Journal of Social Work Values and Ethics, Fall 2004, Vol. 1, No. 1
Published by White Hat Communications

Contents

Editorial Comment: The Birth of *The Journal of Social Work Values and Ethics*

Welcome to the first edition of *The Journal of Social Work Values and Ethics*! Values and ethics are at the heart of social work practice and education. They determine both what constitutes a "social problem" and the responses that may be taken to intervene in the problem.

Today, especially relevant are developing new technologies, increasing polarization of values in US society, value conflicts inherent in a diverse society, growing debate over the most effective and appropriate service models, theoretical development, and the study of values and ethics is especially relevant. Through the development of a body of literature, *The Journal of Social Work Values and Ethics* (JSWV&E) seeks to inform and influence social work practice and education. JSWV&E addresses scholarly inquiry including:
Development of models for analyzing and resolving value and ethical conflicts;
Description of new value dilemmas and their impact on social work practice;
Research studies on the influence of values and ethics in social work practice decision-making and in agency program development;
Examples of good practice that clearly highlight ethical and value considerations;
Theoretical articles that explain the origin, development and evolution of social work values and ethics;
Discussion of ethical and value dilemmas related to the development of new technologies;
Review and analysis of scholarly and practice books, monographs, and articles written on the topic of social work values and ethics.

The original concept for this journal was conceived as a response to a mandate established by the Board of Directors of the Association of Baccalaureate Social Work Program Directors (BPD). In the fall of 1998, the president of BPD requested that the Committee on Information Technology and Distance Education (CIFTSWE) establish a system to provide BPD members with technological information that could serve across the entire generalist curriculum. During a CIFTSWE Committee meeting, the members decided to divide themselves into nine subcommittees each representing a curriculum area of the Counsel on Social Work Education (CSWE). The committee members decided that each subcommittee would offer a web page to disseminate "bleeding edge" information to the BPD membership.

One subcommittee emerging from the discussion was, of course, the Subcommittee on Values and Ethics. Steve Marson became the chair. During the first meeting, a discussion ensued regarding strategies to offer current information about values and ethics to the BPD membership. The original discussion involved a values and ethics newsletter. That concept soon was replaced by that of a scholarly and applied journal. Because no social work journals exclusively address the topic of values and ethics, there was an immediate and enthusiastic response among the entire membership.

Steve Marson had just completed 10 years of being the co-editor of *The Journal of Law and Social Work* (JLSW) and since the journal was transferred to another owner, he was free and excited about the prospects of editing a new journal. While working with JLSW, he quickly learned that the major problem associated with a highly specialized journal is the cost of publication and dissemination of a paper journal. The concept of maintaining the journal on the committee's web page was attractive -- particularly since the BPD Board of Directors requested technological advances for each curriculum area. Upon deciding to pursue an online journal, Marson approached Jerry Finn (well-known for his technological expertise) to accept the position as co-editor. Marson and Finn found that their respective

campuses couldn't offer the necessary technical support or time to maintain an online journal. Thus, they began the search for corporate sponsor.

Searching for a corporate sponsor took about three years. White Hat Communications volunteered to take on *The Journal of Social Work Values and Ethics.* Early in the conception of JSWVE, the committee decided that the online publication must *not* have a subscription fee. Not only is the editorial board made up of volunteers, the publisher must be a volunteer. White Hat Communications, a for-profit company, makes no profit from JSWVE. The editorial board is indebted to Linda May Grobman, ACSW, LSW, owner of White Hat Communications, for her willingness to support our efforts.

In seeking a publisher, two particular goals were necessary to achieve. First was to establish a sample web page for the journal. For several years, Marson had been reading the online and free publication, *The Journal of Teaching Statistics* (JTS). JTS became the role model. Second, Finn and Marson sought an editorial board with the skills and knowledge beyond those of the members of the Subcommittee of Social Work Values and Ethics. They began to recruit members outside of the subcommittee and BPD. All invited to participate in membership to the editorial board accepted the invitation. Members of the editorial board are listed on the Journal's web site.

Thus, members of the Editorial Board represent a wide diversity of participants, including ethnic, geographic regions (including international representation), gender, disability, academic, practice and most importantly philosophy. Although, the board members have a wide variety of difference, they share one critical commonality. All members are devoted to the study and analysis of social work values and ethics. All recognize the importance of maintaining and supporting a scholarly and practice journal that addresses current issues of values and ethics. Thus, *The Journal of Social Work Values and Ethics* is born.

Stephen M. Marson, Ph.D., ACSW
Jerry Finn, Ph.D.

BOUNDARIES IN SOCIAL WORK: THE ETHICAL DILEMMA OF SOCIAL WORKER-CLIENT SEXUAL RELATIONSHIPS

Susan Hutchinson Mittendorf, Ph.D. and Julie Schroeder, Ph.D
Louisiana State University School of Social Work

Abstract

This article reports the results of an exploratory study examining social workers' attitudes and beliefs about sexual involvement with clients and their knowledge of the prevalence of this behavior as reported to them by their clients. It also presents an historical perspective for discussing previous research documenting the incidence of this unethical behavior and offers policy implications that address prevention of social worker misconduct.

Key Words: Mental Health, Ethics, Sexual misconduct, Private practice, Psychotherapy

Introduction

The sexual exploitation of clients by their therapists continues to be a problem in social work and in the other mental health professions (Berkman, Turner, Cooper, Polnerow, & Swartz, 2000; Freud, & Krug, 2002). The National Association of Social Workers (NASW) identified sexual activity with clients as the most frequently cited infraction of the association's Code of Ethics (NASW, 1996). Strom-Gottfried's (2000) review of ethics complaints filed with NASW between 1986 and 1997 found that of the 267 cases with findings of ethics code violations, 55% (n=147) were related to boundary violations. Of these cases with findings of boundary violations, 37.4% (n=95) involved sexual activity with clients. Strom-Gottfried argues that these incidence estimates of misconduct must be used with caution because NASW receives fewer complaints against social workers than state licensing boards and malpractice insurers.

The picture becomes murkier when attempting to ascertain the prevalence of sexual misconduct by using statistics compiled by state social work licensing boards. These boards regularly receive complaints of ethics violations, including the sexual exploitation of clients by social workers, but many retain data only on fully adjudicated cases (Berliner, 1989, Dawes, 1988; Reamer, 1995). The absence of information on complaints of unethical behavior by social workers, regardless of outcome, hampers efforts to systematically and reliably measure the frequency with which clients allege sexual misconduct by their social workers. For example, a review of all disciplinary actions by the Louisiana State Board of Certified Social Work Examiners between 1975 and 1999 yielded a total of 13 fully adjudicated cases in which disciplinary action for sexual misconduct was taken. Because no records of complaints of sexual misconduct against social workers are kept by the Board, researchers are not able to compare the number of complaints with actual survey responses. The lack of uniformity across national and state systems that receive complaints

of professional misconduct coupled with the methodology problems of survey research in this area (viz., response bias), hinders efforts to describe and understand the frequency with which social workers engage in sexual behavior with their clients.

