

# BUZZ IN THE BRAIN AND HUMILITY IN THE HEART: DOING IT ALL, WITHOUT DOING TOO MUCH, ON BEHALF OF CHILDREN

Erik Pitchal\*

## I. INTRODUCTION

The *UNLV Conference Recommendations* are noteworthy for many reasons. Chief among these is the ringing reaffirmation of the *Fordham Conference Recommendations*, a reaffirmation adopted while also adding significant new findings and determinations based on experiences developed in the intervening ten years since that first landmark gathering.

The breadth and scope of the *UNLV Recommendations* are far-reaching. In addition to the fundamental call of the *Fordham Conference* for children's attorneys to undertake zealous client-directed advocacy, we now have recommendations that those attorneys meet their clients in their communities; engage in broad-based coalition building; utilize financial and demographic data and analysis in their advocacy; undertake legislative advocacy and community education, outreach, and organizing; hold service providers accountable by challenging ineffective or harmful programs; provide legal services in matters ancillary to the matter on which they are initially appointed (holistic lawyering); remain constantly aware of their clients' level of functioning and maturity of thinking (which presumably change rapidly as children grow); re-orient their entire mode of advocacy to incorporate a truly collaborative multi-disciplinary approach, as well as to more fully and authentically incorporate their clients' voices into their advocacy; model the decision-making process for their clients and otherwise assist their clients in developing the capacity to make their own decisions; and use the media as a key component in their advocacy, among literally dozens of other recommendations.<sup>1</sup>

Moreover, along with these *UNLV Recommendations*, children's attorneys are now urged to attend continuing legal education classes devoted to issues of race, ethnicity, class, and culture; sex, sexual orientation, sex identity, and sexual conduct; child and adolescent development and family systems theory;

---

\* Director, Fordham Interdisciplinary Center for Family and Child Advocacy; J.D., 1998, Yale Law School; A.B., 1994, Brown University. Thanks to Lyn Slater and Chris Gottlieb for helpful comments on a draft version of this Paper and to the organizers of the *UNLV Conference* for inviting me to participate.

<sup>1</sup> *Recommendations of the Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years after Fordham*, 6 *NEV. L.J.* 592 (2006) [hereinafter *UNLV Recommendations*].

leadership training skills for fostering systemic change and community empowerment; international law that is applicable to child advocacy; and many other areas.

A practicing children's attorney who reviews just this summary might very well become overwhelmed at all the things experts in the field now expect her to do in order to successfully and comprehensively serve her clients well. The myriad requirements, recommendations, and dictates can make the brain buzz in a short-circuit of nerves. Imagine her confusion, though, when, in the midst of reading the *Report of the Working Group on the Role of the Family*, she discovers that she is *also* being counseled to "do less." For, contained within the Introduction is the following observation and admonition:

Once involved, the systems over-involve themselves. They seek, in good faith, to do too much. Perhaps counter-intuitively, we ask them to strive to do less.

They believe they have the authority to *force* families to change their ways. Instead, we ask them to help families understand why families should change. There is a lack of humility; a lack of understanding of the capacity for overreaching; failure to check the power that has been unleashed.<sup>2</sup>

The participants in the *UNLV Conference* unquestionably viewed children's lawyers as institutional actors who, as part of the aforementioned systems, could in many instances be considered part of the problem. But in case a practitioner fails to acknowledge or agree with this sentiment, the Working Group Report further admonishes: "The legal players in the system too often fail to appreciate the limitations of their expertise and claim the authority to dictate decisions beyond the scope of their expertise."<sup>3</sup> The UNLV Conference attendees found that the ideals of the *Fordham Conference* have not been fully realized in part because of the "cowboy lawyer" syndrome—a situation in which children's attorneys, believing they are heroic child savers, avoid input from people with knowledge of and experience in the matter at hand—including their clients.<sup>4</sup>

