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## SOCIAL WORK AND THE LAW—SOME CURRICULUM APPROACHES\*

CHARLES I. SCHOTTLAND\*\*

COOPERATION between the social work profession and the legal profession is now a hit theme throughout the country. This cooperation has been accelerated by the programs of the Office of Economic Opportunity. The anti-poverty program has stimulated the organization of neighborhood legal services, and many poor litigants have been enabled to have a kind of legal representation hitherto denied to them in many cases. Law reviews abound with articles on AFDC, the legality of midnight searches, reviews of judicial decisions on residence for purposes of public assistance, AFDC budgets and a variety of other programs of concern to social workers.<sup>1</sup> Court decisions are increasingly affecting the daily practice of social workers as the courts outlaw accepted practices of family budgeting in public assistance,<sup>2</sup> wipe out long established residence requirements,<sup>3</sup> put into question the practice (a legacy of the English Poor Laws) of holding relatives responsible for the support of needy blood and marriage relations,<sup>4</sup> complicate the administration of public assistance by forcing a state welfare department to adopt a practice contrary to State regulations,<sup>5</sup> determine the authority of conflicting bureaucratic claims,<sup>6</sup> return a girl to her parents in spite of the social worker's determination that she needs custodial care because in the opinion of the court such proper care was not available,<sup>7</sup> overrule a recommendation of social agencies and social workers in adoption cases,<sup>8</sup> modify the

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1. See, e.g., Matthews & Weiss, *What Can Be Done: A Neighborhood Lawyer's Credo*, 47 B.U.L. Rev. 231 (1967); Sanford, *Poverty's Challenge to the States*, 31 Law & Contemp. Prob. 77 (1966); Zukerman, *Cultivating Social Perspectives In The Lawyer*, 5 Journal of Family Law 2 (1965); Comment, *Withdrawal of Public Welfare: The Rights to a Prior Hearing*, 76 YALE L.J. 1234 (1967); Comment, *Welfare's Condition X*, 76 YALE L.J. 1222 (1967).

2. In *Collins v. State Bd. of Soc. Wel.*, 248 Iowa 369, 81 N.W.2d 4 (1957), the Iowa Supreme Court ruled that a statute limiting ADC payments to a maximum of \$175 per month per family was unconstitutional on the ground that it discriminated against large families.

3. See, e.g., *Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967).

4. *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964).

5. In *Albany Med. Center Hosp. v. Harris*, Comm'r., 28 A.D.2d 784, 280 N.Y.S.2d 778 (2d Dep't 1967), the court overturned a rule that medical indigency is determined at the time of admission to the hospital and asserted that consideration must be given to the circumstances at the time the bill is due.

6. In *Metropolitan Ass'n of Private Day Schools, Inc. v. Baumgartner*, 41 Misc. 2d 560, 245 N.Y.S.2d 733 (Sup. Ct. 1963), the court upheld the statute giving the City Health Department the authority to license private day schools as against the State Department of Education's desire to be the sole licensing agent.

7. In *Matter of Anonymous*, 43 Misc. 2d 213, 250 N.Y.S.2d 395 (Fam. Ct. 1964), the family court paroled a girl to her parents because in the Court's view there was not an adequate "facility for her treatment and rehabilitation."

8. *Matter of McDonald*, 43 Cal. 2d 447, 274 P.2d 860 (1954).

trend in the juvenile court from what social workers hoped would emerge as a social agency to one where juveniles receive the same legal protections as adults,<sup>9</sup> establish visitation rights of the father of a child born out of wedlock,<sup>10</sup> and courts assume to decide what constitutes appropriate psychiatric treatment.

The civil rights movement, likewise, has accelerated the inter-relationship between the two professions. Public assistance recipients are demanding their "rights," and a study of the fair hearing procedure in California's public assistance program reveals that a recipient's chances of winning a hearing "are doubled if he brings along someone to represent him."<sup>11</sup> This increased reliance on the law to protect clients was welcomed in an editorial in the journal of the National Association of Social Workers.<sup>12</sup> Recently, the National Association of Social Workers and the American Bar Association agreed on joint statements outlining the relationship of the two professions; the Office of Economic Opportunity publishes a monthly journal *Law in Action* which reports on legal services to the poor, judicial decisions relating to the poor, the right to benefits, etc.; and which journal recently proclaimed that such legal services to the poor "can have a powerful impact on the entire quality and structure of the world in which poor people live."<sup>13</sup> Social workers are recognizing that the right of the people served by social agencies to participate in decisions of the judicial arm of government through being represented by a lawyer may be of as great importance as the right to vote.

