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ADDRESSING SOCIO-LEGAL PROBLEMS: A UNIFYING  
PERSPECTIVE FOR SOCIAL WORKERS

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ABSTRACT

Problems where social work and the law overlap have consistently challenged social work professionals, and the challenges promise to continue. The overlap exposes important interdisciplinary issues, which are best addressed when certain conditions are met. The article describes these conditions within the context of a perspective that underlines the interaction between the two fields and structures the professional's approach to these interdisciplinary problems.

Many practical challenges confront professionals who deal with problems where social work and law overlap. The challenges can be seen on several levels. First, legislation remains a conspicuous legal structure for social welfare funding (Reamer, 1983). Second, practitioners encounter client problems that are becoming increasingly "legalized" (Cavanaugh and Sarat, 1980). Third, social service clients possess -- even if they're unaware -- an array of legal rights (Hannah, et al., 1980). Finally, increasingly, professional conduct is being measured against legal requirements (Woody, 1984; Besharov, 1983). Collectively, these developments portend significant consequences for professionals working at the law-social ser-

vices juncture.

The literature on this subject includes diverse viewpoints, including the benefits of interprofessional collaboration (Hoffman, 1984; Needleman, 1984; Weil, 1982; Constantino, 1981), the settings that require legal skills (Craig, 1982; Schroeder, 1982), the prerequisites for implementing legal mandates (Sosin, 1979; Moss, 1984), the prospects of teaching law and legal skills to social workers (Miller, 1980; Katkin, 1974), the inquiry into who should administer the social services (Gelman, 1976), the "due process" requirement as a constraint on social work practice (Stone, 1978), the social work advocacy ethic and its skill requirements (Albert, 1983; Epstein, 1982; Kutchins, 1980), the phenomenon of legal discretion and its implications for practitioner decision-making (Gaskins, 1981), the principle of confidentiality and its relation to practice (Wilson, 1979), the legal consequences for irresponsible professional conduct (Woody, 1984), and the issues that arise with particular target groups or in particular settings (Besharov, 1983; Hardin, 1983; Roberts, 1983; Gelman, 1982).

These contributions are descriptive and helpful as such, but the practitioner needs more. Although they describe certain interdisciplinary issues, they stop short of explicating a way to structure problem-solving. The omission is a serious one, because the law's role in relation to social policy and service delivery is likely to expand to encompass virtually every aspect of social work practice. Given the potential for growth in this area, then, the question arises: How can the social work professional address multi-dimensional problems? A unifying perspective, such as the one proposed in this article, would provide a mechanism that would bring into focus the interaction between the two fields and thereby enhance the professional's

approach to these interdisciplinary problems. The perspective's practical worthiness, therefore, lies in its ability to inform professional conduct and to promote an awareness of disciplinary interdependence.

## CONCEPTUALIZING SOCIO-LEGAL PROBLEMS IN SOCIAL WORK PRACTICE

Law fulfills many roles in society, and each shapes the scope of social problems that emerge ultimately in social work (Kutchins, 1980). "Conflict between relatives, friends, and neighbors," according to Cavanaugh and Sarat (1980), "belongs to the province of family or community. As both lose their ability to impose order and develop normative consensus, disputes that once would never have been expressed in terms of legal breaches of legal duty are increasingly cast in precisely those terms.... Regulation by public processes, especially litigation, replaces regulation by parents, teachers, and clergy and the order provided by shared norms."

Social workers figure prominently in this interchange between law and social processes. Their role is based on longstanding concerns about the conditions under which legal intervention into an individual's private affairs is appropriate. Consequently, they assume a mediating role (Schwartz, 1961) in an array of knotty issues, such as: judicial control of disputes as volatile as child abuse (Hardin, 1983; Besharov, 1982), spouse abuse (Constantino, 1981), involuntary commitment (Whitmer, 1980), and divorce (Bernard, et al, 1984; Saposnek, 1984; Bohm, 1981; Silberman, 1981; Markowitz and Engram, 1984); institutional reform litigation (Moss, 1984); juvenile and criminal justice settings (Roberts, 1983); and agency regulations and public participation in the regulatory process (Albert, 1983).

The concrete problems that unfold within this law and society context, as a practical matter, can be defined operationally as socio-legal. The definition is both practical and consistent with similar conceptualizations in the literature (Schroeder, 1982; Bradway, 1929).<sup>1</sup> It also places social work in relation to law in a way that exposes the legal context within which social work problems unfold. More important, it underlines that the interdisciplinary dimensions of these types of problems are sufficiently entangled to require the professional to structure their problem-solving approach accordingly.

