classroom education is a vital and viable strategy for fostering knowledge about and appreciation of the range of disciplines which play important roles in child welfare cases.

There are, however, challenges to engaging students in interdisciplinary clinical training that are not encountered in the classroom setting. Learning no longer derives merely from intellectual discussion from differing professional perspectives, but rather from endeavors to learn from actual practice. The stakes are higher because the learning involves actual children and families, and the clashes between disciplines are starker. Additionally, students in each discipline need an opportunity to learn and practice the ethics and core clinical skills of their discipline. Providing these opportunities may be difficult when another profession "owns" the case. A law student cannot learn trial practice skills on a hospital child protection team. A social work student cannot engage in treatment of a child welfare client in a law clinic.

We have developed models for interdisciplinary clinical training which allow for collaboration across professions, but we also have separate child welfare clinical training programs for law students, social work students, and medical students. For example, law students under supervision of a clinical professor may serve as legal consultants to social workers and social work students in the Family Assessment Clinic, where social workers "own" the case. Social work students, under supervision, may serve as consultants to and collaborators with law students when lawyers "own" the case at the Child Advocacy Law Clinic. Students learn the core practice skills of their professions, however, in the separate clinical training pro-

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188. See Pitchal, *supra* note 103, at 1359.

grams associated with the three professional schools—the Law School, the School of Social Work, and the Medical School.

Barriers must be overcome if professions are going to work together for the betterment of children and families. To change the practice climate, we must increase opportunities for interprofessional interaction during graduate education. There are a number of solutions other than the one we have described here, to address the tensions of teaching interdisciplinary clinical child welfare work. Recent years have seen an increasing focus on interdisciplinary educational opportunities in law and social work schools. A number of law schools and schools of social work now have joint degrees in law and social work.<sup>189</sup> There is more cross-disciplinary teaching in both classroom and clinical settings.<sup>190</sup> A number of schools offer specialty certificates in child welfare that focus on interdisciplinary teaching.<sup>191</sup>

Nevertheless, to assume that merely by interdisciplinary training those obstacles to inter-professional collaboration in practice on child welfare cases will be overcome is naïve. This stance fails to appreciate the fundamental differences among the professions and their world views. While these differences in world views serve as excellent sources of intellectual debate in the classroom, they may collide in clinical context.

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189. For example, universities offering joint law/social work degrees include the University of Michigan, the University of Maryland, Syracuse University, Florida State University, Virginia Commonwealth University, Washington University at St. Louis, Case Western Reserve University, the State University of New York at Stonybrook, and the University of Toronto.

190. For example, Fordham Law students and Graduate Social Work students receive three classroom credits for participating in interdisciplinary in-class electives in the areas of Child Abuse and Neglect and Domestic Violence. [http://law.fordham.edu/ihtml/int-2education\\_offer.ihtml?id=789](http://law.fordham.edu/ihtml/int-2education_offer.ihtml?id=789). The School of Law and the George Warren Brown School of Social Work at Washington University will host the fifth annual access to equal justice conference, "Poverty, Wealth and the Working Poor: Clinical and Interdisciplinary Perspectives." <http://news-info.wustl.edu/news/page/normal/4926.html>. See generally Brigid Coleman, Note, *Lawyers Who are Also Social Workers: How to Effectively Combine Two Different Disciplines to Better Serve Clients*, 7 WASH. U.J.L. POL'Y. 131 (2001) (describing the benefits of joint degrees).

191. For example, Michigan State University offers a certificate for social workers in law and child welfare, entitled "A Chance at Childhood." <http://chanceatchildhood.msu.edu/index.html>.