This article reports the results of an exploratory-descriptive study examining social workers' attitudes and beliefs about therapist-client sexual contact, as well as their knowledge of the prevalence of this behavior, as reported to them by their clients. It is a replication of an earlier study by Hutchinson (1991) conducted to confirm the presence of a group of clients in the earlier research who reported having been sexually abused by their therapist. We also offer an historical perspective to frame previous research examining the incidence of this unethical behavior, and we recommend practice, policy, and research measures to prevent social worker misconduct.

Getting Valid Answers to Sensitive Questions

Social work researchers contend that survey data gathered by social workers about worker-client sexual contact underestimate the actual occurrence of these incidents and these data are not consistent with the complaints of unethical behavior by reported other sources (Berkman et al., 2000; Jayaratne, Croxton, & Mattison, 1997). There is a discrepancy between the self-reported rates of unethical behavior published in the literature and those based on actual complaints of unethical behavior received by NASW, state licensing boards, and malpractice insurers. This discrepancy raises questions about the well being of clients of practitioners who are unaware of the problem of worker-client contact and who underestimate its prevalence. At the very least, it may be assumed that for every exploitive social worker, there is at least one sexually exploited client. Nearly half (46.3%) of the 147 responding social workers surveyed by Hutchinson (1991) reported that 177 clients had disclosed sexual involvement with a previous therapist. These clients reported that the majority of these therapists were psychiatrists (37.8%), followed by social workers (18.6%), psychologists (15.8%), clergy (13.5%), licensed professional counselors (7.3%), and other professions (6.7%). Sloan, Edmond, Rubin, and Doughty (1998) obtained similar results in their survey of 450 social workers. They found that during a twelve-month period, 75 (17%) of respondents provided clinical services to 123 clients who reported having been sexually exploited by a previous therapist.

A representative of the NASW Insurance Trust observed that sexual misbehavior continues to be a serious problem, and in 1999, it was a major cause of suits against social workers (L. Robinson, personal communication, January 11, 2000). The increasing number of claims against social workers for sexual misbehavior resulted in the NASW Insurance Trust limiting its coverage for social workers found guilty of sexual involvement with clients to $25,000 (Gechtman, 1989). The number of social workers who admit engaging in sexual misconduct with clients, combined with claims of sexual misconduct received by insurers, state licensing boards, and NASW, indicate that social workers are as much at risk for this type of unethical behavior as other mental health practitioners.

A Brief History

Researchers in the fields of medicine (Kardener, Fuller, & Mensch, 1973), psychiatry (Gartrell, Herman, Olarte, Feldstein, & Localio, 1986), and psychology (Holroyd & Brodsky, 1977) called attention to this issue by estimating the number of practitioners in these professions who engaged in sexual misconduct with patients. These early studies stimulated interest in this issue in the professions of psychiatry and psychology, generating an on-going discussion of therapist exploitation of clients that continues to the present time.

In social work, however, the sexual exploitation of clients by their therapists was not widely discussed in the literature prior to 1990. Articles in the social work literature published prior to 1990 (Brown, 1984; Gareffa & Neff, 1975; Holzman, 1984; Shor & Sanville, 1974) focused on treatment dynamics, and frequently addressed treatment issues such as therapeutic responses to seductive clients. Gechtman (1989) completed the first national survey of social workers that described practitioners' sexual behavior with clients in 1985. This research was not embraced by major social work journals but was later published in a book edited by a psychiatrist (Gabbard, 1989).

The first article to appear in a social work journal specifically addressing social worker sexual misconduct as a professional problem was written by Berliner (1989). The number of publications focused on the issue of social worker sexual misconduct increased slowly within the profession during the next decade (e.g., Kagel & Giebelhausen, 1994; NASW, 1995; Reamer, 1992). This body of literature addressed the topic indirectly by incorporating it into more global discussions of practitioner impairment, boundaries, and ethical practice. More recent articles (Berkman et al., 2000; Jayaratne et al., 1997; Sloan et al., 1998) directly explored the topic of social worker sexual misbehavior with clients in more detail than was done in earlier articles.

As stated above, obtaining accurate estimates of the number of social workers who have engaged in sexual behavior with clients is difficult, primarily because obtaining information on intrusive issues raises complex methodological problems. Studies published in social work journals varied in design, sample size, and methodology, making generalizations across studies difficult. Although incidence rates varied, all of these studies yielded consistently low self-reported rates of social worker sexual involvement with clients (Gechtman, 1989; Hutchinson, 1991; Jayaratne et al., 1997; Sloan et al., 1998).

The effect of gender on the sexual exploitation of clients has been the subject of considerable speculation among researchers. Early studies (Gartrell et al., 1986; Holroyd & Brodsky, 1977; Kardener et al., 1973) indicated that the highest rates of sexual exploitation of clients involve male therapists and female clients. More recent research (Bernsen, Tabachnick, & Pope, 1994) confirms the importance of gender in any discussion of sexual impropriety. This research suggests that male therapists are more likely than female therapists to experience sexual attraction to clients and to become sexually involved with them. Fewer reports of social worker-client sexual contact may be due, in part, to the gender make-up of social work as compared with that of psychiatry and psychology, given that social work is a predominantly female profession, and the other two professions are predominantly male.

Although current research suggests that male therapists are more likely than female therapists to become sexually involved with their clients, the importance of same-sex contact as a factor in client sexual exploitation must be considered. Strom-Gottfried (1999) notes that little is known about same-sex involvement. She cautions, however, that it is important to explore the dynamics of gender and sexual orientation as they relate to the sexual abuse of clients in order to more fully understand this problem.

Method

This study investigated the attitudes of 144 social workers in private practice settings regarding therapist-client sexual contact. Using a 40-item questionnaire, the survey gathered information about the following characteristics of respondents: gender, previous psychotherapy, practice experience, knowledge regarding the NASW Code of Ethics, and

MSW curriculum content on ethics. Respondents were also asked whether they had engaged in sex with a current or former client and whether they ever had a client who reported a sexual encounter or relationship with a previous therapist.

The study population was composed of all social workers in a southern state whose primary practice setting was identified by NASW as private practice. The population included 288 social workers, 216 females (75%) and 72 males (25%). A cover letter explaining the purpose of the study, the nature of the selection process, and the procedures for establishing confidentiality were mailed with the questionnaire and a stamped self-addressed envelope to all 288 social workers. Responses received in the four-week period following the initial mailing of the questionnaire were tabulated in the returns. Univariate statistics were used to summarize and describe the data. A nonparametric procedure, Chi square analysis, was used to detect the presence of a relationship between the therapist type and number of reports of sexual contact reported to subsequent therapists.

The questionnaire was originally developed by psychiatrists and psychologists and was used in similar studies of their members' attitudes and practices regarding sexual involvement with clients (Gartrell et al., 1986; Holroyd & Brodsky, 1977). In an attempt to maintain consistent definitions across studies, the present study used the same definition of sexual contact as that used in these previous research studies.

Hutchinson (1991) adapted this questionnaire for use by social workers by adding items that more accurately reflected social work training and practice. Items added to the revised questionnaire included information about licensing, practice history, ethics training, concern about the prevalence of client-therapist sexual contact, assignment of responsibility for this behavior, and suggestions for handling erotic feelings that arise in therapy. The revised questionnaire contained 11 items measuring respondents' demographic characteristics, 9 measuring their attitudes toward social worker-client sexual contact, and 20 items gathering information about their personal experiences with their own clients. Most questions required pre-coded, forced-choice responses (e.g., yes/no or always appropriate/sometimes appropriate/always inappropriate) or a numerical specification. Space was provided for additional comments.