The operational definition is also connected to a very straightforward perception of client concerns in a socio-legal setting: clients bring problems to social workers and don't articulate the various dimensions of their troubles; they seek assistance expecting to place themselves in a better position than they were in prior to social work intervention. Practitioners can meet this expectation, but only if they appreciate the complicated (i.e. interdisciplinary) nature of the problems they encounter.

#### A PERSPECTIVE FOR ADDRESSING SOCIO-LEGAL PROBLEMS

The perspective is built around issues that surface when the professional encounters problems where social work and law interact. Though gleaned from the literature, these issues are supported by the author's survey of law-trained social workers<sup>2</sup> and by discussions with professionals who routinely deal with socio-legal problems. Collectively, they suggest the conditions under which socio-legal problems are resolved and, impliedly, underscore the requisite knowledge and skills for effective problem-solving.

In constructing the perspective, the author borrowed from a method suggested by Mullen (1978)<sup>3</sup>, and drew heavily on literature that specifically dealt with socio-legal issues in social work practice. Some may seem obvious, but the literature suggests they're all interrelated and important. Further, neither the literature nor the survey respondents indicated that any one is more important than another. Perhaps future research will not only validate their individual importance, per se, but also indicate their relative weight in the problem-solving process.

As the discussion below will show, then, the perspective is built around a recognition that socio-legal problems are addressed most effectively when the social work professional appreciates:

- (1) that there are legal boundaries for service delivery and for social worker--client relations;
- (2) that a problem may provide a legal basis for intervention and/or may suggest a strategy for law reform;
- (3) that interprofessional collaboration can be productive -- if occasionally frustrating; and
- (4) that certain legal concepts and skills are essential supplements to an intervention strategy.

## THE EXISTENCE OF LEGAL BOUNDARIES

The legal context for social work practice takes several forms: the legislative structure for social welfare funding; the boundaries that simultaneously protect the client's legal rights and control official discretion; and the sanctions for professional misconduct.

First, we note that legislation articulates social policy choices, identifies rights and obligations, and allocates funding

for program implementation. Under these circumstances, legislation specifies the limits of available program funds, provides the framework for services to be delivered, and outlines substantive rights -- the broad purposes and goals of the legislation and its intended beneficiaries.<sup>4</sup>

For example, in the child welfare field, there is the legal context for balancing the tripartite interests of the parent, the state, and the child. The Child Abuse Prevention and Treatment and Adoption Act of 1978 and the Adoption Assistance and Child Welfare Act of 1980 are two illustrative federal statutes. There are numerous state counterparts. The context thus provided exposes a difficult practical dilemma: to respect parental rights while also communicating that these rights can be forfeited upon proof of abuse or neglect AND, in the process, to provide statutorily-mandated social services.

Second, the legal context helps protect a client's legal rights by imposing a structure, which typically includes regulations<sup>5</sup> that stem from a specific piece of legislation, designed to guard against an administrative agency official's abuse of "discretionary power".<sup>6</sup> These safeguards are the result of the law's increasing reliance on administrative agencies -- and the officials who control them -- to implement the goals embodied in social legislation (Freedman, 1981; Handler, 1984; 1979).

Hoshino's (1974) discussion of the pursuit of administrative justice in the welfare state illustrates this structure. "The social service state," he observes, "is characterized by mass bureaucratized professionalized administrative agencies. Because of their statutory authority, functional roles, command of highly-specialized knowledge and skills, ability to ration or secure access to needed or desired services, and capacity to

apply sanctions in overt and subtle ways, professionals in service delivery systems have enormous discretion, and therefore, power over the ordinary individual. Under these circumstances, how does the individual cope with large bureaucracies, especially if he is poor, or a minority group, or is socially, or legally vulnerable?" Thus, he concludes, administrative agency officials still exercise considerable discretion despite the existence of these limits on their exercise of authority.

Drawing, again, on the child welfare field for an example, we note that the law may allow state intervention to remove a child from unfit parents, but the decision must also withstand constitutional scrutiny. In this instance, the Due Process clause of the Fourteenth Amendment demands that the state present certain proof before severing parental rights in the child.<sup>7</sup> As a practical matter, social work professionals must recognize that their recommendations will also be evaluated against this standard -- despite their clear convictions about parental incompetence. The United States Supreme Court articulated this standard in Santosky v. Kramer, 455 U.S. 745 (1982), when it announced that "before a state may sever completely and irrevocable the rights of parents in their natural child, due process requires that the state support its allegations by at least clear and convincing evidence."

