Social Work & Practice and the Law

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SOCIAL WORK PRACTICE AND THE LAW
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SOCIAL WORK PRACTICE AND THE LAW

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We would like to dedicate this book to the late Professor Ann Moynihan. She was a brilliant scholar, an inspiring teacher, a fierce advocate for justice, and a loyal friend. We were both extraordinarily fortunate to have her as a mentor and many of the thoughts and ideas presented in this book were forged during our many provocative and stimulating conversations with her.
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It is the central premise of this book that the law powerfully, implicitly, and explicitly constructs and influences social work practice. The actions and options of social workers and their clients are constantly being shaped, mandated, and regulated by law. At this current time in our professional history, much of what social workers do is the result of some legal mandate or rule. These mandates can be products of federal, state, and local laws and regulations as well as case law where statutes and laws are applied to individual cases. In fact, the majority of state licensing laws even define the words “social work practice” and sets out what activities it is permissible for you to engage in by law.

Regulations create, effect, and shape the organizations where you work, how you identify who are your clients, what activities you may perform, what obligations you have to clients and in some cases, what limits you set on how long you may work with a client. The law defines the power relationship between you and your client as can be seen in statutes that give you certain duties such as the reporting of abuse. As a profession we frequently focus on how the law places limitations on practice but this book will focus on how the law implicates and supports social work values such as the right to confidentiality, equal opportunity, social justice, freedom from discrimination and oppression, and the balancing of intervention and control. This book presents a conceptual framework that assists the social worker in thinking about the law in a different way and applying and using the law proactively in practice.

This book will introduce you to what the authors call the implicit legal context of social work practice. The implicit legal context is the complex system of laws and regulations that powerfully shapes and impacts your social work practice but is frequently invisible during the course of everyday work or at best, not consciously thought about.

You will also learn about what the authors call the explicit legal context, which is defined as social work practice in those overtly legal forums such as courts, prisons, victim service centers, probation and parole offices, and is also known as forensic social work. We will introduce you to important reforms that are occurring in the legal system such as treatment courts and other alternatives to the adversarial system that seek to address the legal problems of clients in more holistic ways and offer many exciting opportunities for social work participation and collaboration.
It is not our goal to teach you every law that is implicated in social work practice. The volume of law is too large and changes too rapidly for us to do that effectively or inclusively. We will, however, teach you to understand how the law shapes and informs social work practice, how you might apply it to practice, and how the legal system will go about making decisions about your clients. Most importantly, you will learn the knowledge and skills necessary to access and make sense of the relevant law when you need to know it in your work with clients or as you think about your professional roles and responsibilities. Technology makes it much easier for social workers to access the law than in the past. We will not teach you about social work practice per se, but rather how to target and translate social work knowledge and practice skills you may already know for use in both implicit and explicit legal contexts.

Finally, we will show how the law can be used to empower your client and yourself as a social worker and assist you in having effective communication with legal professionals. This book advances the idea that knowing the law will empower you to function more effectively, ethically, actively, and legally in all practice settings, not only legal arenas. This book can also be used by lawyers to understand how they can effectively access and use social workers and their knowledge base to assist them in achieving legal and nonlegal outcomes that meet the goals of their clients and that are ultimately experienced by clients as fair and just processes.

This text is written for all social workers because all social workers interface with the law, both implicitly and explicitly, in the context of everyday social work practice and life in general. Social workers that work or wish to work specifically in legal or criminal justice settings and collaborate with lawyers on a daily basis will find this book an essential resource for practice. Although written primarily for social workers, lawyers who must collaborate with the social work profession in the course of everyday work may find this book a useful resource in understanding how to more effectively enlist social work knowledge and skills to enhance their work with clients.

Written collaboratively by a social worker and a lawyer, the majority of the book presents an ongoing conversation between two different professionals about a common case, The Case of Michelle Jones, as the vehicle through which to teach you about the law, about your own profession, and about another profession. We believe that it is more effective to teach social workers about the law by starting with the social work context in which the case law or regulation will be applied. As social workers can become anxious and uncomfortable when interfacing with the law, this book will start with the familiar territory of social work issues, knowledge, language, and skills and show you how knowledge about the legal framework for practice can expand and enhance your work.

It is our hope that this method will better assist you in applying and practicing skills to help you achieve critical competence, to prepare you to effectively collaborate with other professionals in generating creative solutions to the many problems faced by low-income families, to feel competent to identify
and to respond to legal issues, and to respect and activate the rights of your clients. The lawyer/author will also instruct you on how to obtain legal guidance and expertise when you as a social worker do not have direct access to a lawyer.

Many of the ideas in this book are informed by evaluation research conducted by the social worker/author that sought to identify and describe practice and educational activities that can result in more effective collaboration between social workers and lawyers, challenge and modify professional stereotypes and greater feelings of empowerment and competence for social workers that work within legal forums. This book represents our belief and the contemporary view of policy makers, that interprofessional dialogue and problem solving results in more comprehensive and creative solutions for client problems and consequently the development of more effective and just laws, justice systems, and social services.

The book begins by identifying the legal needs of social work clients, with particular focus on low-income populations. We follow this with a conceptual and historical framework that provides a base for social workers from which to rethink their relationship to the law. Chapters 4, 5, and 6 provide the basic knowledge, values, skills, and ethics needed to become a critically competent practitioner including: ethical differences and similarities between the profession, an overview of both the implicit and explicit legal contexts, essential critical thinking skills, and basic skills of legal and social science research. Chapters 6 and 9 present an in-depth review of a range of civil proceedings, the path of a civil case and stress the areas where there is an intersection between law and social work as well as identify legal decisions that often require social work knowledge. Chapters 7 and 10 cover criminal and juvenile justice proceedings, the path of a criminal and juvenile case, and the many opportunities for social work intervention with a focus on prevention. Chapter 8 deals with the basic skills and knowledge that a social worker will need to effectively participate in a trial or hearing, including such topics as witness preparation, what to expect, report writing, and expert testimony. Chapter 11 describes the many alternative venues available to traditional adversarial proceedings such as mediation, family group conferencing, and problem-solving courts.