The increase of interest on the part of law schools in welfare law has resulted in accelerated dialogue between lawyers and social workers.<sup>14</sup> The multiplicity of new government programs affecting social work, each established pursuant to statute, administered through administrative regulations which are legally binding, and interpreted by the courts, have put social workers in an arena where law governs their basic tasks and is ever-present in their professional activities. The Federal government alone has over two hundred health and welfare programs of interest to social work. The Federal government operates or makes funds available for the operation of more than twenty-five programs providing assistance to persons seeking employment; more than sixty programs provide financial assistance to individuals and families; some fifty programs are involved in vocational and job training; about thirty-five Federal programs provide financial assistance and technical guidance in the housing field; approximately seventy-five separate programs seek to stimulate economic growth,

9. *Matter of Contreras*, 109 Cal. App. 2d 787, 241 P.2d 631 (1952).

10. *Mixon v. Mize*, 198 So. 2d 373 (Fla. 1967).

11. *Editorial*, Soc. Work, Oct., 1967, at 2.

12. Schorr, *Editorial*, Soc. Work, Oct., 1967, at 107: "It is the very instinct of our profession to welcome the strength that law . . . will lend to our clients."

13. 2 *Law In Action*, No. 7, Oct., 1965, at 1.

14. The Project on Social Welfare Law has been operated by New York University Law School which publishes the *Welfare Law Bulletin*. Columbia University has established the Columbia University Center on Social Welfare Policy and the Law.

provide job information, renew our deteriorated cities or provide some type of economic aid to public and private organizations.<sup>15</sup>

The social work field has responded to this increased interest and has been publishing numerous articles and pamphlets on social work and the law.<sup>16</sup> Likewise, general periodicals have shown interest in the area<sup>17</sup> and the Ford Foundation has made a one million dollar grant to establish a "National Office for the Rights of the Indigent" which office has published a booklet summarizing the legal reform movement in the United States.<sup>18</sup>

It can be seen from this recital of programs, publications and activities that a closer relationship is developing between the legal and social work professions. Not since the decade of the 1920's has there been such interest in law and social work. It was during the 1920 decade that schools of social work began courses in social work and the law, and books and articles in abundance appeared describing various legal-social work relationships.<sup>19</sup>

The interest in the relationship of law and social work was revived in the early 1960's for reasons I have previously indicated. In mid-1962, the American Bar Association and the National Association of Social Workers established a National Conference of Lawyers and Social Workers to provide a forum for continuing discussion at the national level. This Conference has issued pamphlets

15. See Schottland, *Government Economic Programs and Family Life, J. of Marriage and the Family*, Feb., 1967, at 107.

16. See, e.g., *The Law and the Impaired Older Person* (G. H. Hall ed. 1966); J. Handler, *Neighborhood Legal Services—New Dimensions in the Law* (U.S. Office of Juvenile Delinquency and Youth Development, 1966); Randall, *Why The Concern About Protective Services for Older People?*, in *Seminar on Protective Services for Older People 1-13* (R. Eckstein & E. Lindley eds. 1964); Winston, *Welcome Address*, in *The Extension of Legal Services To The Poor*, Conference Proceedings, November, 1964 (Office of Juvenile Delinquency and Youth Development, 1965); L. Bennett, *Adult Protective Services and the Law*, Am. Pub. Wel. Ass'n Northeast Reg. Conf. New York, Sept. 13, 1965; Bamberger, *Law and Social Experimentation*, Am. J. of Orthopsychiatry, July, 1967, at 661-65; Bennett, L. *Protective Services for the Aged*, The Soc. Serv. Rev., Sept., 1965, at 283-93; Grosser & Sparer, *Legal Services for the Poor: Social Work and Social Justice*, Social Work, Jan., 1966, at 81-87; Larson, *Protective Services for Older Adults*, Public Welfare, Oct., 1964, at 249-50; Polier, *The War vs. Poverty: The Role of Law and Mental Health*, Am. J. of Orthopsychology, Oct., 1966, at 786-94; Polier, *The Invisible Rights of the Poor*, Children, Nov.-Dec., 1965 at 215-20; Rothwax, *The Poor, The Law, and Civil Liberties*, Social Serv. Outlook, Nov., 1966, at pp. 14-16; Wickenden, *The Legal Right to a Minimum but Adequate Level of Living*, Public Welfare, Jan., 1967, at 8-14.