Respondents were asked for their opinions about the appropriateness of social worker-client sexual contact. They were given an opportunity to describe circumstances in which they considered sexual contact with a client to be appropriate and their beliefs about how this type of sexual behavior affects clients. Social workers were questioned about their knowledge of NASW's policy on sexual behavior in therapy and their beliefs about NASW's position on this matter. Reliability and validity data for the revised questionnaire have not been established; however, the questionnaire used by Hutchinson (1991) in a similar study yielded comparable data.

Findings

Responses were received from 144 respondents, 75.6% females (n=109) and 24.3% males (n=35), establishing a response rate of 50%. This response rate compares favorably with the returns received in similar studies of social workers (Bernsen et al., 1994; Gechtman, 1989; Hutchinson, 1991; Jayaratne et al., 1997; Sloan et al., 1998).

The mean age of respondents was 52 (SD=8.20) with a range of 28 to 78 years. Sixty-five percent (n=93) reported having over 10 years of practice experience. Slightly less than half (49%, n=71) recalled participating in continuing education that included

content on ethics over the last 3 years. When asked to recall the amount of ethics content offered in their master's program, one fourth (n=34) reported no ethics-related course content and 64% (n=91) recalled content included as part of another course. Only 17 respondents (12%) had taken a course specifically related to ethics. When questioned further about their MSW program's emphasis on ethics content, 28% (n=40) of respondents reported no emphasis in this area while 20% (n=29) reported that their MSW program placed strong emphasis on ethics content.

Attitudes about Sexual Contact with Clients

Erotic contact with clients. All respondents indicated that erotic contact between social worker and client is usually harmful to the client. In describing their level of concern about this issue, most (66.2%, n=94) said they were very concerned, just over one third (25.4%, n=36) were somewhat concerned, 7.7% (n=11) were not particularly concerned, and one respondent was unconcerned about this problem. When asked how frequently they believed this type of behavior occurred, 3.5% (n=5) of respondents said they thought it occurred frequently, about two-thirds (65%, n=93) responded sometimes, and fewer than one third (31.5%, n=45) said rarely. In assessing responsibility for the sexual contact, 91.7% (n=132) of the respondents believed that the social worker was always responsible when sexual contact occurred. When asked who usually initiates sexual contact, 34.8% (n=48) said the social worker usually initiates the contact, 13.8% (n=19) said the client, and 51.4% (n=71) said both social worker and client initiate the contact.

Respondents were asked to specify whether any of the following types of intimate client contact were appropriate during therapy: hugging, kissing, fondling, sitting on social worker's lap, and genital contact (multiple responses were allowed for this item). The majority of respondents (92%, n=132) indicated that hugging is always inappropriate in therapy. Comments by some respondents pointed out that hugging is not necessarily a form of erotic or sexual contact. A smaller percentage of respondents (10.4%, n=15) believed that kissing and allowing the client to sit on the social worker's lap (4.1%, n=6) are always appropriate. Most respondents stated that kissing (88.8%, n=128), fondling (100%), sitting on the social worker's lap (95.8%, n=138) are always inappropriate. All respondents agreed that genital contact with clients is always inappropriate in therapy.

When asked under which circumstances they would permit sexual relationships with clients, a few respondents (2.1%, n=3) indicated that they would allow a sexual relationship when the social worker is in love with the client or when the client is being treated for sexual dysfunction. Although most respondents indicated that sexual contact between social worker and client is prohibited even after the termination of therapy, a few respondents (6.3%, n=9) believed that the prohibition against erotic contact with a client ends with the termination of therapy.

Responsibility for reporting unethical behavior. When asked who should report social worker-client sexual contact, fewer than half (41.6%, n=57) of respondents indicated that the client should report a social worker's unethical behavior, 19.7% (n=27) indicated that reporting should be done by the subsequent social worker, and just over one third (38.7%, n=53) said reporting should be done by the client and subsequent social worker together.

Sexual Practices with Clients

Clients who reported having sex with a previous therapist. When asked if they ever had a client who reported having had sexual contact with a previous therapist, about half

(54%, n=77) answered affirmatively. These respondents acknowledged having had a total of 245 clients who reported having sex with their previous therapist. These sexually exploited clients were 90.6% female and 9.4% male. In speculating about the effects of these sexual relationships on their clients' well-being, most of the respondents (94.9%, n=75) believed the encounters were always harmful to the client, one respondent believed that these encounters had no effect, and one believed sexual contact was helpful in some cases. Respondents identified the professions of the exploitive therapists as social workers (21%, n=30), psychiatrists (21%, n=30), psychologists (21%, n=30), clergy (21%, n=31), licensed professional counselors (10%, n=14), and unspecified other professionals (6%, n=6). As a group, licensed professional counselors differed significantly in proportion from the number of other professions ($\chi 2=22.70$, df=1, $p<.001$). Fewer than one third of the respondents (27.5%, n=22) reported the exploitive therapist to a licensing board or other authorities.

Other social workers believed to have had sex with clients. When asked if they knew of other social workers who had sexual contact with a client, over one third (38%, n=47) of respondents answered affirmatively, identifying 103 other social workers who they believed had initiated sex with from 1 to 4 clients. Among respondents who believed that one or more peers had initiated sexual contact with clients, only 15% (n=7) reported these ethics violations to an ethics committee or licensing board.

Respondents' sexual contact with their own therapists. Seven respondents (4.9%) reported having had previous sexual contact with their own therapists. All of these respondents were heterosexual female social workers ranging in age from 45 to 60. All described the sexual contact as ultimately inappropriate, exploitive, and harmful. None of these respondents described the sexual contact as therapeutic.

Sexual contact with clients. None of the respondents reported sexual contact with clients during therapy, however, two social workers acknowledged having had sexual contact with clients after termination. One respondent was a female social worker who became sexually involved with a former male client five years after termination of therapy. She reported that the client initiated the sexual contact, both she and the client had strong positive feelings for each other, and the relationship resulted in marriage. The second respondent, a male social worker, reported that he initiated sexual contact with two former female clients. He noted that at the time the contacts occurred, it was not considered unethical to have sexual relationships with former clients if there was a significant delay between termination of the professional relationship and the sexual encounter.

Discussion

There was almost no variation in the responses of social workers participating in the study concerning their attitudes toward sexual contact with clients and respondents' actual behavior with clients. All respondents stated that they were opposed to sexual contact of any kind with clients, and no respondent acknowledged having had this type of contact with a client during treatment. These findings are inconsistent with the number of social workers disciplined by the Louisiana State Board of Certified Social Work Examiners for sexual misconduct and with a national survey of social workers' attitudes and practices about erotic behavior with clients (Gechtman, 1989). This latter study estimated a 2.6% incidence rate of social worker-client sexual contact during therapy. While this rate is considerably less than the overall 7%-10% incidence rates reported in the professions of psychiatry and psychology, it is consistent with the lower rates of sexual involvement reported by female

psychiatrists and psychologists who reported sexual contact with clients (Gartrell et al., 1986; Holroyd & Brodsky, 1977).