In Chapter 12, social workers will learn about administrative law and the path of an impartial hearing and come to understand how administrative law is especially relevant to social work practice. Finally, Chapter 13 introduces the reader to the opportunities for collaboration on a more macro level, such as participation in class action lawsuits, civil rights litigation, and the submission of amicus briefs.
ACKNOWLEDGMENTS

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I would first and foremost like to acknowledge my incredible writing and thinking partner Kara Finck. Writing this book with her reminded me every minute what a joy it is to have a smart, funny, and creative collaborator and why I love interprofessional work. I must also acknowledge the faculty from Fordham Graduate School of Social Service and the Clinical Education Program in the School of Law who contributed to my intellectual and academic development and our thinking about social work and the law: Leah Hill, Mary Ann Forgey, Beth Schwartz, Virginia Strand, Ian Weinstein, James Cohen, and Michael Martin. I would also like to thank Dean Peter Vaughan from the Graduate School of Social Service and former Deans John Ferrick and William Treanor of the School of Law for their gracious support during my years in the clinical program. My fellow social workers in the clinical legal education world; Michelle Geller, Monica Mahan, and Lynn Barenberg have been wonderfully encouraging and outstanding colleagues. My family as ever has been endlessly supportive, especially my partner Calvin. My greatest debt of gratitude, however, is to the many clients and students who have inspired and continue to inspire me everyday to remain passionate and committed to my incredible profession, social work.

Kara R. Finck
I first want to thank my remarkable collaborator, Lyn, who had the original inspiration for this book and challenged and inspired me with her creativity, intellect, and commitment to the highest practice on behalf of her clients. Writing this book with her not only taught me to be a better lawyer, but also reminded me how rich and fulfilling interprofessional practice can be. I want to thank Robin Steinberg, my first mentor who created The Bronx Defenders and gave me the amazing opportunity to build a family defense practice and to work with the most talented group of advocates for parents anywhere. She continues to revolutionize the practice of public defense everyday, and I am indebted to her for all the support, guidance, and advice that she has provided over the years. I also want to thank all the fiercely dedicated attorneys, social workers, parent advocates, investigators, team administrators, and community outreach staff of The Bronx Defenders who work tirelessly everyday to
bring justice to the residents of The Bronx. Over the years, my clients have taught me how to be a better advocate and continue to inspire me with their strength, grace, and humor in the face of daily injustice. Finally, to my beloved family, Mark, Conor, and our new baby, Ronan, thank you for your endless support, encouragement, hugs, and love.

We would both like to especially acknowledge and thank our wonderful editor Jennifer Perillo, who was a fan of this book when it was only an idea, and with patience and enthusiasm supported us through the writing process.
CHAPTER ONE
IDENTIFYING THE LEGAL NEEDS AND REALIZING THE RIGHTS OF SOCIAL WORK CLIENTS

INTRODUCTION

This chapter will introduce you to the idea that knowledge of the legal system and the development of skills to work within this system are powerful tools for effective social work practice. Knowledge of and participation in the U.S. justice system can offer social workers and clients a means to solve problems, identify and address harms, protect and realize rights, and advance personal and professional interests. This chapter will introduce you to the wide range of legal and, as you will see, corresponding service needs that have been identified, and frequently remain unaddressed, for low-income clients. You will understand what some of these legal issues are, why they are frequently unaddressed, and how the legal problems are related to social work outcomes and goals.

THE INTERSECTION OF SOCIAL WORK AND THE LAW: SOCIAL SERVICE ISSUES AND SYSTEMS OF LAW

How many times do social workers come across the following scenarios: a family living in unsafe housing and there is an unresponsive landlord, a child who has been suspended from school, a client who has a medical emergency and cannot obtain health care, a parent who is not getting child support, a teenager who has been arrested for assault but who only speaks to an attorney 5 minutes before court, a veteran who has been arrested for domestic abuse and is not getting benefits from the Veterans Administration or an elder in financial trouble because of fraud?

Whether you view yourself as a clinician or a generalist practitioner, when clients have these concerns they always impact on the process of social work intervention. As an example, think about how your clinical work providing trauma treatment focused on symptom management with a survivor of rape may be impacted if your client is unable to get her landlord to fix the lock on her door or put a light in the hallway of her apartment building. Whether the result is missed or disrupted treatment sessions, both you and your client should be aware that there are usually legal as well as nonlegal solutions that can be used to rectify the situation. The problem is that many
clients, as well as the social workers who work with them, are not aware that many of these issues have a legal basis and therefore a legal solution and that there is an appropriate system of law where the issue can be addressed.

INTRODUCTION TO SYSTEMS OF THE LAW

The United States has three systems of laws: civil, criminal, and administrative. In future chapters, we will be discussing the three systems in much greater depth. For purposes of introduction, civil law is the body of law that identifies and impacts the private rights and interests of citizens and what “remedy” or solution a client may have when they are concerned about their rights. A tenant’s right to safe housing conditions is considered a civil matter. Criminal law is that body of law that defines and prohibits behaviors or acts that the government believes is dangerous to general welfare or safety of others and establishes the punishments that are imposed when someone commits a crime, including incarceration. A veteran arrested for domestic abuse is considered to be a criminal matter. Administrative law is the body of law that governs the activities of the administrative agencies of government. A veteran not receiving benefits he is entitled to would be considered an administrative matter.