17. See, e.g., Cloward & Elman, *Advocacy in the Ghetto*, Trans-action, Dec., 1966, at 27-35; Oaks & Lehman, *Lawyers for the Poor*, Trans-action, July-Aug., 1967, at 25-29.

18. *And Justice for All* (Ford Foundation, 1967).

19. See, e.g., J. Bradway, *Law and Social Work* (1929); B. Flexner, *The Legal Aspect of the Juvenile Court* (U.S. Children's Bureau, 1922); R. Smith, *Justice and the Poor* (Carnegie Foundation for the Advancement of Teaching, 1919); J. Bradway, *Social Work and the Law*, in [1927] Nat'l Conf. of Soc. Work Proceedings; Bruno, *Cooperation of Social Workers with Public Officials in Law Enforcement*, in [1923] Nat'l Conf. of Soc. Work Proceedings; Kirchwey, *Forms of Cooperation Between Social Work and the Law*, in [1926] Nat'l Conf. of Soc. Work Proceedings; Pound, *Preventive Justice and Social Work and the Law*, in [1923] Nat'l Conf. of Soc. Work Proceedings; Kelso, *The Historical Steps by which Law and Social Work Are Coming Together*, 234 Annals 17 (1929); Kirchwey, *The Old Justice and the New Order*, 234 Annals 74 (1929); Linsey, *A Lawyer Looks at the Field of Legal Social Work*, 234 Annals 1 (1929);

on the rights of public assistance recipients,<sup>20</sup> adult protective services,<sup>21</sup> adoption<sup>22</sup> and family courts<sup>23</sup>, which discuss the respective roles of the lawyer and the social worker.

Various institutes have developed around the country such as the Arthur Garfield Hays Civil Liberties Center Project on Social Welfare Law of the New York University School of Law to which reference has already been made.

This heightened interest between the two professions is long overdue, and a very constructive development. Nevertheless, it must be recognized, that as the question of organizing within schools of social work a course or courses in the area of social work and the law is discussed, the job is two-fold. Not only must it be determined what materials to present and what the content of the courses must be, but it must be recognized that there is a psychological attitude which must be overcome if social workers are going to develop the right point of view and accept cooperation between the two professions on an appropriate basis.

Memories die hard, and the social work profession unfortunately has inherited a long experience of legal obstructions to the achievement of its goals. Social workers who study the history of social work and social movements may well develop a biased and jaundiced attitude towards the law, legislative bodies, courts and even lawyers. For almost fifty years, social workers fought for workmen's compensation laws, and the social work profession was jubilant when the State of Maryland passed the first workmen's compensation law in 1902—a law passed because of the large number of industrial accidents and the obvious success of workmen's compensation in Germany and other places. The enthusiasm was short-lived. In 1904 this workmen's compensation law was declared unconstitutional on the ground that it deprived the worker of his common law right to sue the employer as guaranteed by the Constitution.<sup>24</sup> This decision fanned public indignation, and social workers in New York joined with other groups to push through a workmen's compensation law in the State of New York. This law, passed in 1910, was also declared unconstitutional.<sup>25</sup> The court asserted that such action was "revolutionary." Social workers likewise worked for more than forty years to develop special assistance for the blind, the disabled, and the aged. In 1923, the State of Pennsylvania established an Old-Age Assistance Act which was declared unconstitutional on the basis that

20. *Rights of Public Assistance Recipients*, in Nat'l Conf. of Lawyers and Soc. Workers, Publ. No. 3, 1967.