Thus, the *UNLV Recommendations* contain within them what might be viewed as an internal tension. On the one hand, practitioners are urged to learn more, do more, and change fundamental aspects of their advocacy such that they are more involved in their clients' lives and communities than ever before. If not a full re-orientation, then at the very least these *Recommendations* serve as a clarion call for a significant deviation from the path along which even the best advocates, those lawyers most filial to the precepts of the *Fordham Conference*, have been churning. On the other hand, children's lawyers are simultaneously cautioned that over-involvement in their clients' lives is dangerous and debilitating. Far from being rebellious, the intensely involved children's attorney is now declared to be regnant—a force to be restrained and cabined

---

<sup>2</sup> *Report of the Working Group on the Role of the Family*, 6 NEV. L.J. 616, 619 (2006).

<sup>3</sup> *Id.*

<sup>4</sup> See also Martin Guggenheim, *How Children's Lawyers Serve State Interests*, 6 NEV. L.J. 805, 823 (2006) (arguing that children's attorneys advocate for their clients' wishes only when it is consistent with the attorneys' notion of what is safe for the child).

lest, as a representative of an oppressive system, she make things worse for her clients than they already are.<sup>5</sup>

How can these apparently opposite themes be reconciled? How can practicing lawyers, reading the Recommendations, find their way to a balanced accommodation between the habit of humility<sup>6</sup> and the need to go increasingly deeper into the complexities and richness of their clients' lives and cases? The rest of this Paper seeks to answer this question.

## II. WHY HUMILITY IS UNIQUELY IMPORTANT FOR CHILDREN'S LAWYERS

Most lawyers probably would agree that a defining feature of the profession's culture is caution. As officers of the court, and as professionals subject to malpractice claims, no lawyer likes the idea of submitting a brief that mis-cites a case or signing off on a contract that fails to include a critical provision to protect the client's interests. Thus, most attorneys would no doubt concur with the sentiment that it is important to be careful in their work and to attend to over-reaching or thoughtless zealotry.

Few lawyers, however, would likely characterize their approach to their work as humble. To the contrary, attorneys tend to see themselves as dedicated advocates for clients who must both be confident and exude confidence in order to be successful. Before the tribunal, it is important to be seen as believing in your client, lest your own ambivalence plant seeds of doubt in the trier of fact. In negotiations with other parties, it is important to be able to posture credibly, showing faith in the rightness of your position and commitment to stick to your guns for as long as it takes to get the job done. Approaching these tasks with humility seems peculiar—if not undermining of the entire enterprise. A lawyer does his homework, prepares his case, and then gets in the mix. It is one thing to be aware of those aspects of one's case that are perhaps weaker than others, so as to cover those weaknesses and affirmatively play to one's strengths. But it is quite another to go into a trial or business deal negotiation with humility.

Children's lawyers are different. When representing a child in a dependency matter<sup>7</sup>, there are a number of factors that must lead to an advocacy approach that is defined in large part by humility. Lawyers can never be assured of having all the information necessary to do their job well since the facts of the case are constantly changing, and the client's perspective and posi-

<sup>5</sup> See GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992) (describing hallmark features of "regnant" lawyers in contradistinction to "rebellious" lawyers).

<sup>6</sup> For an excellent introduction to the concept of building habits as a means of training lawyers, see JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* 241-327 (2d ed. 2001); see also Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLINICAL L. REV.* 33 (2001). Peters and Bryant collaborated in developing the model of "The Habits," which is an approach to teaching young lawyers how to navigate cross-cultural relationships by relying on five highly developed habits.

<sup>7</sup> For purposes of this Article, I limit the discussion to dependency cases in most instances. The *Conference Recommendations* are of course not so limited, but in order to provide a focused analysis (and to keep within space limitations), I am excluding a broader discussion of delinquency and other types of cases. Humility is no less important a habit for lawyers in these matters, but the analysis may be slightly different.

tion on the critical issues in the case are subject to change as well. Moreover, even when the child's lawyer operates in a jurisdiction that requires her to advocate for the child's wishes, the temptation to take a "best interests" approach instead is constant.