Each body of law has its own procedural laws that comprise the rules by which a court hears and determines what happens in civil, criminal, or administrative proceedings. The objectives of the rules are to ensure fair procedures and decisions. A teenager who has been arrested for assault and only sees his attorney for 5 minutes before going to trial has a procedural legal issue as defendants in criminal proceedings can appeal their verdict on the grounds of ineffective representation by their attorney. As demonstrated above, social workers often have clients with legal issues that span all systems of law. Indeed, a single client of a social worker can have issues implicating all the systems of law at the same time.

THE CIVIL AND ADMINISTRATIVE LEGAL NEEDS OF LOW-INCOME CLIENTS

Civil and administrative legal problems often involve basic human needs such as protection from abuse, violence and exploitation, safe and livable housing, and supplemental income such as when a person is disabled and cannot work. In order for clinical work or case management services to be effective, clients must have the very basic needs of shelter and safety met before there can be movement to addressing more complex concerns. The Centre for Human Rights (1994) takes the position that human needs and human rights are inseparable from each other and from social work values, ethics, and practice; “Rights corresponding to human needs have to be upheld and fostered and they embody the justification and motivation for social work action” (Centre for Human Rights, 1994, p. 5). Social workers have an interest and a
duty in seeing that the needs and rights of their clients on every level are linked together, met, and achieved.

The Legal Services Corporation (LSC) is the institution charged by Congress with the administration of a federally funded civil legal assistance program for those who would otherwise not be able to afford legal counsel. As part of this responsibility, LSC collects data from states to determine the legal needs of low-income individuals and the level of legal assistance available to meet the need. LSC has identified the difference between the level of legal assistance available and the level needed to meet the needs of low-income Americans as the “justice gap” (Legal Services Corporation, 2009).

Findings summarizing data collected from surveys conducted by different states consistently report that nationwide, low-income individuals have a significant number of legal needs, from 2 to 5 per year and that significant numbers (80%) of these needs go unaddressed (Committee on Civil Justice—Supreme Court of Georgia Equal Justice Commission, 2009; District of Columbia Access to Justice Commission, 2008; Indiana State Bar Association, 2008; Massachusetts Legal Needs Advisory Committee, 2003). State surveys consistently find less than one in five of the legal problems identified by individuals are actually handled by an attorney (Legal Services Corporation, 2009).

Research also reports that certain groups have more legal concerns than other groups, for example: single mothers, elders, immigrants, those for whom English is not their first language, African American and Hispanic households, households comprised of five or more people and those with children (Massachusetts Legal Needs Advisory Committee, 2003).

Civil legal problems cover a range of issues and fall into the following categories: family, consumer, housing, employment, education, benefits and income, health, and immigration needs (Legal Services Corporation, 2009). Table 1.1 illustrates the types of legal problems reported by the respondents from various states in each of the categories.

As a social worker you have probably been educated to identify and to think about many of the examples listed in Table 1.1 as social service needs. Regardless of how they are defined, solving these kinds of problems and addressing client needs are essential to fulfilling social work values and ethics such as; the practice of achieving a good fit between the person and the environment, upholding and fostering human rights, and the achievement of social justice (Witkin, 1998). Legal needs and rights can be addressed in civil courts such as Family Court or in administrative proceedings such as impartial hearings that assess a claim of unfair denial of government benefits. In Chapter 4, you will learn much more about the way in which civil and administrative proceedings operate. However, it is important for social workers to also know that there is a body of research documenting that certain groups, such as African American children and families, receive disparate treatment when compared with Whites during all the decision-making points that occur in civil proceedings related to child welfare and juvenile justice (Hartley & Silva, 2007; Hill, 2007). This disparity will be important to be aware of when listening to clients’ concerns about the
<table>
<thead>
<tr>
<th>Family</th>
<th>Consumer</th>
<th>Housing</th>
<th>Employment</th>
<th>Education</th>
<th>Income Benefits</th>
<th>Health</th>
<th>Immigration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child support</td>
<td>Foreclosure</td>
<td>Failure to provide heat,</td>
<td>Discrimination based on age, disability,</td>
<td>Discipline problems</td>
<td>Difficulty in applying and being</td>
<td>Access to health and mental health care</td>
<td>Problems getting a green card</td>
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<td></td>
<td></td>
<td>hot water, and electricity</td>
<td>criminal record, and race (obtaining employment,</td>
<td>being discouraged from applying</td>
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<td>Custody and</td>
<td>Abusive</td>
<td>Rats, cockroaches, mice</td>
<td>Unsafe working conditions</td>
<td>Dangerous conditions</td>
<td>Unfair denial and unfair cutting</td>
<td>Inability to obtain insurance and</td>
<td>Problems bringing a family</td>
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<td>visitation</td>
<td>collection</td>
<td></td>
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<td></td>
<td>of benefits</td>
<td>insurance disputes</td>
<td>member to the United States</td>
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<td>procedures</td>
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<td>Domestic</td>
<td>Oppressive</td>
<td>Eviction threats and</td>
<td>Difficulty collecting pay, overtime, and</td>
<td>Denial of enrollment and transfer</td>
<td>Repayment demanded</td>
<td>Refusal to accept Medicare/Medicaid</td>
<td>Difficulty dealing with</td>
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<td>violence</td>
<td>contract</td>
<td>conflict with landlord</td>
<td>unemployment compensation</td>
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<td>government agencies because of</td>
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<td>terms</td>
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<td>language problems</td>
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<td>Child welfare</td>
<td>Utility</td>
<td>Poor security such as</td>
<td>Sexual harassment</td>
<td>Denial of special education and misclassification</td>
<td>Unfair treatment, no information</td>
<td>Obtaining advance directives for</td>
<td>Getting political asylum</td>
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<td>involvement</td>
<td>shut-offs</td>
<td>broken locks</td>
<td></td>
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<td>on how to appeal</td>
<td>elders</td>
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<td>Elder abuse</td>
<td>Lack of</td>
<td>Housing discrimination</td>
<td>Being paid less than the minimum wage</td>
<td>Language difficulties</td>
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<td>Nursing home problems</td>
<td>Being threatened with deportation</td>
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<td>Adoption</td>
<td>loss of</td>
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<td>insurance</td>
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<td>Wills</td>
<td>Bankruptcy</td>
<td>Public service needs such</td>
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treatment they receive throughout their participation in civil and administrative proceedings.