21. *Adult Protective Services. Responsibilities and Reciprocal Relationships of the Lawyer and Social Worker*, in Nat'l Conf. of Lawyers and Soc. Workers, Publ. No. 5, 1967.

22. *Responsibilities and Reciprocal Relationships in Adoption—Lawyer and Social Worker*, in Nat'l Conf. of Lawyers and Soc. Workers, Publ. No. 1, 1965.

23. *Lawyer-Social Worker Relationships in the Family Court Intake Process*, in Nat'l Conf. of Lawyers and Soc. Workers, Publ. No. 4, 1966.

24. *Franklin v. United Rys. & Elec. Workers of Baltimore*, 2 Baltimore City Rep. 309 (1904).

25. *Ives v. South Buffalo Ry.*, 201 N.Y. 271, 94 N.E. 431 (1911).

it was "forbidden legislation."<sup>26</sup> Social workers had hoped that the Pennsylvania law would usher in a new line of decisions on the part of the courts after the rebuff in 1914 when the first old-age pension law established by the State of Arizona was declared unconstitutional.<sup>27</sup>

It was the New Deal days, however, which brought the most serious antagonisms between social work and the law. In preparation for a nation-wide program of social security, social workers looked to the Railroad Retirement program to withstand the attack by Federal courts. Great was their disappointment when in 1935, the Railroad Retirement system was declared unconstitutional on the ground that the regulatory power of Congress could not be exercised "purely for social ends."<sup>28</sup> This was followed in 1936 by a decision which declared unconstitutional minimum wages for women with the Court maintaining that "fixing of minimum wages for women violated the due process clause."<sup>29</sup> Perhaps the greatest blow to social work reformers such as Jane Addams and Frances Perkins came in connection with child labor. After twenty-five years of work, the social reformers of the early twentieth century succeeded in pressing Congress to pass a law in 1916 prohibiting transportation in interstate commerce of the products of mines or factories in which children under fourteen were employed, or where children worked more than eight hours a day or more than six days a week if between the ages of fourteen and sixteen. The United States Supreme Court held the act invalid holding that it was ". . . repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce but also exerts a power as to a purely local matter to which the Federal authority does not extend."<sup>30</sup>

It is important in bringing law to social workers in the social work curriculum to emphasize that most of these decisions are now antediluvian, and today some of the most progressive and forward-looking social policies of our time have been established by judicial decision. It is important, also, that the social worker who currently finds the law thwarting him in his work should understand legal processes and the assistance which the law can give to him. The social worker who finds a client evicted through due process because he cannot pay his rent, the social worker who finds it difficult to commit a psychotic person to a state hospital because of some strict or rigidly interpreted commitment statute, the public assistance worker who cannot meet the financial needs of his clients because of a ceiling placed on grants by the State Legislature, the social worker who encounters opposition from lawyers to the establishment of legal services in the OEO programs,<sup>31</sup> the social worker whose recommendation

26. *Busser v. Snyder*, 282 Pa. 440, 128 A. 80 (1925).

27. *State Bd. of Control v. Buckstege*, 18 Ariz. 277, 158 P. 837 (1916).

28. *Railroad Retirement Bd. v. Alton R.R.*, 295 U.S. 330, 371 (1935).

29. *Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587 (1936).

30. *Hammer v. Dagenhart*, 247 U.S. 251 (1918).

31. *See, e.g., Bamberger, supra* note 16. In Philadelphia the local Bar association has sought to prohibit the operation of the Community Legal Services program.

against a child adoption is over-ruled by the court because the adopting parent is a movie actress and the court found the social worker quite unreasonable in recommending against adoption merely because the movie actress had been married four times, admitted having sex relations with a number of men outside of marriage, and had been arrested several times for drunkenness—such social workers may look at the law with a jaundiced point of view.

I emphasize this negative attitude on the part of social workers because I have taught three courses in social work and the law using three different methods of instruction. In all courses, I found that many students initially had a negative and antagonistic attitude toward the law and that failure on my part to deal with this at the outset, delayed reaching the course objectives.