### A. *Imperfect Information*

All lawyers must attend to the possibility that their clients may fail to provide them complete and accurate information, but working with child-clients poses fundamentally different challenges. With adults, lawyers can explain their role and emphasize to the client how critical it is that the client provide all relevant information. Then, if the client omits something, or gives incorrect or misleading facts, the lawyer can disclaim responsibility for any harmful results in the case. As long as the adult client understands why the lawyer needs to know everything, the lawyer can feel justified in assuming that the client is telling him everything.

When children are involved, however, lawyers cannot make this assumption.<sup>8</sup> Even the most intelligent, sophisticated, and cognitively developed teenager will fail to tell her lawyer everything that the lawyer may need to know to provide comprehensive and zealous representation. Certainly, at the beginning stages of a case, when a trusting relationship has yet to develop, an adult advocate can never safely assume that a child client is not holding something back. But even after working with a young person for years, and even if she emphasizes time and again that she needs to have all the facts, a lawyer must always be aware that the information she is getting from the client is imperfect and incomplete. The adolescent's self-report may be accurate as to the youth's own perceptions, but that does not mean that it is accurate.<sup>9</sup>

Undoubtedly, with child clients of any age, the lawyer must do a thorough investigation so as to get a robust picture of the child-in-context.<sup>10</sup> As important as this process is, it highlights the fundamental uncertainty of information concerning the child's life and her case. The more reliance the lawyer places on information gathered from non-client sources, the less facially reliable the information becomes. All external information must be filtered for bias, perception errors, and other classic problems in witness reporting.<sup>11</sup>

---

<sup>8</sup> Placing the burden on the adult client either to tell the whole story or suffer the consequences if the lawyer is unprepared to deal with a "surprise fact" later may in fact not be justified any more than it would be justified to do so with a child client. For a host of cultural and other reasons, an adult client may not be immediately forthcoming with information just because the lawyer asks for it and explains why it is important, and lawyers should know that they have to work hard to establish trust and bridge divides. Nevertheless, at the end of the day, in most cases, a lawyer should be a lot less certain that he knows everything he needs to know from a child client than from an adult.

<sup>9</sup> Of course, the younger the child, the riskier it is to place heavy reliance on the information reported by the client. And in a high-volume practice, it is particularly hard to get all the information that could be relevant to advocacy. See PETERS, *supra* note 6, at 13 ("the nagging sense that I frequently knew far less about my child clients than there was to know, in the end, degraded my practice and dampened my morale").

<sup>10</sup> See PETERS, *supra* note 6, at 1-19 (explaining concept of child-in-context).

<sup>11</sup> The most well known researcher in the field of witness unreliability is psychologist Elizabeth Loftus. For an overview on her work and her findings regarding the cognitive limita-

### B. *Constantly Changing Facts*

Another unique feature of dependency cases is that the facts are always in flux.<sup>12</sup> As children grow, their needs, interests, and wishes frequently change. Similarly, the adults in their lives often experience changed circumstances—biological parents complete service plans (or parts thereof), foster parents relocate out of state, relatives come into the picture—and these can directly and indirectly impact on a child and the lawyer's advocacy. The child's lawyer may have a good grasp on the case one moment only to see the ground shift the next. Constant questioning and re-examination is a necessity; applying an outdated assessment of the case based on stale facts is the antithesis of good lawyering.

### C. *The Client's Changing Views*

When a case is centered on the present and the future, as opposed to merely the past, any client can fairly be expected to change her views on the matter from time to time. This is even more likely when the client is a child, who, in the middle of everything else, is constantly maturing and learning. Children of course are also susceptible to influence by the adults in their lives, so their expressed wish today may change tomorrow. A lawyer who thinks he understands his client's wishes is probably deluding himself if he is basing it on an interaction with the client six months ago, or three months ago, or perhaps even last week.<sup>13</sup> If an adult client changes her position on an issue in the case, the lawyer is on safer ground in assuming that the adult will call her between court appearances or appointments to tell her this than if the client were a child. Similarly, adult clients are far more likely to contact their lawyer than children clients are simply to tell the attorney about a new development in their lives, as adults are more apt to believe that new facts are material to the lawyer's work and the legal case.<sup>14</sup>

---

tions people have when reporting on events they have experienced or witnessed, see ELIZABETH F. LOFTUS & JAMES M. DOYLE, *EYEWITNESS TESTIMONY* (3d ed.1996).