It is also important for social workers to know that when legal concerns are not resolved it can cause further hardship, or secondary adversities, for the individual and in many cases their family as well. When responding to the question in the state surveys of how much trouble these legal issues had caused their family, 60% of the respondents reported some trouble and 40% reported significant trouble. These statistics are consistent across states and across geographical regions (Committee on Civil Justice—Supreme Court of Georgia Equal Justice Commission, 2009; District of Columbia Access to Justice Commission, 2008; Indiana State Bar Association, 2008; Massachusetts Legal Needs Advisory Committee, 2003). Low-income individuals also reported that they consider these legal problems as very serious and important in meeting the basic needs of self and their family (Legal Services Corporation, 2009).

**LEGAL NEEDS OF CLIENTS IN THE CRIMINAL JUSTICE SYSTEM**

During 2009, the Federal Bureau of Investigations estimates that there were 13,687,241 people arrested for a crime (U.S. Department of Justice, 2009a). In 2008, over 7.3 million people in the United States were on probation, in jail or prison, or on parole (Sabol, West, & Cooper, 2009). State and federal prison authorities had jurisdiction over 1,610,446 prisoners, with 1,409,166 in state jurisdiction and 201,280 in federal jurisdiction, and local jails held 785,556 persons awaiting trial or serving a sentence (Sabol et al., 2009).

The legal needs of clients in the criminal justice system are pressing and profound at every stage of their interaction with the system because of the high stakes involved, particularly for men and women of color (Glaze & Maruschak, 2008; Sabol et al., 2009). The rate of incarceration for Black males has been estimated at 3,161 per 100,000 U.S. residents compared to 487 per 100,000 U.S. residents for White males (Sabol et al., 2009). The Bureau of Justice Statistics reports that there are 1,706,600 U.S. children under the age of 18 that have a parent that is incarcerated (Glaze & Maruschak, 2008). Black children are 7.5%, Hispanic children 2.2%, and White children 0.9%, more likely to have a parent in prison (Glaze & Maruschak, 2008).

Numerous studies report racial disparities exist at every decision-making point of the criminal justice process; prearrest, arrest, pretrial prosecutorial discretion, during trial, and sentencing including death, with similar findings reported for youth in the juvenile justice system (Hartney & Vuong, 2009; Sentencing Project, 2010).

Table 1.2 presents the range of legal problems that can be experienced by low-income individuals before and throughout their involvement in the criminal justice system.

Many of the legal matters identified in Table 1.2 can also be thought of as social service needs. Assisting a family you are working with to prepare
Table 1.2 Types of Criminal Legal Problems

<table>
<thead>
<tr>
<th>Prearrest</th>
<th>Arrest</th>
<th>Pretrial</th>
<th>Trial</th>
<th>Sentencing</th>
<th>Incarceration</th>
<th>Reentry</th>
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<tr>
<td>Profiling</td>
<td>False and coerced confessions</td>
<td>Pleading guilty for fear of more penalty</td>
<td>Ineffective assistance of counsel</td>
<td>Mitigation assessment</td>
<td>Appeals of conviction or sentence</td>
<td>Fines as a result of a criminal conviction</td>
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<td>Illegal search and seizure</td>
<td>For immigrants can lead to deportation</td>
<td>Employment problems including suspension from job pending resolution of the case</td>
<td>Eyewitness error</td>
<td>Making legal arrangements for care and custody of children</td>
<td>Custody and visitation</td>
<td>Restriction from employment and licenses</td>
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<tr>
<td>Improper detention</td>
<td>Child welfare involvement</td>
<td>Competence to stand trial</td>
<td>Inappropriate use of informants</td>
<td>Immigration and deportation</td>
<td>Child support</td>
<td>Eviction from public housing</td>
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<td>Harassment or police brutality</td>
<td>Child custody concerns</td>
<td>Temporary orders of protection excluding person from home or family</td>
<td>Unethical police or prosecutorial conduct</td>
<td>Administrative hearings on the use of psychotropic medication and commitment to psychiatric facilities</td>
<td>Filing of complaints about treatment and access to medical and mental health care</td>
<td>Inability to access student loan programs</td>
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<td>Restraint and pregnancy</td>
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<td>Marriage or divorce</td>
<td>Reunification with children in foster care</td>
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<td>Sexual abuse and harassment</td>
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for the incarceration of a loved one or provider suggests a number of legal decisions that need to be made, rights to uphold, and arrangements such as visiting and ways for parents to remain involved in the lives of their children to be put in place even though the parent may be incarcerated (Legal Information for Families Today, 2010). Helping a client advocate for a child in jail who may need mental health treatment but is denied access may be another instance of a legal right and social service need being linked. Certainly, working with a youth or adult who has reentered the community and wishes to continue or pursue education or vocational training as a way of remaining free of the system but does not initially have access to funding can be a problem that presents to many social workers. We see again how issues we might initially define as social service outcomes also have a corresponding legal component.

Once arrested, the most pressing legal need low-income individuals have is access to an effective attorney who can ensure that the client receives a proper defense and that their rights are protected and were not violated prior to and during the arrest process. Unlike many civil legal issues, clients who enter the criminal justice system have a constitutional right to a lawyer. The Sixth Amendment to the U.S. Constitution establishes the right of federal criminal defendants to counsel, a right which was extended by the U.S. Supreme Court to defendants in State and local criminal prosecutions because of the “obvious truth” that a fair trial and a defendant’s right to due process could not be guaranteed without an attorney (Gideon v. Wainwright, 1963).