A recent study has indicated much misunderstanding on the part of social workers and lawyers toward the role each plays in our society,<sup>32</sup> and the differences in approach need to be explored in any course on law offered in a school of social work. For example, the social worker is more at home with the lawyer in the process of mediation and conciliation for the resolution of differences than he is with adversary proceedings which do violence to the social worker's approach to the ascertainment of facts and the settling of conflict. This is particularly acute in the examination of expert witnesses. The lawyer may respect expertness but also he feels that such expert must be subject to the hard test of questioning and examination. In social work the "questioner" is the researcher. Social work practice emphasizes the working through to acceptance.

Again, social workers emphasize solution of the problem in the interests of that factor consistent with social work's goal. For example, in an adoption case, the child is the focus of interest. The lawyer, on the other hand, appears to the social worker (whether rightly or wrongly) to be interested only in his client whose point of view may be, in the opinion of the social worker, inimical to the child. Social workers, particularly social caseworkers, tend to analyze conflict in terms of the psycho-social situation; while lawyers tend to place such conflict in a legal formulation. The social caseworker is trained in psychological individualization whereas such caseworker sees the law in terms of the settlement of disputes between private parties on the basis of universally applied rules which leave no room for individualization. The social worker tends to look upon a court trial as a combat of paid gladiators with each gladiator pushing for victory for a client rather than a resolution of the differences through the processes of mediation, discussion, and agreement. Law is frequently seen by the social worker as technical, rigid, logical and precise—but not interested in the solution of interpersonal problems. On the other hand, the lawyer is likely to view social work as associated with church-sponsored charity, work with homeless children, public assistance with its problems of dependency and family breakdown, activities carried on by persons who have not been accorded pro-

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32. Sloane, *The Relationship of Law and Social Work*, Soc. Work, Jan., 1967.

professional status by law and whose professional relationship to the client is colored (in his mind) by the fact that the social worker is employed by an agency and not by a client.

These generalizations are, of course, not completely accurate in both situations. I emphasize some of these differences because they must be dealt with in any curriculum on law and social work. Otherwise, social work students are likely to complain (either publicly or privately) that the course does not come to grips with the realities of the social work-law relation.

Turning now to the organization of a course or courses on law and social work to be given in a school of social work. There is little agreement on content or educational method. One school of social work teaches the course through the case method similar to such case method in law schools. UCLA, for example, taught the course this way several years ago. Another school taught the course entirely from social casework records, extracting the legal situations from these records as a basis of lecture and discussion. Such was a course at Catholic University several years ago. Some courses parallel courses in medical information for social workers, attempting to give the student some basic information about the law; one course emphasized the role of the social worker in legal situations such as probation, adoption, or expert witness; another emphasized legal knowledge of situations frequently affecting clients such as divorce, child support, eviction, garnishment, probation and parole.

I have no particular formula or firm bias for any one method. After all, there are dozens of ways to cut this academic pie. I offer my own approach, therefore, in all humility but would like to outline the way I would organize such a course.

At the outset, it must be determined whether it is to be a one semester or two semester course or more. With our crowded master's programs, I think that most schools would find it difficult to give more than a one semester course unless they underplay certain other aspects of curriculum. My own formulation could be either a one or two semester course.

I would start by asking the question: Upon completion of the course, what should the student social worker *KNOW*? I have set down thirteen principles or areas that seem to me the most significant in terms of the social work practitioner's relation to law, lawyers, and the legal system. Undoubtedly many more could be listed. My discussion of each item will be indicative rather than complete in the interests of space.

1. *Law and social work have significant interrelationships in social work practice.* I would start the course with this concept in order that the social work student may realize that law is not something far removed from daily practice. This may be done in several ways. In the course I gave at Catholic University I used a case record which was used concurrently in a casework course. Using this record, we discussed such items as:



- (a) The family involved was a legal unit and from this legal unit flowed many rights and responsibilities.
- (b) The social programs utilized by the family were created and established by law such as ADC, public medical care, vocational rehabilitation.
- (c) The voluntary agency giving the service was established pursuant to law, incorporated under the laws of the state, and licensed in this case by the state welfare department to engage in child placement in accordance with legally binding regulations of such department.
- (d) The social worker had to work with "legal" agencies in the case—the court, probation officer, police.