<sup>12</sup> Of course, the fact-finding hearing more commonly will be retrospective, focusing on whether an alleged incident of child maltreatment did or did not occur. Other than this one determination—which may be affected by current factual circumstances in any event—the court's focus is constantly on what is happening in the family's life now. The decisions are almost always prospective in nature, with the court making predictions about what will happen in the future.

<sup>13</sup> This assumes that the lawyer's understanding of the client's wishes was accurate even at the time they *did* have a conversation—which, as noted above, may not be the case when the client is a child.

<sup>14</sup> Again, there is no guarantee that adults will necessarily do this, and lawyers have to work hard to make connections with their clients and overcome whatever cultural differences there may be so as to encourage this kind of proactive client behavior. But overall, it is probably the case that the average adult client is more likely to call her lawyer to tell them news than the average child client. The consequence for the children's lawyer is that he has to work much harder.

#### D. *The Temptation to Insert One's Own Beliefs*

Much has been written on the question of whether dependency lawyers should advocate for a client's wishes or the child's best interests.<sup>15</sup> Even for those lawyers who take the "straight advocacy" approach, the question of how to formulate positions for clients who, due to age, are unable to express their own wishes presents a host of complicated practical and ethical issues.<sup>16</sup> An analysis of these questions is beyond the scope of this Paper. However, it is worth noting that even the most conscientious and diligent children's lawyer will regularly confront situations in which he must decide which substantive goal to pursue on his child-client's behalf. There is an enormous risk that in these situations the lawyer will think he knows more than he does about the case and his clients and, as a result, make the wrong choice. So long as there are lawyers for children in these cases, the best antidote to overreaching is a generous slice of humble pie.

### III. HOW OVER-INVOLVEMENT CAN BE HARMFUL

If the need for humility is driven in part by the recognition that the children's lawyer possesses imperfect information, then the natural instinct in response is to seek to gather more information. Setting aside the ordinary context of large caseloads that functionally prohibit increased investigation and involvement in the case<sup>17</sup>, the idealized children's attorney will seek to immerse herself more and more into the case to avoid the pitfalls mentioned above. She will find further encouragement to do this from the *UNLV Recommendations*, because they highlight so starkly the need for lawyers to grapple with issues that experts in the field agree have been by and large ignored for too long.

Take for example the admonition in the *Recommendations* that children's lawyers provide (or arrange for the provision of) legal services in matters ancillary to the matter on which they were initially appointed.<sup>18</sup> Obviously, preliminary to providing these services, the lawyer would have to know about the need for them. Prodded by the notion that she ought to be a holistic lawyer, the children's attorney will undertake to identify any and all issues in the client's

<sup>15</sup> See, e.g., Bruce A. Green & Bernardine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 *FORDHAM L. REV.* 1281 (1996); Robert E. Shepherd, Jr. & Sharon S. England, "I Know the Child is My Client, but Who Am I?" 64 *FORDHAM L. REV.* 1917 (1996); Ann M. Haralambie, *The Role of the Child's Attorney in Protecting the Child Throughout the Litigation Process*, 71 *N.D. L. REV.* 939 (1995); Marvin R. Ventrell, *Rights & Duties: An Overview of the Attorney-Child Client Relationship*, 26 *LOY. U. CHI. L.J.* 259 (1995). See also PETERS, *supra* note 6, at 46-48 (summarizing scholarly debate on proper role of children's attorney).

<sup>16</sup> See, e.g., *Report of the Working Group on the Best Interest of the Child and the Role of the Attorney*, 6 *NEV. L.J.* 682 (2006) (offering reasons why the *Fordham Conference* has not been fully implemented).