A publicly funded attorney or a public defender office represents the majority or 80% of low-income defendants (National Right to Counsel Committee, 2009). Numerous reports have documented the inadequacies of low-income defense services (American Bar Association Standing Committee on Legal Aid and Indigent Defense, 2004). Due to lack of resources, increasing criminalization of behaviors due to “tough on crime” policies on the part of state and local governments, and the increasing complexity of criminal law, public defenders are forced to carry large caseloads, in some instances, 100 clients at a time, that make it impossible to effectively defend and represent their clients (National Right to Counsel Committee, 2009). Another aspect of ensuring effective representation that is often lacking due to low public funding is access to experts, social workers, investigators, interpreters, sufficient client contact, and investigation.

Many of the clients who are represented by public defenders are charged with serious crimes having serious consequences including extended periods of incarceration and, in some states, death. Perhaps the most compelling reason for social workers to be aware of the legal concerns of criminal defendants, including the lack of effective representation and racial injustice, are the increasing number of wrongful convictions that are being reported by organizations such as The Innocence Project (http://www.innocenceproject.org) and the Death Penalty Information Center (http://www.deathpenaltyinfo.org). There have been 261 postconviction DNA exonerations in the United States. The average length of time serviced by those exonerated is 13 years. Of the 261 individuals, 155 were African
American and 70 Caucasian (Innocence Project, 2011). Since 1973, there have been 116 individuals serving time on death row who have been wrongly convicted and exonerated. Of those individuals, 72 were African American, 45 Caucasian, 12 Hispanic and 1 Asian (Death Penalty Information Center, 2004). Research has also shown that wrongful conviction and imprisonment can cause serious psychological consequences (Grounds 2004). As noted by Ruesink & Free (2005) very few studies have been done on women and wrongful conviction.

**LEGAL NEEDS OF VICTIMS OF CRIME**

In 2008, approximately 21 million crimes were committed in the United States. Of these crimes, 4.3 million were violent, 15.6 million were property crime, and 133,000 were personal theft (Rand & Harrell, 2009). Crimes ranged from murder, assault, and stalking to human trafficking, hate crimes, and workplace and school-based violence (Rand & Truman, 2010). Social workers in the course of their work often confront the effects or secondary adversities associated with the aftermath of being a victim of crime. These outcomes can include physical and mental health concerns and loss of employment, income, and property. In 2007, for crimes both reported and not reported, the economic cost to victims was 16 billion dollars (Rand & Truman, 2010). Studies show that there is an increased risk for future mental health problems when one is a victim of crime (Kilpatrick & Acierno, 2003).

With the advent of state and federal legislation that has expanded the rights of victims of crime, social workers who are knowledgeable about the rights of victims can advise and assist clients in obtaining benefits, such as compensation for medical injuries or lost wages; protection, such as a police escort to and from court; safe housing or simply help the client advocate for a speedy trial when the legal proceedings are delayed; and effecting your client’s ability to move forward and return to stability or work on other important goals or concerns that need to be addressed in their lives (http://victimlaw.org).

Another reason for social workers to know how to identify and activate victims’ legal rights and right to benefits are the data indicating that certain vulnerable groups that are frequent clients of social workers such as the elderly, developmentally disabled, the mentally ill, and youth are victimized at greater rates than the general population and are at greater risk of victimization (Rand & Harrell, 2009; Rand & Truman, 2010). Race, age, and gender are implicated when looking at who are the victims of violent crimes with Black males and those younger than 20 years of age having the highest rates of victimization (Rand & Truman, 2010). More recently, there has been an increase in the number of hate crimes involving racial, religious, sexual orientation, ethnicity or national origin, and disability bias against many of the groups social workers traditionally work with and advocate for people such as immigrants and gay, lesbian, and the transgendered (U.S. Department of Justice, 2009b).
INCREASING NUMBER OF UNREPRESENTED INDIVIDUALS IN THE LEGAL SYSTEM

Studies that identify and report on the unmet legal needs of low-income individuals in both the civil and criminal justice systems also report high numbers of clients who are representing themselves, particularly in family, probate, and housing courts (Legal Services Corporation, 2009). In the criminal system, clients are more frequently unrepresented when they are trying to appeal their verdicts or sentences and to address family matters or medical and mental health needs while incarcerated. Individuals involved in the criminal system also have unmet legal needs that confront them when they are released from prison.

Clients who represent themselves are also called “pro se” litigants. Recent studies conducted across the country have reported increasing numbers of self-represented clients and also forecast that this trend will continue and greatly impact on the fair and unbiased administration of justice in the long term (Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005). A study conducted in Montana found that 31% of criminal appellate filings and civil filings in 2005 were self-represented (Montana Judicial Branch, 2005). A similar study in Wisconsin found that as many as 70% of family cases involved a client who was not represented (Wisconsin Pro Se Working Group, 2000). In larger cities and states the numbers are even higher. Statistics from California and New York confirm that in big cities, 70% and 90% of litigants who do not have lawyers when they go to court face abuse or the loss of their homes (Judicial Council of California, 2004). A number of factors have been found to result in this trend including decreases in funding for legal services for low-income clients, an increased desire on the part of clients to want to know the law and participate in their legal matters and the rising cost of legal representation (Legal Services Corporation, 2009).

Findings from an analysis of data collected through the distribution of a survey to pro se litigants in New York City Family and Housing Courts report that 83% of the respondents identified as African American, Hispanic, or Asian, had less education and income than New York City residents as a whole, believed they could not afford an attorney, and were involved in very critical cases such as: evictions, domestic violence, child custody, guardianship, support, and paternity (American Bar Association (ABA) Coalition for Justice 2010; Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005).