2. *Law is an expression of social policy.* This is the second concept I would tackle. An historian one thousand years from now, wishing to ascertain what we stood for in the decade of the 1960's, could find no better evidence than the tens of thousands of statutes, judicial decisions, and administrative regulations. Here one might show how such social policy has changed over the years through changing laws and judicial decisions. From decisions which kept government out of many social programs, one can proceed to such cases as *Steward Mach. Co. v. Davis*<sup>33</sup> and *Helvering v. Davis* which declared the Social Security Act constitutional.<sup>34</sup> When Justice Cardoza declared in this case that "Congress may spend money in aid of the general welfare," a new era dawned for social work. His comments that "Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the time . . ." presaged changes now involving a large percentage of social workers who are employed in programs made possible by this decision.

Any number of areas can be selected to illustrate law as an expression of social policy: The accepted doctrine of relative responsibility came down from the Poor Laws, was enacted into statutory law by almost all states and upheld by the courts. Cases showing this are numerous and a recent contrary holding shows the law as a changing institution.<sup>35</sup>

For years, the established social policy looked upon public assistance as a privilege or gratuity and not as a "right." As one court said as late as 1941, "Old Age assistance benefits are not payments to which a citizen is entitled as a right. They are themselves gratuities given by the State to the needy. . . ."<sup>36</sup> Today, public assistance is regarded a right, a right which is enforceable in the courts. Such rights go beyond the individual right to assistance, they include the right to equal treatment and benefits, the right to free use of the benefit

33. 301 U.S. 548 (1937).

34. 301 U.S. 619 (1937).

35. In a recent California case, the California court held that a statute which made relatives responsible for cost of care in a state mental hospital was invalid. See *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 36 Cal. Rptr. 488, 388 P.2d 720 (1964).

36. *Howlett v. State Soc. Sec. Comm'n*, 347 Mo. 784, 149 S.W.2d 806 (1941).

or grant and the right to statewide uniformity of administration.<sup>37</sup> Present state laws frequently make public assistance grants subject to a maximum dollar payment irrespective of family size. Such a maximum grant provision was declared unconstitutional by the Iowa court (as previously mentioned) as a violation of equal protection under the Iowa constitution<sup>38</sup> and this long established practice (of maximum grants) is currently being questioned in Arizona<sup>39</sup> and attorneys from Columbia University Center on Social Welfare Policy and the Law are assisting in the case.

3. *The statutory or legislative process.* It is important for social work students to know how laws are enacted. Many students will get this in their undergraduate political science courses. But frequently these are fairly dull and routine, describing the usual procedure of introduction of a bill, referral to committees, hearings, debate, passage and signature by the Governor or President. It is important that the social work student understand the forces involved in the passage of legislation and the points in the legislative process where intervention can be most effective. Although a course in social work and the law should not necessarily be a course in the techniques of social action, neither should we present the law-making process as a purely technical operation.

I believe that a case study of the passage of a law is a good way to present this. One of the best case studies which I think is almost ideally suited to a discussion of the process of legislative enactments is the case study of the Medicare legislation set forth in a series of articles in *The New Yorker* magazine. Although this article presents a specific point of view or bias, it is a fairly accurate description of what happened, and makes the passage of the Medicare legislation a dramatic and living experience.<sup>40</sup>

4. *How administrative regulations are established.* The procedure for the establishment of administrative regulations should be discussed, and particularly the points of possible intervention in the procedure for outside groups should be stressed. Social work students ought to know that there are ways in which their views can be made known during the process of establishing administrative regulations. They should also appreciate the fact that these regulations have the full force and effect of law, and, therefore, their promulgation becomes important in affecting, modifying, or controlling social work practice in various governmental and even voluntary agency settings.