Finally, Wilson's (1978) discussion of legal boundaries stresses the existence of sanctions awaiting professionals whose conduct exceeds legal limits. "The topic of confidentiality," she observes, "is becoming a primary area of concern for many of the helping professions. The consumer's increasing sensitivity to confidentiality and his desire to assert and protect basic privacy rights are giving rise to complex legal and ethical problems which were not imagined only

a few years ago." A corollary concern is the confidential communications privilege.<sup>8</sup> Although not all states currently provide for such privileges, professional licensure of social workers may increase the likelihood that this protection will be extended to the officially licensed practitioner. When this occurs, no professional will be able to escape knowing the legal prerequisites for protecting client communications. The California Supreme Court, in Regents of the University of California v. Tarasoff, 17 Cal.3d 425 (1976), underscored this point. In Tarasoff, a therapist was informed by his client that he intended to harm a third party. The therapist failed to warn this third party, who was subsequently killed by the client. The court, in holding that the welfare of the community overrides any claim of confidentiality between the therapist and patient, stated:

when a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending on the nature of the case. Thus, it may call for him to warn the intended victim or others likely to appraise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances.

The exercise of discretion by child welfare workers provides another concrete example. The exercise of discretion carries with it the responsibility to decide correctly, and experience has shown that this is not the case always. Besharov (1983) states that social workers are often accused of exercis-

ing poor judgement in adequately protecting a child, in violating parental rights, in inappropriate foster care services, and in inadequate follow-up of children in foster care placements. But this is not to suggest that social workers are at fault at all times. The law is sometimes worded ambiguously, and they do their best under unclear legal mandates and overwhelming practical conditions. Legal ambiguities aside, however, the social worker must make certain judgements for which he/she will be held accountable.

### ADDRESSING THE PROBLEM'S SOCIO-LEGAL SCOPE

The interchange between law, social policy, and social problems, given the law's multiple social functions, exemplifies the debate over legal competency and effectiveness (Kidder, 1983; Jenkins, 1980; Nonet and Selznick, 1978). Social workers enter the fray by instigating an examination of the law's responsiveness to client needs and social issues.

As a practical matter, however, identifying the problem's legal aspects is compounded because problem identification varies with the social caseworker, the clinical social worker, the agency administrator, the social planner, and the community organizer. This does not mean that each allows their particular methodological approach to limit their professional world view -- at least it should not because they are all connected by a shared knowledge base, by professional values and ethics, and by the profession's stated commitment to social justice.<sup>9</sup> Nevertheless, professional training and experiences directly influence the practitioner's selection of intervention options, which, in turn, can shape their recognition of and response to any interdisciplinary aspects of client problems (Schwartz, 1974).

Lukton (1974), for example, discusses an

apparently straightforward social work problem whose scope was broadened to recognize and take advantage of its underlying legal issues. Faculty at Adelphi University School of Social work collaborated with Nassau County Legal Services in a suit brought against a landlord on behalf of a group of families who charged that their rented premises were substandard. They argued that these dwellings violated the "implied warranty of habitability"<sup>10</sup> and, consequently, had a negative impact on their emotional, mental, and familial conditions. The plaintiffs hoped to establish a legal precedent that would clarify available tenant remedies when the landlord failed to fulfill obligations under the implied warranty. The Adelphi faculty gathered data to use as evidence and for their role as expert witness. They hoped their data would substantiate the tenant's claims of psychological harm caused by the substandard housing. For Lukton, the experience "... offered a unique opportunity to develop methods for intervening at a crucial point of articulation between the individual and the milieu."

The challenge, then, is to delve underneath the problem -- to scratch behind the surface -- to expose its legal dimensions.<sup>11</sup> As suggested above, the task may be difficult; but the worker who backs away from this challenge does so at the client's expense.

## INTERPROFESSIONAL COOPERATION AND CONFLICT

There are numerous opportunities for friction between social workers and lawyers. The basis for these confrontations has remained essentially unchanged since Bradway's (1929) observations on the topic. Although conflict will continue, it is not unreasonable to expect the differences to yield to rational discussion.<sup>12</sup> Indeed, the array

of socio-legal settings suggests that a growing number of social work problems are cast in interdisciplinary terms. Given these types of settings, interprofessional collaboration will need to be the norm. Legal Services is a prominent example: "The legal difficulties of the poor," Craige asserts, "are frequently symptomatic of longstanding economic, social and personal problems....Legal services attorneys share the [social work profession's historical] goal of enhancing the lives of poor people through...direct services...and through the modification of sociolegal forces in society."