The majority of respondents expressed concern about the issue of worker-client sexual contact. Almost all believed that the social worker is responsible when sexual contact occurs, although half of these respondents suggested that these dual relationships are entered into by mutual decision. The majority of respondents also believed that the decision to report previous sexual contact with a therapist should be a joint decision made between the client and his/her subsequent therapist. Fewer than one fifth believed that the client's current therapist should make a unilateral decision to report.

Perhaps the most interesting findings from this study point to the discrepancy between the number of social workers who admit having sexual contact with clients and the number of social workers whose clients reported having had sexual contact with previous therapists, many of whom were social workers. These data were gathered from social workers who practice in different areas of the state, suggesting that respondents were not repeatedly identifying the same few clients. These findings are consistent with those of Hutchinson (1991) and Sloan et al. (1998) whose research identified similar groups of clients exploited by their therapists. The presence of this group of exploited clients suggests that some therapists continue to exploit their clients. Although one must exercise caution when relying on second-hand self-reports from clients, these allegations are disturbing.

Coping with therapists' sexual impulses and sexual fantasies toward clients has been a persistent problem experienced by mental health professionals ever since the development of psychotherapy (Strean, 1993). Social workers may be confused when they experience sexual feelings about clients, and unsure about how to process these feelings (Giovazolias & Davis, 2001). Sexual feelings are common by-products of therapy that should be explored in supervision or consultation. The use of supervision and consultation protects both the social worker and the client in situations when sexual feelings occur in therapy.

As with all exploratory studies, there are limitations to this work. In addition to limitations imposed by a small sample drawn from one state, the most obvious of these are measurement problems. The questions used to measure attitudes and behaviors rely on self-reported data. The sensitive nature of the study's substantive focus may have encouraged socially desirable responses, a validity problem that plagues measurement of professional attitudes (Rubin & Babbie, 1997). Further, individuals who have engaged in unethical behavior may have underreported certain aspects of their behavior with clients out of fear of being identified.

In addition to sample size and methodological limitations, generalizability of study findings is limited by issues related to sample composition such as gender. Previous research indicates that therapist sexual misconduct primarily involves male practitioners who become involved with female clients (Brodsky, 1985; Gartrell et al., 1986; Gechtman, 1989). Although gender composition in this present study closely approximates the gender breakdown of NASW (i.e., a population that is 75% female and 25% male), gender differences could be more fully investigated with a larger male cohort. Constructing a sample for future research composed of equal numbers of male and female social workers, similar to the one used by Gechtman (1989), may provide more accurate estimates of social workers' sexual involvement with clients.

Another limitation related to sample construction is the generalizability of the findings to social workers in practice settings other than private practice. Some studies suggest that private practitioners are most at risk for engaging in unethical behavior with clients (Berkman et al., 2000; Jayaratne et al., 1997) because of the lack of organizational support and oversight in this setting. Independent practice may also allow troubled or impaired professionals to escape notice because of the relative isolation in which they work (Kagel & Giebelhausen, 1994). Including a broader range of practice settings in future research may increase knowledge about the contexts in which worker-client sexual contact occurs.

Implications for Social Work Practice, Education, Policy, and Research

Social work practice with exploited clients. The social work profession is challenged to develop assessment tools and treatment procedures that respond to the needs of exploited clients. Social work education is the proper venue to outline the complicated roles of therapists who are working with clients who have been exploited by previous therapists. The social worker's expertise when treating a previously exploited client is critical to the success of therapy because of the unique issues that must be processed and resolved, in addition to addressing the client's initial presenting problems. Such issues include exploring the client's thoughts and feelings about the relationship with the previous therapist, processing the client's feelings about being exploited by a helping professional, and determining whether to report the client's exploitation to a licensing board.

Social work education. Despite the integration of ethics content into the MSW curriculum and the availability of continuing education seminars on professional ethics, some social workers appear to be confused about appropriate boundaries in a therapist-client relationship. The majority of these respondents were not clear about their obligation to report ethics violations, and they were unsure about provisions in the NASW Code of Ethics that address dual relationships with clients. In a survey of attitudes of social work graduate students, Berkman et al. (2000) found relatively high level of approval of sexual contact between social workers and clients under certain circumstances. These authors concluded that the social work students who comprised this sample did not understand professional values and ethics, the power differential between social worker and client, and the possible harm to clients that such a relationship could cause.

Increasing awareness of unethical behavior is facilitated by open discussions of the problem in practice classes and field settings. As Berkman et al. (2000) cautions, inadequate exploration of worker-client sexual contact in social work education may imply that teachers and supervisors are uncomfortable with this content, or believe that this aspect of ethics training is unimportant. They also warn that inadequate discussion of this topic deprives students of the opportunity to identify and process sexual feelings toward clients, as well as learning how to behave ethically when sexual feelings are present in a therapeutic relationship.

Social Work Policy. The education of stakeholders such as consumers, public officials, and policymakers is a critical step in the prevention of unethical behavior by social workers (Strasburger, Jorgenson, & Sutherland, 1992). Formulating policies in all states to demystify client reporting of unethical behavior by social workers will assist licensing boards in identifying unethical practitioners. Clear procedures that guide social workers who are required to report the unethical behaviors of their colleagues need to be developed by state regulatory boards. Development of a client-rights handbook in all states that explains the

complaint process will make it easier and less threatening for clients to report an unethical social worker.

In an informal survey, the authors contacted all state social work regulatory boards in 2003 to request information on documentation and reporting procedures for ethics violations. A review of information from the responding boards indicated that there is no consistent method of record keeping and reporting of ethics violations among the states. Some states document numbers of complaints by category of violation while others document information only for adjudicated cases. Regulating agencies also vary widely in the amount of information regarding ethics violations that they are willing to provide to researchers. Some posted this information on easily accessible web sites or responded via e-mail. Others required payment before initiating a query of their data base. The development of more consistent data management policies and procedures that allow for education and feedback about these data among state regulatory agencies would facilitate future research on ethics violations.

Requiring social workers to report ethics violations is a regulatory action implemented by many states. However, mandatory reporting raises complex issues of client confidentiality and client self-determination. Clinicians may avoid reporting a colleague's unethical behavior because they lack well-documented evidence about the alleged violation. They may be concerned about derailing the therapeutic process by insisting that the client report previous exploitation. In most jurisdictions, mandatory reporting is the obligation of the social worker, not the client. Although clients are encouraged to report unethical behavior to the social worker's licensing board, they are not required to make these reports.

Social Work Research. The identification of a cohort of clients that reported sexual involvement with a previous social worker during therapy underscores our obligation as a profession to directly address this problem and to develop systematic means of preventing worker-client sexual contact. While it is clear that some social workers in private practice continue to engage in sexual contact with their clients, the current research methodology is inadequate to capture the attitudes and behaviors of this subgroup of social workers. With this being the case, proper education on ethics and on the dynamics and dangers of dual relationships, as well as changes in policy are needed to protect clients from exploitation as a result of sexual relationships with their therapists. Practitioners and educators must not become complacent because state licensing boards prosecute relatively few social workers for the sexual exploitation of clients.

Acknowledgements

We thank Catherine Lemieux, Ph.D., Louisiana State University School of Social Work, for her expertise in the reviewing and editing this manuscript.