5. *The nature of the judicial process.* The student should get an under-

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37. Two cases upholding old age assistance laws are indicative of a line of decisions. In *Alameda County v. Janssen*, 16 Cal. 2d 276, 106 P.2d 11 (1940), the court asserted that granting aid to needy aged was a well recognized obligation of the state and was a governmental function tending to promote the general welfare. In *State ex rel. Nielson v. Lindstrom*, 68 Idaho 226, 191 P.2d 1009 (1948), the court emphasized the value of old age assistance as promoting a more normal existence free of the stigma and disagreeable life in an institution.

38. *Collins v. State Bd. of Soc. Wel.*, 248 Iowa 369, 81 N.W.2d 4 (1957).

39. *Dews v. Henry*, Civ. No. 6417 (D. Ariz., filed Aug. 10, 1967).

40. *Annals of Legislation: Medicare*, *The New Yorker*, XLII, No. 19, July 2, 1966, and No. 20, July 9, 1966, and No. 21, July 16, 1966, and No. 22, July 23, 1966.

standing, even though very elementary and superficial, of the nature of the judicial process and of the adversary proceeding. In addition, he should get some exposure in reading and understanding judicial decisions. I am sure that those readers who are from the faculties of law schools, and who have taught persons in other disciplines who are not law students, find it difficult to understand why such student reads a very simple and brief judicial decision, and cannot repeat in any orderly fashion what he has read or what the decision is all about. This is not the place to comment on the weaknesses of our educational system which does not teach students how to read critically and analytically. Perhaps one method is to have the students brief a few cases in the form in which the typical law school has its students brief cases. Certainly the student should get a picture of the growing importance of judicial decisions in our total national life.<sup>41</sup>

6. *The organization of our court system.* Students should understand and know something about the organization of the court system, particularly the courts in which they are most likely to be involved. These include the juvenile courts, family courts, criminal courts and the relationship of probation officers to such courts, courts in which adoptions and guardianships are handled, and, also, administrative devices for fair hearings which must precede court action in many social work programs and which may be discussed through actual cases of fair hearings in public assistance, social security, or other such programs.

7. *Law sets the framework in which most social work is practiced.* It is important that the social work student get from his course a positive and affirmative view of the law and its relationship to his everyday practice. There are certainly dozens of ways in which this can be done. In one course, I took a child placement agency and illustrated the control, or influence, of the State Welfare Department over the agency through the laws relating to licensing, through the administrative regulations which set the standards for agency practice and through the law and regulations regarding educational leave which was available to persons in the voluntary agency utilizing state funds. To take another example, in the state of West Virginia, the state auditor refused to honor a requisition drawn by the State Director of the Department of Public Assistance for payment to an employee of the Department of Public Assistance for the purpose of enabling the employee to obtain social work training in a school of social work. The court held that the auditor must make such payment, and related the decision to the law and the regulations. Said the court:

Obviously, the successful and efficient exercise of such a governmental function (child welfare) covering such a broad and specialized field requires the services of a great number of specialized leaders and workers. It also requires experimentation in new methods of assistance. Thus the necessity for the state to encourage and assist individuals in

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41. Many writers are maintaining that the courts are the organs really deciding the basic issues of our time. See, e.g., *Are Judges Remaking America?*, U.S. News & World Report, Dec. 18, 1967, at 36-38.

preparing and qualifying themselves for such services. The cost to the government is returned to the public in the better health and welfare of its people. . . . In our view, these provisions may not only be interpreted so as to authorize the encouragement and assistance of adequate methods in child welfare, by specialized training, but sufficiently provide standards for a plan of operation. . . .<sup>42</sup>

Such a decision can be utilized to point out the role the courts play in assisting social work and social workers to develop professionally staffed and forward looking welfare programs.

The recent case *Matter of Gault*,<sup>43</sup> setting forth the requirements in the juvenile court for due process may well change the role of the social worker henceforth in juvenile court proceedings. And a recent series of decisions by the Circuit Court of Appeals in Washington, D.C., sets forth the proposition that a court may determine what is adequate psychiatric or related service in order to determine whether a person has been properly committed to a mental hospital. These decisions usher in a line of cases which might well result in the future in some determination as to what constitutes adequate social service.