Both the increasing number and the characteristics of unrepresented clients pose significant implications for the administration and realization of justice, particularly for disadvantaged and “at-risk” groups; groups social workers are ethically required to advocate for and serve (NASW, 1999). Many clients acting on their own behalf may not be informed about the law or proper procedures and may have language and literacy challenges that create enormous demands on court staff and create court delays or misunderstandings about the kinds of legal problems clients have or the solutions clients are requesting. In addition, this situation creates ethical
dilemmas for judges who must remain impartial and unbiased yet must do everything in their power to provide clients with a fair hearing (Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005). Given the kinds of cases, such as eviction and domestic abuse, clients may also be in crisis or experiencing traumatic stress in ways that further interfere in the level of cognitive and social functioning required for effective advocacy in court.

WHY CLIENTS DO NOT ALWAYS ACCESS AND VIEW THE LEGAL SYSTEM AS HELPFUL

It is important for social workers to understand the reasons as to why the legal needs of clients go unaddressed and why clients do not enforce their rights. Reasons for not addressing legal concerns at the client level include: lack of knowledge about legal rights and entitlements, lack of access to legal professionals, low literacy, physical or mental disability, isolation, apprehension about the courts and legal system, sense of stigma, and self and others’ prior experiences with the legal system that discouraged participation (Legal Services Corporation, 2009). These reasons suggest that clients believe there are both social and psychological costs associated with accessing and taking up their rights and entitlements (Hernanz, Malherbet, & Pellizzari, 2004).

Clients in the state surveys also expressed that taking up the rights and benefits they were entitled to was just “too much hassle” (Legal Services Corporation, 2009). This speaks to “transaction costs” and refers to modes of operation in government agencies such as intrusive policies and procedures, disrespectful interactions that clients endure, stigma, and the administrative obstacles they face as they attempt to activate their legal rights and entitlements (Lens & Vorsanger, 2005; Weiss-Gal & Gal, 2009).

Social workers are sometimes part of the reason that clients do not access the legal system or understand its potential as a helping system. Social service providers’ lack of knowledge that a client problem was a legal one, which could be solved legally and therefore insufficiently connecting clients to legal resources, is identified as one of the reasons clients do not access legal services (Legal Services Corporation, 2009). This is a crucial point because low-income clients are far more likely to have interactions with community and social service providers than legal services.

In a study conducted by Braye and Preston-Shoot (2006a) investigating what service users expected from their social workers with regard to legal knowledge and skills, the authors report that clients want and need their social workers to know the law and to know how to interact effectively with the legal system. A persistent complaint identified by the clients was that social workers claimed to know the law but often did not, the results being that clients were misinformed. Further, clients note that social workers’ lack of knowledge about the law made them less effective and credible when the workers were engaged in legal proceedings (Braye & Preston-Shoot, 2006a). At the same time, clients wanted social workers to think proactively and positively about the law, so that social workers
could use the law to empower themselves and the client and promote access to resources. To achieve this end, social workers must have knowledge of a wider range of laws, statutes, and regulations and develop a more critical perspective on the role of law in society and the pervasive ways in which it affects the lives of social work clients (Braye & Preston-Shoot, 2006a).

Social workers have an ethical responsibility to address client reasons for not activating their rights as well as to provide clients with information and assistance in realizing rights because the NASW Code of Ethics explicitly tells social workers to “strive to ensure access to needed information, services and resources” as a way of obtaining social justice (NASW, 1999, p. 5). Part of effective case advocacy or practice that seeks to promote a client’s access to services, entitlements, and other social rights is to “provide clients with information on rights, coaching them so they can effectively exercise their rights and participating in forums to further clients’ rights or to reverse decisions made relating to those rights” (Weiss-Gal & Gal, 2009, p. 270).

Many social workers also meet clients in crisis, at a time when thinking about legal solutions and implications may not be a priority for the service user or for the social worker. However, a lack of immediate attention to these important needs right away may result in serious trouble for the client later on. In an article that addresses the challenges that occur when a grandparent takes on custody of a grandchild, the authors describe the difficulty caregivers face having to learn about the legal system on their own at the same time they are in the midst of family crisis and trauma (Letiecq, Bailey, & Porterfield, 2008). In order to assume the most fundamental parenting duties such as enroll their grandchild in school or give approval for a medical procedure, grandparents must have legal custody and this involves going to court (Glass & Huneycutt, 2002). An example of how not paying prompt attention to a legal issue can cause secondary adversity for vulnerable families is a grandparents’ report of running into financial difficulties and almost losing their home after paying out of pocket for their grandchildren’s medical care. In this instance, the grandparents were not told about the kinds of financial assistance they were legally entitled to by the social service providers they were working with (Letiecq et al., 2008).

As the case above suggests, studies conducted in the United States, Canada, and Israel indicate that social workers’ participation in case advocacy is limited (Hardina, 1995; Koren & Doron, 2005; Teare & Sheafor, 1995). Further there is a dearth of current empirical knowledge about the use of case advocacy and the reasons as to why social work practitioners do not employ it more frequently.

WHY SOCIAL WORKERS DO NOT ALWAYS ACCESS AND VIEW THE LEGAL SYSTEM AS HELPFUL

Social workers have been identified in many of the recommendations generated by the reports on access to legal services as being a part of the reason low-income individuals do not activate their rights, but social workers have also been identified as being important players in the solutions being proposed
to help close the “justice gap” (Legal Services Corporation, 2009; Legal Services
NY, 2009). Other professional groups, such as lawyers, are inviting our pro-
fession to collaborate with them in the project of giving clients access to
justice and realizing the civil and human rights they should enjoy.