References

Berkman, C. S., Turner, S. G., Cooper, M., Polnerow, D., & Swartz, M. (2000). Sexual contact with clients: Assessment of social workers' attitudes and educational preparation. *Social Work, 45* (3), 223-235.

Berliner, A. K. (1989). Misconduct in social work practice. *Social Work, 34*(1), 69.

Bernsen, A., Tabachnick, B. G., & Pope, K. S. (1994). National survey of social workers' sexual attraction to their clients: Results, implications, and comparison to psychologists. *Ethics and Behavior, 4*(4), 369-388.

Brodsky, A. M. (1985). Sex between therapists and clients: Ethical gray areas. *Psychotherapy in Private Practice, 4*(1) 57-62.

Brown, F. (1984). Erotic and pseudoerotic elements in the treatment of male patients by female therapists. *Clinical Social Work Journal, 12*(3), 244-257.

Dawes, C. (1988). *Complaints against respondents: A pilot study*. Paper presented at the 1988 NASW Annual Conference 10/11/88.

Freud, S., & Krug, S. (2002). Beyond the code of ethics, Part I: Complexities of ethical decision making in social work practice. *Families in Society, 83* (5/6), 474-482.

Gabbard. G. O. (Ed.). (1989). *Sexual exploitation in professional relationships.* Washington, DC: American Psychiatric Press.

Gareffa, D. W., & Neff, S. A. (1975). Management of client's seductive behavior. *Smith College Studies in Social Work, 44,* 110-124.

Gartrell, N., Herman, J., Olarte, S., Feldstein, M., & Localio, R. (1986). Psychiatrist-client sexual contact: Results of a national survey. I: Prevalence. *American Journal of Psychiatry, 143*(9), 1126-1131.

Gechtman, L. (1989). Sexual contact between social workers and their clients. In G. O. Gabbard (Ed.), *Sexual exploitation in professional relationships* (27-38). Washington, DC: American Psychiatric Press.

Giovazolias, T., & Davis, P. (2001). How common is sexual attraction towards clients? The experiences of sexual attraction of counseling psychologists toward their clients and its impact on the therapeutic process. *Counseling Psychology Quarterly, 14*(4), 281-287.

Holroyd, J. C., & Brodsky, A. M. (1977). Psychologists' attitudes and practices regarding erotic and nonerotic physical contact with clients. *American Psychologist, 32*(10), 843-849.

Holzman, B. L. (1984). Who's the therapist here? Dynamics underlying therapist-client sexual relations. *Smith College Studies in Social Work, 54*, 204-224.

Hutchinson, S. C. (1991). Sexual contact between therapist and client: A survey of social workers in private practice (Doctoral dissertation, Tulane University, 1990). *Dissertation Abstracts International, 52*, 298.

Jayaratne, S., Croxton, T., & Mattison, D. (1997). Social work professional standards: An exploratory study. *Social Work, 42*(2), 187-199.

Kagel, J. D., & Giebelhausen, P. N. (1994). Dual relationships and professional boundaries. *Social Work, 39*(2), 213-220.

Kardener, S., Fuller, M., & Mensch, I. (1973). A survey of physicians' attitudes and practices regarding erotic and non-erotic contact with clients. *American Journal of Psychiatry, 130,* 1077-1081.

National Association of Social Workers. (1995). Study cites most-reported ethics breaches. *NASW News, 40* (4), 1.

National Association of Social Workers. (1996). Code of ethics. NASW.

Reamer, F. G. (1992). The impaired social worker. *Social Work, 37*(2), 165-170.

Reamer, F. G. (1995). Malpractice claims against social workers: First facts. *Social Work, 40*(5), 595-601.

Rubin, A. & Babbie, E. (1997). *Research methods for social work* (3rd ed.). Pacific Grove, CA: Brooks/Cole.

Shor, J., & Sanville, J. (1974). Erotic provocations and dalliances in psychotherapeutic practice. *Clinical Social Work Journal, 2*, 83-95.

Sloan, L., Edmond, T., Rubin, A., & Doughty, M. (1998). Social workers' knowledge of and experience with sexual exploitation by psychotherapists. *Social Work, 43*(1), 43-53.

Strasburger, L. H., Jorgenson, L. & Sutherland, P. (1992). The prevention of psychotherapist sexual misconduct: Avoiding the slippery slope. *American Journal of Psychotherapy, 46* (4), 544-555.

Strom-Gottfried, K. (1999). Professional boundaries: An analysis of violations by social workers. *Families in Society, 80* (5), 439-449.

Strom-Gottfried, K. (2000). Ensuring ethical practice: An examination of NASW code violations, 1986-97. *Social Work, 45*(3), 251-261.

A COMPARATIVE STUDY OF PRACTITIONERS AND STUDENTS IN THE UNDERSTANDING OF SEXUAL ETHICS

Gloria Duran Aguilar, Florida A&M University; Carol J. Williams, Kean University; Jim Akin, Florida Chapter, National Association of Social Workers

Abstract

Social work practitioners and social work students in one state were surveyed to assess their attitudes about the appropriateness of sexual contact with clients, handling of colleagues who engage in sexual misconduct, and the extent of educational preparation in their programs on sexual ethics. Both groups were found to be critical of sexual contact between social workers and clients. Practitioners were more likely to report incidents to supervisors, licensing boards, NASW, or appropriate authorities. However, students were more likely than practitioners to report having sexual ethics content in their educational training. Results seem to indicate the importance of continued education in this area for social work practitioners and students.

Key Words: Sexual Ethics; Professional Ethics; Social Work Ethics; Social Work Education

I. Introduction

Sexual contact and sexual intimacies between social work practitioners and clients are unethical and unprofessional, yet they continue to occur. In 1993, the NASW Center for Policy and Practice found that 29% of all complaints to NASW between 1982 and 1992 were for violations of sexual activity with clients (Study cites, 1995). More recently, Strom-Gottfried (2000a) found 107 of 894 ethics cases filed with NASW between 1986 and 1997 were for sexual activities violations.

The National Association of Social Workers (1999) Code of Ethics clearly states “Social workers should under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced” (Ethical Standard 1.09 Sexual Relationships). The Code of Ethics further stipulates in other sections that social workers should not provide clinical services to individuals with whom they have had a prior sexual relationship and should not engage in sexual activities with former clients.

But it is not just social workers who prohibit this behavior. The code of ethics for the American Counseling Association, the American Psychological Association, and the American Association for Marriage and Family Therapy all agree that sexual contact before two years after termination is unethical, although NASW does not specify a time period (American Association for Marriage and Family Therapists, 2001; American Counseling Association, 1995; American Psychological Association, 2002). The code of ethics of the American Association of Pastoral Counselors provides explicit and comprehensive directives concerning what constitutes unethical sexual behavior by stating that all forms of sexual behavior with clients are unethical (Haug, 1999). In addition, professional organizations, accreditation agencies, and state licensing boards recommend or mandate that the educational preparation of mental health professionals provide content on ethics (CSWE, 2001; ACA, 1995).