<sup>17</sup> See *Report of the Working Group on the Role of the Family*, 6 *NEV. L.J.* 616 (2006) (calling for controlled caseloads); *Report of the Working Group of the Role of Race, Ethnicity, and Class*, 6 *NEV. L.J.* 634 (2006) (same) ; *Report of the Working Group on Representing the Whole Child*, 6 *NEV. L.J.* 665 (2006) (same) .

<sup>18</sup> *UNLV Recommendations*, *supra* note 1, at pt. I.D.1.

life that could be remedied by legal counsel and advocacy. The list is potentially endless, with those issues highlighted by the Recommendations suggestive of an even broader range of possibilities: housing, education, immigration, public benefits, health, and domestic violence. To this, one might add employment (discrimination claims, wage claims, problems with labor unions, pension benefits, etc.); torts (products liability for clients or their families who are hurt by a faulty consumer item; personal injury claims against the state for physical or severe emotional harm a child experiences while in foster care); or even constitutional claims (First Amendment violations experienced by children in school or at the hands of the public foster care agency or juvenile justice authority).<sup>19</sup>

Traditionally, lawyers provide services to address the problems identified by their clients. Whether it is a small business owner who wants to sue a competitor, or a large corporation seeking to acquire another firm, or an indigent criminal defendant who wants to minimize his jail time, the classic relationship between lawyer and client centers on the client identifying the legal goals he wishes the attorney to pursue. This is what is meant when we say that clients direct their representation. In any of these situations, the lawyer is of course free to suggest to the client that, to the lawyer at least, it appears that the client has some other issues in his life that perhaps the lawyer could also assist in resolving. And when the lawyer does so, the adult client is free to say yes, please, that would be fine—or, no thanks.

It is unrealistic to believe that even the most sophisticated child would understand that she is in a position to tell her lawyer not to work on an ancillary matter, let alone that it is possible for her to direct her lawyer not to ask her

---

<sup>19</sup> Arguably, a more coherent framework that sets out what is meant by “ancillary” would be incredibly helpful, and I do not mean to criticize the Working Group on Representing the Whole Child for not having offered such a framework, as time constraints at the *UNLV Conference* prohibited a deeper inquiry. That said, there is ancillary and then there is ancillary. In one view, what I might call the “Dependency Only View,” anything outside the four corners of a dependency petition would be ancillary. Another view, the “Dependency Plus View,” might be that a legal goal directly related to the goal of the dependency representation is not ancillary—for example, if the allegation in the petition relates to educational neglect, and the goal of the representation is to enable the child to stay at home (or return home), and the child needs special education services, then arguably to provide IEP advocacy furthers the dependency representation goal. In either of these two views, representing Alex on a civil damages action (*see infra* text accompanying note 21) would be ancillary, whereas advocating for him to be moved from an unsafe group home falls within the four corners of the dependency case.

A third view, what I would call the Dependency Justice View, holds that even civil damages representation is not ancillary, because it furthers justice for the client *and* arises out of events that would not have occurred but for the dependency petition. It is unclear if the *UNLV Recommendation* on ancillary representation takes the Dependency Justice View for defining “ancillary.” As broad as it is, under the Dependency Justice View, there are still other legal matters that would be considered ancillary. Take, for example, a child client suspended from school for wearing a t-shirt that said, “Barbie is a Lesbian.” *See Reuters, Teen Sues Over Lesbian Barbie T-Shirt Ban*, June 20, 2003, <http://www.cnn.com/2003/EDUCATION/06/20/life.barbie.reut>. On its face, the suspension is not causally related to the fact that the state filed a dependency petition against the child’s parent.

A fruitful area of discussion and research would be an assessment of the various views of “ancillary” and an effort by scholars and practitioners in this area to develop a useful framework for allocating advocacy resources accordingly.

about these ancillary topics.<sup>20</sup> To think otherwise would be to assume that the ordinary child-client has a good sense of what is “ancillary” and what is not. Essentially, the power dynamic between the adult attorney and the child client is most stark when these two individuals are negotiating the scope of the representation, and the lawyer who seeks to do it all on his client’s behalf is likely to think he is helping, when in fact he is being incredibly invasive and disrespectful.