When one examines the multiplicity of legal provisions setting up and establishing the specifics of programs of public assistance, child welfare, veterans benefits, vocational rehabilitation, public health and medical care, poverty programs, the supervision by the state of voluntary agencies of various kinds, methods of purchasing services by public agencies from voluntary agencies, and many other areas, the student can get a conception of the significance of the law in the everyday practice of social work.

8. *The legal resources of the community.* The student should examine the legal sources of the community in the same way that medical resources are examined. A knowledge of legal aid—of the role of the local bar associations and courts in furnishing counsel for the indigents, the special legal resources of specialized agencies such as family agencies which may employ a lawyer—this kind of information is an important tool for the social worker. Many persons contend, as a matter of fact, that one of the unique contributions of social work as against other professions is the skill in utilization of community resources brought to bear on the particular problems of the individual.

9. *How to identify legal problems in cases handled by social workers.* Here, I suggest the use of some social work case records from which can be extracted such legal problems as evictions, appeals to administrative bodies or courts against the decision of some administrative official, problems of divorce, adoption, etc.

10. *Basic legal concepts governing selected social work programs such as social security, public assistance, licensing of child care institutions, adoptions.* A few selected areas should be used to present the basic legal concepts behind

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42. State *ex rel.* Roth v. Sims, 139 W. Va. 795, 799-801, 81 S.E.2d 670, 673-74 (1954).

43. *Matter of Gault*, 387 U.S. 1 (1967).

some of the programs administered by social workers. For example, what is the basic philosophy in the adoption of children? What do the statutes say? What do judicial decisions say? Is it always the interest of the child, or are there some other considerations which blunt this principle such as placing the child in a home of its own religious background?

11. *The social policy of the law and accepted social work practices and principles may on occasion be in conflict.* It is important, I think, for social workers to realize that sometimes their professional goals and objectives may be in conflict with established social policy as set forth by law. There are numerous examples of this, but the outstanding one, I think, which brings home the point is the area of confidential communications. Social work communications, with very few exceptions, are not privileged under the law as are communications between a lawyer and client, and in most jurisdictions between doctor and patient. The basic social policy involved is that all communications between people should be revealed in court if such revelation is germane and relevant to the issue at stake. Otherwise, the truth cannot be ascertained. It presents conflict and antagonism to the goal of the social work profession which seeks to have its communication privileged, like the legal and medical professions. The conflict between the exercise of legal privilege and the goal of having all communications available in a court of law illustrates how social policies may be in conflict, both legally established social policies and social policies of the social work profession as against the social policy of the law.

12. *The kind of professional or personal action which may result in legal liability on the part of the caseworker or social worker.* The possible liability in transporting clients, the possible liability in giving advice resulting in separation of husband and wife, or the estrangement of children from parents, might very well be presented.

13. *The nature of services performed by an attorney.* Here the attorney should be presented as a professional person, an officer of the court, his ethical behavior as governed by the lawyers' code of ethics. When to refer cases to a lawyer should be discussed.

The thirteen items indicated above are indicative of the things that I think a social worker should know when he completes a course in law and social work. I realize that many of these cannot be ascertained in depth, nor can the knowledge of the student be the same as the knowledge of a law student who works at these problems much more intensively. But I do think that the social work student can at least know, in a general way, something about these thirteen items which I have mentioned.

In addition to *knowing* certain things, the student, upon completion of the course ought to be able to *DO* certain things. Such a student ought to be able to *DO* the following:

1. Read and understand uncomplicated statutory laws and judicial decisions.

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2. Participate in social action in the law-making process with knowledge of points of intervention.
3. Identify legal problems in a caseload or other social work practice.
4. Make a proper referral to a lawyer or legal resource.
5. Participate on a professional level in consultation with lawyers, judges, or other officials involved in legal problems.
6. Relate legal advice and courses of action to the total casework plan or agency program.

These items of "doing" are indicative rather than complete and merely suggest some of the areas in which the course under discussion should add to the ability of the social worker to make use of the legal knowledge obtained.

The above discussion is somewhat fragmentary. I hope that it is at least indicative of some of the questions which must be examined. The growth of legal programs, new forms of legal services, new statutes every year, judicial decisions—all of these and more are the imperatives dictating the necessity for schools of social work to give its students exposure to this area.