While values and ethics are of concern for social workers, studies have primarily focused on the number and types of complaints filed with NASW. Although the Council on Social Work

Education requires programs to include content on social work values and ethics, there have been limited studies which examine the educational preparation and training of students in this area. In fact, the number of studies which examine sexual ethics is extremely limited in the social work literature. Most of the research reported on sexual misconduct appears to be in other related mental health professions, including mental health counselors, psychologists, psychiatrists, psychotherapists, clergy, and marriage and family therapists. Studies which have focused on sexual ethics among social workers have primarily centered on the number and types of complaints filed with NASW.

This paper reports on an exploratory study that compares social work practitioners and social work students who are members of NASW in one state on their understanding of sexual ethics. More specifically, the study addresses the appropriateness of sexual contact with clients, handling of colleagues who engage in sexual misconduct, respondents' own experience with sexual contact in a therapeutic relationship, and the extent of educational preparation in their programs in sexual ethics. Our study is based on an earlier one that assessed graduate social work students in one program on their attitudes about sexual contact with clients and their perceptions about their training and education in this area (Berkman, Turner, Cooper, Polnerow, and Swartz, 2000).

II. Review of the Literature

Sexual relationships with clients, former clients, students, and supervisees can be one of the most difficult clinical issues for social workers and other mental health professionals. Sexual impropriety has been found to be among the most common of all malpractice claims filed against social workers (Reamer, 1995; Study cites, 1995; Strom-Gottfried, 2000a). In a study of 826 NASW members in Michigan, approximately six percent of respondents considered dating a former client appropriate and approximately five percent saw nothing wrong with having sex with a former client (Jayaratne, Croxton, & Mattison, 1997). That study also found one percent of respondents acknowledged having sex with a former client. Their findings also found that men were more likely to approve of feelings of sexual attraction toward a client.

Among counselors, sexual misconduct is the leading cause of malpractice suits (Corey, Corey, & Callahan, 1993) and during 2001-2002, the ACA Ethics Committee found that the counseling relationship was the second most frequently mentioned category of informal inquiry concerns (Sanders & Freeman, 2003). In a survey of state licensing boards of complaints made against credentialed counselors, results indicated that 7% of complaints were made for having sexual relationships with a client (Neukrug, Milliken, & Walden, 2001). In an effort to provide counselors and licensing boards a broader view of options, Avery and Gressard (2000) examined state regulations for licensure or certification of counselors regarding sexual misconduct. Of the 41 states and the District of Columbia which license or certify counselors, they found that only 62% of states have proscriptions against sexual misconduct with former clients in their statutes, rules, or regulations for counselors and usually identify ACA standards as their benchmark.

In a national random sample of members of the American Mental Health Counselors Association and the mental health division of NASW, Barnett-Queen and Larrabee (2000) found that members of the American Mental Health Counselors Association reported twice the frequency of sexual contact intimacy as did members of NASW. They also found that female students in both AMHCA and NASW were at far higher risk of sexual involvement with educators than males.

Despite the existence of a two year time frame prohibiting sexual contact with clients, studies of psychologists and psychiatrists have found that as many as 12 percent have had sexual contact with current clients (Bouhoutsos, Holroyd, Lerman, Forer, & Greenberg, 1983; Gartrell, Herman, Olarte, Feldstein, & Localio, 1986; Herman, 1987; Rawwas, Strutton, & Pelton, 1994). Borys and Pope (1989) found that 3.9 percent of psychiatrists, psychologists, and social workers in their study had sex with a former client, with no significant differences among the professions.

As our society becomes more secular, complaints against clergy have also been reported. In 1984, Blackmon and Hart (1990) found that 38% of clergy of four major denominations admitted that they engaged in inappropriate sexual behavior. Ten years later, a report by the Maryland state regulatory board indicated that 40% of the psychologists accused of sexual misconduct were also ordained ministers (Case, McMinn, & Meeks, 1997).

Sexual contact between educators and graduate students in mental health programs is another area that has received attention in the literature. Pope, Levensen, and Schover (1979) found that 25 percent of female clinical psychologists had experienced sexual contact with their psychology educators. They also found that thirteen percent of the educators surveyed engaged in relationships with students and supervisors, yet only two percent believed that these relationships could be beneficial. In a national study, Miller and Larrabee (1995) found that six percent of female members of the Association for Counselor Education and Supervision reported sexual contact during their educational training. In a study of male counselors who were members of the American Counseling Association, 4% reported having had sexual contact with their teacher, counselor, or supervisor while a student, client, or student under supervision (Thoreson, Shaughnessy, Helmer, & Cook, 1993).

Examining ethics cases filed with NASW from 1986 to 1998 involving social work students, faculty, or field instructors, Strom-Gottfried (2000b) found that approximately ten percent included boundary violations of sexual and dual relationships. In a national study of 87 social work faculty, Congress (2001) found that while an overwhelming majority (98.9%) believed that a sexual relationship with current students was unethical, only 29.9% believed that sexual relationships with former students was unethical. In addition, her study found that only 46% of those surveyed thought it was unethical to become the therapist of a former student.

III. Present Study

Although Florida only provides licensure for clinical social workers, its statutes provide disciplinary guidelines for sexual misconduct that apply to social workers, mental health counselors, and marriage and family therapists (Chapter 491, Florida Statutes, 2004). However, it is expected that all social work students and practitioners, especially NASW members, will abide by the NASW Code of Ethics. The purpose of this study was to assess the level of understanding of social work practitioners and students in the area of sexual ethics. How do these two groups assess unethical behavior as it relates to sexual contact with clients? What action would they take if they became aware of a colleague who engaged in sexual contact with clients? How much content and in what courses did these two groups receive on sexual ethics in their programs? Had they themselves experienced sexual contact in a therapeutic relationship?

IV. Methodology

The purpose of this study was to describe situations and events. Consequently, descriptive research was used to study the attitudes of MSW practitioners and BSW students (Rubin and Babbie, 2005). The survey was sanctioned by the Florida Chapter of NASW.

4.1. Sample

A systematic sample of 400 MSW full-members and 400 BSW student members of the Florida Chapter of NASW was utilized for this study. At the time of the study, there were 4445 NASW members in the Chapter: 3592 (80.8%) MSW full members and 853 (19.2%) BSW student members. Surveys were sent to 400 members from each group. A sampling interval of 9 was used for the full members and a sampling interval of 2 was used for the student members. A self-addressed, stamped envelope was sent with each survey. Because the survey was anonymous, a second mailing was sent to the entire sample six weeks after the initial mailing. An overall return rate of approximately 35% (N=280) was achieved.

Of those responding to the study, 77 (27.5%) were students, 195 (69.6%) were practitioners, and eight (2.9%) did not indicate their practitioner/student status. Eighty-seven percent were female, with a median age of 45 years. The overwhelming majority were Caucasian (78%), followed by Hispanics (10%), African American (7%), with the remaining 5% being of other groups. On average, the respondents had 14 years of post-degree practice experience. To determine whether the sample was demographically representative of the population, these characteristics were compared to the profile of NASW members in the 2003 NASW membership survey. The characteristics of the sample closely resemble the characteristics of the general membership as reported in the membership survey (NASW, 2003).

4.2. Instrument

The instrument used for this study was based on the questionnaire used by Berkman, Turner, Cooper, Polnerow, and Swartz (2000) in their study of MSW students. The survey was divided into five sections: Ethical Behavior, Personal Experience, Educational Preparation, Educational Information, and Demographic Information.