Imagine a twelve or thirteen year-old client, we will call him Alex, who has been in a congregate care setting—perhaps a foster child in a group home, or a child sent to juvenile detention in connection with a delinquency petition. Imagine further that Alex’s lawyer learns that Alex may have been assaulted by a staff member in the group home or detention center. The lawyer learns this from a colleague, who learned it from her client, who was in the same placement as Alex. Unquestionably, Alex’s lawyer should investigate this matter, and let us presume that he does so. Alex’s lawyer has valid concerns about the safety and well-being of his client and questions about whether this is the appropriate placement for Alex. Addressing these concerns and questions is perfectly within the scope of dependency or delinquency representation. But let us also assume that Alex’s lawyer learns that Alex was in fact assaulted and in the wake of the incident he has stopped doing his schoolwork, stopped participating in activities, and is no longer participating in visits with his family, among other things. The lawyer is starting to get the sense that Alex is suffering physical and emotional damage directly caused by the assault.

A holistic lawyer would think, “Tort!” The holistic lawyer would then seek to represent, or arrange representation, for Alex in connection with a tort claim against the staff member who assaulted him, the facility director, the commissioner of the agency, and anyone else in the chain of command against whom there is a cognizable claim. In doing the preliminary research for this claim, though, Alex’s lawyer would probably want a clearer sense of the injuries Alex has experienced, and to do this, he needs to have Alex evaluated.

Is this evaluation a good idea? Clearly, if Alex were an adult and had identified *for himself* the goal of suing the person who assaulted him, and if he had walked into a lawyer’s office to seek representation on this claim, then we would expect the lawyer to say, “The first thing I need to do is send you to a doctor to get an evaluation of your injuries.” And the adult Alex would either cooperate or walk out if he objected to the invasion of an evaluation. But faced with an enthusiastic lawyer who has been commanded to provide holistic representation, the child Alex is not in a position to say no.<sup>21</sup>

---

<sup>20</sup> Of course, children are perfectly capable of telling their attorneys, “I don’t want to talk about that,” and they sometimes do. The lawyer needs to be able to respect that request. More importantly, the attorney needs to balance the recommendation to provide holistic lawyering (and other recommendations that call for ever-increasing levels of involvement in clients’ lives) with the need to respect a client’s decision-making authority. This is especially tricky with younger clients, when the temptation is greater to disregard their decision-making authority and, as a professional, decide both the strategic course to take in a case and what the goals of the representation should be.

<sup>21</sup> This hypothetical does raise the interesting question of who is entitled to (or obligated to) consent to medical and psychological evaluations of injuries to children in state custody, before a tort suit has been filed. In some jurisdictions, biological parents whose rights have

Regardless of what happens after the evaluation, the mere fact that Alex's lawyer has subjected his child client to the procedure can be damaging to Alex, if not calamitous. Perhaps the evaluation is done without Alex's mother's knowledge or consent, but when she discovers the truth, she is angry and hostile and she misdirects those negative feelings onto Alex. Or maybe removing his clothes in the doctor's office triggers a cascade of emotions in Alex that results in significant regressive development. Or perhaps Alex is so upset and disturbed by the assault that merely talking about it in the psychological evaluation causes him great emotional distress. Assuming that he knew ahead of time that one of these things would occur to Alex because of the evaluation, should Alex's lawyer have subjected him to it anyway? What if he knew that one of these results *could* occur?

There are probably dozens of other possible unintended and unforeseen consequences that can flow from providing holistic lawyering to children in the manner called for by the *UNLV Recommendations*. Similarly, for the other new tasks that the *Recommendations* urge upon children's lawyers, some of which are listed in the second paragraph of this Article, there are countless scenarios in which a children's lawyer could actually do damage to his client by trying to do too much—or, if short of causing harm, could nevertheless make the client's life more difficult for a period of time.