The events depicted by Lukton (1974), Schottland (1968), and Stein and Golick (1974), for example, illustrate the potentially fruitful opportunities for social worker-lawyer alliances. Constantino's (1981) description of lawyer-social worker collaboration in dealing with battered women provides another example of the benefits to be gained from interprofessional partnerships. Bernstein (1980) describes the rich possibilities for interdisciplinary teams in child custody and divorce. Barton and Bryne (1975) assert that social worker-lawyer tensions could be reduced if they better understood each other's roles, values, purposes, methods, and the contributions each could make to support mutual interests. And Weil's (1982) study points to positive experiences between social workers and lawyers in the areas of child dependency and adoption.

#### USING LEGAL CONCEPTS AND SKILLS TO SUPPLEMENT SOCIAL WORK

Socio-legal problems require an intervention scheme that integrates both social work and legal skills.<sup>13</sup> Dickson's (1976) survey of legal skills -- though not the final word on the subject -- is a useful

starting point. "Along with a general knowledge of law, legal systems, and procedures," he suggests, "the legal skills social workers need are investigation, interviewing, legal research, legal writing, and preparation of case materials, informal and formal advocacy, and an understanding of discretionary decision making."

Dickson also states that the reciprocity between social work and law requires an appreciation of some of the more abstract concepts of legal theory. He suggests that social workers must be aware of "... the extent to which cases and statutes control or influence rules, procedures, and behavior; the relationships among legal organizations and their impact on how laws are enforced; and locating and understanding decisions that affect careers of individuals who enter, go through, and leave legal systems."

Jankovic and Green's (1981) research into child welfare worker training concluded that social work education is not fully responsive to a clearly identified need for specialized knowledge and skill in law. Their model for incorporating legal concepts into the curriculum would address: "... confidentiality, client consent to social work intervention, understanding legal rights of parents and children, evaluation and documentation of evidence in a case record, using legal authority for one's position as a base for practice, giving substantive, factual testimony in a court hearing, and legal duties implicit in professional practice."

Finally, Sosin (1979) stresses the value of mastering legal skills where social workers advocate for the implementation of legal mandates. He cites legislative analysis -- and by implication, the understanding of legislative and administrative processes upon which such an analysis is based -- as one of the legal skills needed to reconcile service delivery with legislative purposes and goals.

The ability to decipher and interpret statutes, for example, can increase the advocate's ability to challenge attempts to ignore, evade, or subvert legislative purposes. He states that "... social work expertise in substantive areas such as child welfare, mental health, or public welfare can be combined with skills in legislative process in order to help bring about needed social reform."

## CONCLUSION

Essentially, the above perspective is an attempt to at once expose some of the unique interdisciplinary dimensions of socio-legal problems and elucidate a way of thinking about how these dimensions surface for the practitioner. We discussed several conditions that the literature and experience have identified as central to the resolution to these types of problems, but the reader is cautioned that these conditions are not offered as an absolute formula for problem-solving. Rather, the intention is to express that they constitute a foundation for structuring the professional's approach to a particular type of practice situation; namely, where social work and law converge. And these instances, as this article has argued, are best addressed when the social worker is aware that certain influential questions arise concerning the existence of legal boundaries, the legal basis for intervention, the role and impact of social worker-lawyer partnerships, and the requisite legal knowledge and skills to support intervention. These questions are not exhaustive, and others will be presented in the course of practice. The important point is that they're threshold concerns; ones that are sufficiently fundamental to initiate a search for an effective interdisciplinary resolution.

In the light of the law's expansive role in social policy formulation, then, social work professionals will be pressed to respond to an increasing number of situations that contain both legal and service delivery aspects. The above perspective is offered to prod practitioners to think about these types of problems. The conditions described, therefore, are perhaps best viewed as introductory, and the reader is urged to evaluate their validity through application in practice.

#### FOOTNOTES

1. Bradway's interstitial field lay somewhere between social work and law; in the gap reserved for problems that resisted neat categorization as purely social work or legal. Essentially, this conceptualization signaled the fact that many social work relationships were being cast in legal terms.

2. The study dealt with social workers who had received specialized legal training through the Law and Social Policy program of Bryn Mawr College's Graduate School of Social Work and Social Research. The Program leads to the Masters of Law and Social Policy (M.L.S.P.) degree. A questionnaire was sent to all individuals (degree candidates, as well as those who were not) who had enrolled in the program to explore how they were integrating their specialized training in law with their social work practice. The somewhat limited pool notwithstanding (the study was limited to a sample size of 37 in a universe of 120 possible respondents, which represents a 31% response rate), the findings shed light on the conditions under which social work and law come together in practice to confront the practitioner. As already noted, the findings are consistent with the author's discussions with social work practitioners who routinely deal with the social

work-law relationship.