"Ethical Behavior" presented respondents with a list of eleven conditions or mitigating circumstances in which sexual contact might be considered acceptable by the respondent. These eleven conditions were preceded by the statement: "Sexual contact with a client is acceptable when:" To assess how social workers would respond to sexual misconduct of a colleague, respondents were provided a list of seven responses preceded by "If I knew of a colleague who was having sexual contact with a client". Using a Likert scale, respondents were to indicate whether they strongly agreed (response = 1), agreed (response = 2), disagreed (response = 3), or strongly disagreed (response =4) with each of the conditions of ethical behavior and reactions toward their colleague.

"Personal experience" was assessed by asking respondents if they had engaged in sexual involvement with a physician, therapist, social worker, social work professor, field instructor, professor in another discipline, or other mental health professional during or after the course of the professional relationship. In addition, respondents were asked if they had ever been in therapy.

"Educational preparation" was measured by asking respondents to indicate if content on sexual ethics had been covered "significantly", "moderately", "slightly", or "not at all" in their social work education. Courses listed in this section included: Human Behavior and the Social Environment, Social Work Practice with Individuals, Social Work Practice with Families, Social Work Practice with Groups, Social Work Research, Psychopathology, Interviewing, Field Placement, Field Seminar, and Other. In addition, respondents were asked to indicate the level to which they were trained to recognize their own sexual feelings toward a client, to cope with the issue of sexual contact with clients, and to what extent their field placement had prepared them to cope with sexual contact initiated by a client.

"Educational Information" included questions as to level of social work education, year of degree, the state in which they had received their social work degree, and the number of years of post-social work degree practice experience. Sociodemographic characteristics included gender, age, and racial/ethnic identity.

V. Results

Of the 280 respondents, only 42 (15%) were males. The average age of respondents was 43 years, and approximately half of the respondents in the sample (48.9%) were 45 years old or younger. While 84.4% of students were in this age group, only 37.6% of practitioners were under the age of 45.

The sample as a whole was 81.7% Caucasian and 18.3% composed of other ethnic groups. However, a higher proportion of students were members of minority groups (32.9%) than practitioners (12.7%).

Eighty (43.2%) of the practitioners reported that they had ten or less years of post-social work degree practice, while none of the students reported eleven or more years of post-social work degree practice. The average post-degree practice experience for the respondents was 14 years.

5.1. Sexual Conduct Considered Inappropriate

Both students and practitioners who responded to the survey agreed that sexual contact with clients was unacceptable in each of the eleven scenarios presented in the survey. Over 95% of respondents in each group found sexual interactions unacceptable when:

- The clinical relationship has been terminated and lasted only one year (99.6%);
- The social worker engages in sexual contact in order to help the client gain a sense of self-worth because the client felt undesirable (99.6%);
- The clinical relationship was terminated less than one year ago (98.9%);
- The sexual contact only happened once (98.9%);
- The social worker is in love with the client (98.9%);
- The clinical relationship has been terminated and lasted less than two sessions (98.6%);

- The social worker and client are in love with each other (97.8%);
- The social worker and the client are mutually consenting (97.8%) and;
- The social worker's role was to provide intensive psychotherapy (97.4%)

Ninety-one percent of respondents (88.3% for students and 92.6% for practitioners) found sexual contact between social worker and client unacceptable when "the social worker's role was to assist the client with concrete services only."

The only question for which practitioners and students differed significantly ($X^2 = 5.501$; df = 1; $p<.05$) was the question which stated that "the clinical relationship was terminated more than five years ago". For this scenario practitioners were much less likely than students to accept the scenario of having a sexual relationship with a former client. Only 69.3% of students compared to 82.4% of practitioners found sexual behavior unacceptable. Some of this difference may be related to age and maturity. While 84.4% of students were under the age of 45, only 37.6% of practitioners were in this age category ($X^2 = 49.057$; df = 1; $p<.001$).

5.2. Response to Colleague Having Sexual Contact with a Client

Respondents were asked to indicate the action they would take if a colleague had sexual contact with a client. Eighty-nine percent of respondents indicated that they would speak with a colleague if they became aware of such a situation. Over three-fourths (76.2%) would report such a situation to the colleague's supervisor. Lower numbers of respondents would report their colleague to the licensing board (65.7%), NASW (50.4%), or proper authorities (60.2%). Fifty-two percent would consult with another colleague about what should be done.

Students and practitioners differed in how they would respond to an incidence of sexual contact between a client and a colleague. There was a statistically significant difference between the two groups on several responses to this situation. Practitioners were much more likely than students to indicate willingness to report such incidents to a supervisor ($X^2 = 8.889$; df = 1; $p<.01$), the licensing board ($X^2 = 32.461$; df = 1; $p<.001$), NASW ($X^2 = 6.369$; df = 1; $p<.01$), or to the proper authorities ($X^2 = 9.109$; df = 1; $p<.01$). Students were much more likely to indicate that they "would not do anything" ($X^2 = 8.716$; df = 1; $p<.01$). These findings are further described in Table 1.

Table 1. Percentage of Respondents Agreeing to Take Specific Actions Regarding a Colleague Having Sexual Contact with a Client

If I knew of a colleague who was having sexual contact with a client:	*n*	Students	Practitioners
I would speak with my colleague about his/her behavior.	261	92.1%	89.2%

I would speak to another colleague about what I should do.	259	43.4%	55.7%
I would report my colleague to his/her supervisor.	254*	63.5%	81.1%
I would report my colleague to the licensing board.	260**	39.2%	76.3%
I would report my colleague to NASW.	255***	37.8%	55.2%
I would report my colleague to the proper authorities.	254****	46.1%	66.3%
I would not do anything	259*****	11.8%	2.7%

Note: The *n* differs due to missing data

* X^2 = 8.889; df = 1; p<.01; **X^2 = 32.461; df = 1; p<.001; *** X^2 = 6.369; df = 1; p<.01; **** X^2 = 9.109; df = 1; p<.01; ***** X^2 = 8.716; df = 1; p<.01

5.3. Sexual Involvement Reported by Respondents

Respondents were asked to indicate whether they had ever been in therapy and whether they had engaged in sexual involvement during or after the course of a professional relationship. Forty-seven students (61.8%) and 149 practitioners (77.6%) reported that they had received therapy at some point in their lives. This difference was found to be statistically significant (X^2 = 6.885; df = 1; p <.01).

Table 2 shows the percentage of students and practitioners who reported experiencing sexual involvement during or after the course of a professional relationship with the professional. The largest percentage of respondents reported this type of behavior with other professors (3.6%), physicians (2.5%), therapists (2.2%), social workers (1.4%), social work professors (0.7%), and field instructors (1.4%). However, 5.2% of practitioners reported sexual involvement with “other mental health professionals”. For this category of questions, no statistical significance was found between students and practitioners.

Table 2. Percentage of Respondents Indicating Sexual Involvement in a Professional Relationship

Engaged in sexual involvement during or after the course of the professional relationship with:	*n*	Students	Practitioners
Physician	267	1.3%	3.1%
Therapist	268	1.3%	2.6%
Social Worker	268	0.0%	2.1%
Social Work Professor	268	0.0%	1.0%
Field Instructor	268	0.0%	2.1%
Professor in Another Discipline	268	3.9%	3.6%
Other Mental Health Professional	268	0.0%	5.2%

Note: The *n* differs due to missing data.