#### IV. HOW TO KEEP THE BRAIN BUZZING WHILE MAINTAINING HUMILITY IN THE HEART

Children's lawyers enter the field because they want to help young people. In particular, they believe strongly in the idea that the legal profession can bring its power and influence to bear for the good of children, and that providing zealous advocacy to children benefits them in individual cases. Experienced children's lawyers know that there is a vast amount of information that they could learn about their clients and their lives that can advance their advocacy and, consequently, produce added benefit to them outside the strict contours of their legal case.

The instinct to learn more, to do more, and to accomplish more is natural and should be encouraged. But it also needs to be tempered. At the same time that lawyers for children take seriously the UNLV charge to contextualize their clients within families and communities, we also have to pause and reflect on the unintended consequences that could and probably will result, in at least some cases.

---

not been terminated may be consulted, or may be entitled to consent before any such evaluation. In other jurisdictions, this kind of evaluation could be considered a routine procedure that would be done without the parents' consent or even knowledge. Additionally, in some jurisdictions, a persuasive attorney who is assigned to the child by the court for a dependency or delinquency case may convince the state agency to allow an evaluation, in the absence of parental or judicial authorization, even though the attorney will use the evaluation to determine whether to initiate a tort action.

For a general description of the importance of balancing zealous legal advocacy, which should be seen as a short-term intervention, with the more critical and longer-term relationships the child has with other adults, see PETERS, *supra* note 6, at 74-78.

Lawyers must know what they know about each case, and they must equally know what they do not know. Humbly acknowledging that they are not the sun in their clients' universe is a critical step. What will the attorney do then? The mandate to be humble cannot be an excuse to stop working; the *UNLV Recommendations* cannot wither away on a falsely fallow field of humility.

Children's attorneys should go back to the basics to find their way out of this seeming dilemma. When we acknowledge that we are not the most important person in our clients' lives, we are simultaneously acknowledging that there are other adults who hold that station, including other professionals. Children have teachers, they have doctors, they have Little League coaches, they have clergy, and they have parents.<sup>22</sup> Children's lawyers should call upon these resources when doing the work that UNLV calls for.<sup>23</sup> Lawyers should do themselves only what is absolutely necessary, and turn to adults who already had a relationship with their clients before the case even began as much as possible. After all, presumably those adults will be in the child's life after the case is over, when the lawyer will not.

More than that, we must expand beyond our legal cocoons and, as the *UNLV Recommendations* state, pursue a truly interdisciplinary approach to our advocacy. 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.

Alex's situation could be resolved more easily if he were represented by a lawyer who is engaged in interdisciplinary advocacy. Having the discussion with Alex about whether he should have an evaluation, and helping him weigh the pros and cons both of the immediate evaluation and the broader question of whether he should sue for damages, is the kind of task well suited to an interdisciplinary team of a lawyer and social worker who each know Alex well and whose discussions are covered by privilege rules. While the lawyer is expert at the rules of evidence and the law's requirements to win a tort case, the professional social worker is trained to help a client handle trauma and make decisions. In other words, when dealing with an emotionally fragile child, the participation of a social worker is critical to helping the child effectively exercise his right to direct the scope of his legal representation.<sup>24</sup> Assuming Alex decides to do the evaluation, the social worker can help find a forensic professional who can do the evaluation without re-traumatizing the child.

---

<sup>22</sup> Regarding the importance of seeking parents' input as to what is best for their children, notwithstanding that the parents have been charged with child maltreatment or found to be unfit, see Christine Gottlieb, *Children's Attorneys' Obligation to Turn to Parents to Assess Best Interests*, 6 NEV. L.J. 1263 (2006).

<sup>23</sup> PETERS, *supra* note 6, at 74-78 (discussing importance of lawyer's cultivating "right relationships" with other critical adults in the client's life, noting "almost never is the lawyer the most important person in the child's life").

<sup>24</sup> There are many other benefits to interdisciplinary child advocacy that are beyond the scope of this Paper, and there are few costs—other than the financial ones and the fact that it is *hard work* for lawyers to re-orient their worldview away from the legal-centric.