3. Mullen describes a research utilization strategy that seeks to produce a "model of practice", which he defines as a systematic problem-solving approach devised by the practitioner, and gleaned from his/her professional experiences and from research. The practitioner uses experiences and research to develop general principles, which effectively structure his/her intervention strategy. The model is refined -- and validated -- by integrating additional experiences and research.

4. Regarding their increased awareness of the legal context for their agency's services, 80% (N=32) of the respondents stated that their legal training had improved their awareness of this context. Additionally, 49% (N=31) responded they thought a legal approach to practice was very useful, while another 39% found this approach useful.

5. Regulations are "promulgated" (issued) pursuant to their enabling legislation. They must be consistent with the legislation from which they stem and their implementation must follow from the legislation's intent. These regulations are, in effect, the context for the routine decision-making of those most frequently in contact with clients. For a discussion of this regulatory process and the social worker's role in it see Albert (1983).

6. Administrative agency officials must make their decisions within the context of the regulations that govern the programs they administer. They have the authority to exercise their discretion in the interpretation of regulations in relation to enabling legislation. Although they do not enjoy total control -- their decisions may not be "arbitrary" or "capricious" -- they generally have considerable leeway to determine how a particular regulation will be interpreted, given a particular set of facts.

7. The concept of "due process of law" stems from a view of the relationship between the

state and the individual and articulates the conditions under which the state may deprive an individual of life, liberty, or property. It represents the notion that individuals have a constitutionally-guaranteed right to fair treatment by government. The concept is made operational through the imposition of certain procedural requirements on the state; steps it must take before it can interfere in an individual's private affairs or deprive him/her of their freedom or property. These procedural steps --perhaps best thought of as requirements for the state; safeguards for the individual -- include: (1) timely notice; (2) opportunity for presentation of evidence; (3) representation by counsel; (4) opportunity to confront and cross-examine witnesses; (5) open or public proceeding; (6) impartial decision-maker; (7) decision based on the record; and (8) timely hearing.

8. Essentially, the concept that certain communications are privileged against disclosure by a witness in a trial is a rule of evidence, based on the notion that, for public policy reasons, certain confidential relationships between parties give rise to communications which the law will not compel one of the parties to divulge. For an interesting discussion of the topic and its relation to social workers, see "New Privilege for Communications Made to a Rape Crisis Counselor." 55 Temple Law Quarterly 1124 (1982).

9. The most recent definition of the purpose of social work emphasizes these common attributes.

10. The implied warranty of habitability helps ensure that the landlord will provide premises that contain all services essential to maintaining the tenant's health and safety. The warranty applies from the beginning of a residential lease and continues for its duration. For example, the Pennsylvania Supreme Court noted: "In order to constitute

a breach of the warranty the defect must be of a nature or kind which will prevent the use of the dwelling for its intended purposes to provide premises fit for habitation by its dwellers. At a minimum, this means the premises must be safe and sanitary -- of course, there is no obligation on the part of the landlord to supply a perfect or aesthetically pleasing dwelling." Pugh v. Holmes, 486 Pa. 272, 289 (1979)

11. Regarding the change in their perception of social work practice as a result of their legal training, 71% (N=30) of the respondents stated the training had changed their perception of practice. For example, they noted that they now "see law as a framework"; are "more aggressive in working with the legal system"; have "fundamentally changed my conception of social work, for the better"; realized that there are "more legal dimensions of social work practice than I knew". Additionally, 47% (N=30) responded they frequently distinguished between legal and social work components of the problems they encountered ; 13% stated they so did very frequently; and 13% stated they so did almost always. Finally, 32% (N=28) responded that their approach to practice was very different from their co-workers due to their legal training, while another 32% stated their approach was slightly different from their co-workers. One respondent noted that her approach differed because she was able to "grasp more fully the intermingling of social work and legal principles". Another stated her "tendency to rely on verifiable facts as well as feelings, to analyze more, to read more of legal history, and to rely on the possibilities rather than limits of practice". And another noted that she differed in her "approach to clients --entire focus not on feelings but also on environment and its impact on their lives".

12. Regarding the frequency with which they

worked with attorneys, 27% (N=33) responded they frequently worked with lawyers; 9% very frequently; and 12%, almost always. Additionally, 43% (N=23) stated they felt their legal training had adequately prepared them to work with attorneys; 30% felt they had been more than adequately prepared for such collaboration.

13. Regarding the extent to which the respondents incorporated legal knowledge and skills into their intervention strategies, 50% (N=32) stated they frequently did this; 12%, very frequently; 14%, almost always. Additionally, 34% (N=29) responded that their agency frequently relied on their legal knowledge and skills; 17% responded that their agency was almost always so inclined.

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