In this chapter, we have identified that literally millions of persons who
potentially engage with social workers are enmeshed in the legal system in
some way or avoid enacting the legal rights and benefits that they are entitled
to. We have also established that there exists documented evidence of discrimi-
nation, oppression, and unequal access to justice based on race and class. It is
clear from the NASW Code of Ethics that we have a moral and ethical obli-
gation to address this social injustice. The Preamble to our Code clearly
states that the primary mission of the social work profession “is to enhance
human well-being and help meet the basic human needs of all people, with par-
ticular attention to the needs and empowerment of people who are vulnerable,
 Oppressed, and living in poverty” (NASW, 1999, p. 1). The Code provides
further instruction that social workers must address discrimination: “Social
workers should act to prevent and eliminate domination of, exploitation of,
and discrimination against any person, group, or class” (NASW, 1999,
Section 6.04). We as social workers have been invited to engage with the
legal system and legal professionals to participate in initiatives that advance
the goal of achieving social justice. Our ethical mandate is clear. The question
then becomes what are some of the reasons and barriers that can explain the
social work profession’s reluctance to engage with the law?

Various social work commentators have identified the contradictory, yet
complementary relationship of social work and the law (Healy, 2009; Madden,
2000; Weiss-Gal & Gal, 2009). The impact of the legal system on the lives of
clients has greatly expanded in recent years and because of this trend, the
U.S. legal system is an arena where many social work client issues are sorted
out, competing interests are addressed, and policy decisions have been
made, yet some authors suggest that little has been done by the profession
to address the problems within the justice system (Madden, 2000; Mitchell &
Lynch, 2003; Reamer, 2004; van Wormer, 2009).

Currently, the perception of some social work commentators is that
despite the enormous impact and control the legal system has on social
work practice, the profession acts more often as passive collaborators (rather
than aggressive advocates) when it comes to the law and that social workers
more often take on the role of enforcing existing statutes rather than recogniz-
ing the inadequacies and injustices within the legal system and acting to
change them (Madden, 2000; Mitchell & Lynch, 2003). Social workers have
been reluctant to study the basis of the law as it relates to their work or to
think of it as a tool that can advance the achievement of their objectives in
working with clients (Doron, Karpel, & Or-Chen, 2010).

Healy (2009) explores the possible reasons for what she identifies as the
social work profession’s lack of visibility in the human rights movement.
The author suggests that a focus on needs rather than rights and on social
and economic rights rather than civil and political rights can offer some expla-
nation. It is further advanced that in social work discourse, needs and rights
are often placed in opposition, as if promoting one presents a conflict and is
less important than the other. It is important for social workers to understand that human rights are based on human needs and must be viewed as inextricably linked (Healy, 2009).

In fairness to social workers, there have been a number of structural impediments that interfere in their ability to perform case advocacy activities or see the law in a positive way. Perhaps the most important reason is the lack of attention to the law and human rights in social work education (Doron, Karpel, & Or-Chen, 2009; Kopels & Gustavsson, 1996; Madden, 2000; Steen & Mathiesen, 2005). In most U.S. schools of social work, courses in social work and the law are offered only as electives, and despite exhortations to infuse legal content throughout the social work curriculum there has been no systematic attempt to do so (Kopels & Gustavsson, 1996; Madden, 2000).

This lack of a systemic approach is in contrast to the United Kingdom where specific guidance on law content is required and provided by the qualifying body for social work education for England, Scotland, Wales, and Northern Ireland (Central Council for Education and Training in Social Work, 1995). Social work educators in the United Kingdom have developed an evidence-based body of knowledge that describes and evaluates teaching and learning methods designed to teach social work students the knowledge, values, and skills necessary to actively use the law in support of practice (Braye, Preston-Shoot, & Johns, 2005).

It is also much more common in the United States when legal content is introduced in social work courses and texts for the law to be presented as somewhat oppositional to social work values, focusing much more attention on restricting and limiting social work practice than on the ways the law can be accessed for promoting rights and achieving social justice (Preston-Shoot, 2001). There is generally much more focus on content related to liability, malpractice, and ethical conflicts than on content that views the law as a proactive tool for empowered practice and teaches social workers how to use the law to counteract discrimination and support ethical values.

It is also suggested that organizational obstacles can effect a social worker’s attitude toward, and ability to engage in case advocacy activities and in fact some social workers have either faced or fear sanctions from their agency when they devote time to case advocacy activities (Weiss-Gal & Gal, 2009). It has also been argued that social workers may face conflicts between their duties to clients and loyalty to employing agencies and thus interferes in their ability to prioritize client rights (Hardina, 1995).

Another potential reason due to which social workers are reluctant to engage with the law and legal systems are widely held stereotypes about the challenges of working with lawyers. There are very few studies that exist that investigate collaboration between lawyers and social workers and studies that do exist are over two decades old. Much of the research looked at how attitudes of members of the legal profession and how attitudes of social workers contributed to conflict between the two professions. These attitudes translated into widely held stereotypes such as “lawyers are too analytical” and “social workers are too emotional” (Fogelson, 1970; Sloane, 1967; Weil, 1982). Other studies looked at the division of roles and responsibilities
as causing competition and conflict between social workers and lawyers (Fogelson, 1970; Russell, 1988; Smith, 1970). As is the case with many other professional groups, differences in professional culture and how one is socialized during professional education have also been found to contribute to conflict and problems in collaboration for lawyers and social workers (Hall, 2005; Russell, 1988; Taylor, 2006).

Recently, there have been a number of studies suggesting that much like clients, social workers’ actual experience with the courts and the legal system discourages participation and causes workers to challenge the legitimacy of those institutions (Ellett & Steib, 2005; Faller, Grabarek, & Vandervort, 2009; Vandervort, Gonzalez, & Faller, 2008). These studies focused on public and private child welfare social workers and caseworkers that are in a situation where they must interact frequently with courts and judges who exercise a high degree of control and scrutiny over their work.