To take another example, the *UNLV Recommendations* urge children's lawyers to hold service providers accountable by challenging ineffective or harmful programs. Doing so would unquestionably advance a child's legal interests and is well within the ken of lawyers. But this recommendation begs the question: what does a lawyer know about whether a social service provider is doing a good or bad job, let alone whether the provider's program is harmful? Though lawyers know a thing or two about research, it is the professional, master's level social worker who is trained to do social science research, not the lawyer. Social workers also have training in social service delivery systems and are in far better professional position than lawyers to evaluate the effectiveness and safety of a given social service program.<sup>25</sup>

It is far too easy for a lawyer who thinks she has identified a poor service provider (particularly when a client calls it to her attention) to start issuing subpoenas and cross-examining witnesses in a frantic effort to shut the place down, all while wearing the "Child Saver" hat. The client may be right that the provider is substandard, and the lawyer may be right that on balance it needs to be closed. But without working closely with another trained professional—someone who understands social science, someone who can carefully evaluate the benefits and detriments of a given program, someone who can provide individual support to the client and to *other* clients who are also involved with the same failing agency—the lawyer is apt to hew to her tunnel vision and miss significant, collateral consequences to her otherwise laudatory course.

It is important not to overstate the role that interdisciplinary advocacy can play in avoiding the pitfalls of over-involvement. After all, individual social workers are susceptible to hubris too. In fact, given the profession's creed that social workers' responsibility to larger society may sometimes outweigh their responsibility to individual clients, they may be tempted just as much as children's lawyers to make decisions, inappropriately, based on their personal notions of what is best for a client.<sup>26</sup> Just as with lawyers, for certain social workers in certain cases, the drive to become more intertwined with their clients and the drama of their clients' lives is as dangerous as it is irresistible. That said, the different mode of thinking and the alternate worldview that social workers generally offer are invaluable resources for reining in the potentially regnant lawyer.

---

<sup>25</sup> Council on Social Work Education, *Educational Policy and Accreditation Standards* § 1.0 ("The social work profession . . . is the primary profession in the development, provision, and evaluation of social services."). Lawyers often like to think that because of our training, our intelligence, and our experience, we can handle a seemingly easy task like evaluating whether a program is serving our clients well. In many cases, we can, and we do. However, humility requires us to examine this more closely. Do we handle these evaluations on our own because we can, or because we have to? Lacking an in-house social worker, or access to a consulting expert in social work, we may have no choice but to develop an ad hoc method for doing social service program evaluations ourselves. Certainly in situations in which we have a client in crisis, or learn of obviously dangerous and unhealthy placements, we should have no hesitation to act on our own. That we have done so, with success, does not lessen the need to examine carefully whether attorneys are truly the best class of professionals to do this type of research in the main.

<sup>26</sup> National Association of Social Workers, *Code of Ethics of the National Association of Social Workers*, § 1.01; see also *supra* notes 9-14 and accompanying text (discussing children's lawyers' constant temptation to take "best interests" approach).

The *UNLV Recommendations* are exciting. They preview a world in which lawyers for children will take their place among the most important and influential members of society as they seek to empower and better the lives of their clients and their clients' families and communities. As daunting as it may be to seek their widespread implementation, it is important that we all do so.

But in seeking the widespread adoption of the *UNLV Recommendations*, we cannot lose sight of a classically understood rule of the medical profession, which is also applicable to the law: first, do no harm.<sup>27</sup> We must recognize in ourselves that our desire to do good can sometimes lead us to do harm, and we must stop it before it happens. Collaborating with non-lawyers who also care about children and families is an excellent way to make sure that we stay honest and true to our mission without hurting people in the course of it.

---

<sup>27</sup> It is commonly believed that "first, do no harm" is part of the Hippocratic Oath. In fact, this phrase does not appear in the Oath, but a similar concept is found in Hippocrates, *EPIDEMICS* Book 1, § 6. Regardless of its origins, the sentiment is apt when applied to children's lawyers.