Ellett and Steib (2005) observed in their study that at times the demeanor of judges to caseworkers “seemed unnecessarily disrespectful and harsh” (Ellett & Steib, 2005, p. 344), “courts (judges, parent’s attorneys and ADA’s) tended to treat caseworkers as functionaries who were expected to provide documentation and services” (Ellett & Steib, 2005, p. 345) and “although problems in legal representation were widely acknowledged they were more readily attributed to workload or inability to compensate attorneys at a higher level than was the case with caseworkers” (Ellett & Steib, 2005, p. 348). With caseworkers the tendency was to blame performance problems on lack of competence or a lack of interest. It was found, however, that many of the social workers and caseworkers observed during the study appeared not to understand the legal system, know how to write well-documented and relevant court reports, nor demonstrate the ability to effectively testify in court (Ellett & Steib, 2005).

Faller et al. (2009) studied the level of comfort with court proceedings among child welfare workers at the time they began their employment and then again 6 months after employment. An increase in the level of comfort with court proceedings at 6 months was associated with being male, being White, having an MSW, and working for a private versus public agency (Faller et al., 2009). Perhaps the most troubling finding in this study was the decrease in comfort level of professionals of color with court proceedings after 6 months. The authors voice the concern that given the overrepresentation of minority children in the child welfare system, a lack of comfort on the part of a large number of the professionals charged to advocate for families may be indirectly related to disparate outcomes for children of color in the child welfare system (Faller et al., 2009).

Evidence from the studies cited and arguments presented from some social work educators suggests the need for the Council on Social Work Education to require the development of courses that consider social work’s interface with the legal system, teach the knowledge and skills for social workers to be confident and empowered actors within the legal system, and make this a curriculum requirement for all MSW programs (Ellett & Steib, 2005).
MEETING THE LEGAL NEEDS OF LOW-INCOME CLIENTS:
WHAT SOLUTIONS ARE BEING PROPOSED AND HOW
THE SOCIAL WORK PROFESSION CAN PARTICIPATE

The reports that document the lack of access to justice experienced by low-income individuals and the increasing numbers of “pro se” litigants advocate for increased funding and use of pro bono, or volunteer legal services as a direct method of decreasing the “justice gap.” As you learned in the section of this chapter that addressed the legal needs of low-income criminal defendants, one reason preventing the effective representation of a client is that their lawyer often does not have access to professional expertise or support personnel. Social workers can respond to this need by offering pro bono services to legal aid offices to assist in client defense, to do home visits and adoption studies, and can also offer their services to courts so that the social worker can be assigned to assist attorneys in their representation of clients. Social work professors and experienced practitioners in areas such as clinical social work, social welfare policy, and social work practice can volunteer to testify as an expert witness in a range of cases such as identifying best practice and proper procedure in child welfare cases or summarizing the research base about a particular topic such as the impact of exposure to community violence and risk of juvenile delinquency.

Another way the profession can be involved is to not only produce research that documents the effects of the law and legal policy on practice but to understand the role that social workers can play in the various legal systems as a knowledge broker (Madden & Wayne, 2005). In this role social workers are aware of the power they have to introduce social science and empirical research into the decision-making processes across all systems of law. Social workers can bring social science research to the attention of lawyers and judges and introduce evidence-based practice as a framework to be used for the development of legal policies, programs, and decisions.

Pragmatically, given the current economic situation, the reports also suggest that the greatest impact can be made through collaborative advocacy projects with social service organizations (Legal Services Corporation, 2009; Legal Services NY, 2009). Across the country there are two types of collaborative initiatives that are of interest to social workers. The first intervention involves providing legal training and support to nonlawyer professionals such as social workers, teachers, clergy, and medical personnel. This “indirect” service can greatly expand the number of clients who receive legal information, materials, referrals, and who can be assisted in identifying a problem as a legal issue. Social workers working in community-based agencies can proactively reach out to legal service providers to arrange training for themselves and their clients as well as network with self-help community organizations.

The second kind of collaborative intervention involves legal service providers teaming up with other agencies and professions to think more broadly about expanding the number, and kinds of solutions to the multiple and complex problems faced by low-income individuals and families. The goal of collaboration is to provide a “holistic solution” by offering clients a mix of
legal and nonlegal services in one location. This is potentially the most exciting and valuable way social workers could target their knowledge and skills and participate in a long-term solution for closing the justice gap.

Other professions are beginning to make the connection between a state of health and wellness and the importance of accessing the legal system to intervene in environmental conditions that both cause and effect disparate health, mental health, economic, social, and educational outcomes for different groups of clients. An example of this movement is the development of medical–legal partnerships (MLPs). MLPs train health care providers such as doctors, nurses, and social workers to understand the social causes of their patients' health concerns and identify those patients whose stressors may be ameliorated or resolved by legal intervention (http://www.medical-legalpartnership.org). Poor housing conditions, food and energy insecurity, educational and employment factors are just a few examples of nonmedical problems that present significant barriers to health and through medical legal partnerships are addressed in the health care setting rather than referring the client out. Early process and outcome studies show improved client health outcomes, lower levels of client stress, higher uptake of benefits and entitlements, decreased avoidance of medical care because of concern with cost, improved clinical workforce skills, and cost benefits to the medical institution (Paul et al., 2009; Teufel, Brown, Thorne, Goffinet, & Clemons, 2009; Weintraub et al., 2010).

The ecological theories underlying collaborative, multidisciplinary programs that focus on intervention at the level of the client's environment and on prevention should be a familiar and comfortable framework for social workers. Social workers have the values, knowledge, and skills to not just effectively participate in interdisciplinary collaborations but also to organize and become leaders in collaborative service delivery. The following chapters of this book will present the knowledge, values, and skills you need to collaborate with other professionals and your clients in ways that address client needs and client rights. You will learn to appreciate how the activation of client rights can be a critical tool for advancing and realizing a strength-based, empowering social work practice that moves beyond disparate outcomes and meets the health, mental health, social, educational, and economic needs of all people in an equal and socially just way.