5.4. Social Work Education on Sexual Ethics

Respondents were asked to indicate whether they had received training in sexual ethics as part of their social work education, and if so, in which courses. They were most likely to report receiving such training in practice courses (67.6% for courses in practice with individuals, 52.0% for courses in family practice, and 48.2% for courses in group practice). Other courses where this content was often covered included Human Behavior and the Social Environment (49.0%), psychopathology (37.1%), interviewing courses (48.2%), field placement (51.4%), field seminar (44.3%), and "other" courses (51.2%). Sexual ethics were least likely to be covered in research (25.9%). Students were more likely to report learning about sexual ethics than practitioners in several categories of classes, including practice classes and research. As noted in Table 3, these differences were statistically significant.

Table 3. Social Work Education on Sexual Ethics

My social work program covered sexual ethics moderately/significantly in:	n	Students	Practitioners
Human Behavior and the Social Environment	256	57.3%	45.9%
Social Work Practice with Individuals	259*	87.7%	60.2%
Social Work Practice with Families	253**	66.2%	46.7%
Social Work Practice with Groups	250***	65.7%	41.1%
Social Work Research	257****	36.5%	21.3%
Psychopathology	227	28.8%	39.4%
Interviewing	249	58.2%	44.5%
Field Placement	243	56.9%	49.7%
Field Seminar	234	55.8%	41.2%
Other	84	64.7%	49.3%

Note: The n differs due to missing data.

* X^2 =18.148; df = 1; p<.001; ** X^2 = 7.778; df = 1; p<.01; *** X^2 = 12.223; df = 1; p<.001; **** X^2 = 6.358; df = 1; p<.05

To assess the amount and type of content received on sexual ethics in their social work education, respondents were asked three questions. There were 139 respondents (52.9%)

of respondents who indicated that they had been trained to recognize their own sexual feelings toward a client. Approximately 62% of respondents indicated that they had received appropriate training to cope with the issue of sexual contact with clients. However, less than half (46.8%) reported that they were prepared by their field placements to cope with sexual contact initiated by a client. Detailed findings are reported in Table 4.

Table 4. Percentage of Respondents Indicating Moderate to Significant Preparation in Sexual Ethics

Preparation in Sexual Ethics	*n*	Students	Practitioners
I was trained to recognize my own sexual feelings toward a client	261	49.3%	54.3%
I had appropriate training to cope with the issue of sexual contact with clients	262	59.2%	62.3%
I was prepared by my field placement to cope with sexual contact initiated by a client	249	52.7%	45.0%

Note: The n differs due to missing data.

6. Discussion

The purpose of this study was to assess the level of understanding of sexual ethics of the NASW Code of Ethics by social work practitioners and social work student members of NASW in one state. As stated earlier, this study is based on a previous one conducted on social work students in their final semester of an MSW program (Berkman, et al., 2000). That study found relatively high levels of approval for sexual contact between social workers and clients, especially when the clinical relationship had been terminated for more than five years (31.2%), when clients had only received concrete services (17.5%), and if clients had only been seen twice and the clinical relationship had been terminated (17.3%). On the other hand, most students (88%) stated that they would speak to a colleague who was having sexual contact with a client, although only 56% would report the colleague to the appropriate authorities.

Our study found that the overwhelming number of both practitioners and students disapproved of sexual contact with clients in any situation. However, practitioners were

much more likely than students to find such behavior unacceptable. When the clinical relationship had been terminated for more than five years, 69% of students and 82% of practitioners found sexual behavior unacceptable. There were also differences between students and practitioners in terms of actions they reported that they would take. While 89% of respondents indicated willingness to speak to a colleague who was having sexual conduct with a client, there were major differences in the percentages of students and practitioners who indicated willingness to take action beyond this: 81.1% of practitioners versus 63.5 of students would report the colleague to a supervisor; 76.3% of practitioners versus 39.2% of students would report the incident to a licensing board 55.2% of practitioners versus 37.8% of students would report the colleague to proper authorities; 66.3% of practitioners versus 46.1% of students would report the colleague to NASW. Finally, 11.8% of practitioners versus 2.7% of students indicate that they "would not do anything."

In terms of preparation to deal with the issue of sexual ethics, students were much more likely than practitioners to report that they had received educational preparation on the topic in their practice and research classes: 87.7% of students versus 60.2% or practitioners reported studying the issue of sexual ethics in courses on practice with individuals; 66.2% of students versus 46.7% of practitioners had studied the issue of sexual ethics in courses on family practice; 65.7% of students versus 41.1% of students had studied the issue in courses on group practice; and 36.5% of students versus 21.3% of practitioners had studied this issue in research classes.

We find these differences between students and practitioners disturbing. What factors account for students having more preparation but less willingness to take action? Is this pattern specific to the state where this study was conducted, or would the patterns documented in this study be replicated if the study were conducted in other geographic areas? Future studies in other parts of the country are required to address this issue.

The differences between students and practitioners may imply confusion in understanding the NASW Code of Ethics as it relates to sexual conduct. The NASW Code of Ethics is very clear that this type of behavior is not permitted under any circumstances. What contributing factors might account for the fact that students report more preparation to handle issues of sexual ethics but less willingness to take steps to address the issue? One important difference between the students and practitioners in the study was age. While 84.4% of students were 45 or younger, only 37.6% of practitioners were in this age category. Although the difference was not quite statistically significant, none of the students versus 43.2% of the practitioners in the study reported ten or more years of post-social work education practice experience. One might hypothesize that concern with the issue of sexual ethics grows as social workers age and mature professionally. In pragmatic terms, seasoned social workers are much more likely to be aware of the ramifications of sexual behavior with clients in terms of liability and licensure issues, particularly if they are engaged in clinical practice. One might hypothesize that students and practitioners have different reasons for taking action in issue of sexual misconduct. A future study might ask respondents to indicate the contributing factors to their decision to report a colleague who was engaged in sexual behavior with a client. One might hypothesize that practitioners would be more likely than students to indicate both ethical concerns and pragmatic concerns with issues such as licensure, image of the profession, and increase in the cost of liability insurance.

This study further reinforces the importance of required education focused on how ethics are applied to one's own day to day practice, as well as the steps one is required to take to

address sexual misconduct of colleagues. This responsibility falls to the Schools and Departments of Social Work, Social Work Licensing Boards, and NASW to advocate for course work and required continuing education for ethical studies and training for all levels of social workers. A successful program should provide a safe environment in which honest and forthright discussions of sexuality, sexual attraction, sexual socialization issues, sexual exploitation, and other relevant topics may be explored to sensitize social workers to ethical issues so that they may be able to make ethical judgments.

The study also raises some interesting questions for future consideration. How can we more effectively teach future and current social workers to apply ethical standards to real life situations? What factors can we enlist as social work educators and practitioners to continually raise and monitor our standards of care? We owe it to our clients.

References

American Association for Marriage and Family Therapy (2001). AAMFT code of ethics. http://www.aamft.org/resources/LRMPlan/Ethics/ethicscode2001.asp Retrieved 3/18/2004.

American Counseling Association (1995). American Counseling Association code of ethics. http://www.aca.convio.net Retrieved 3/18/2004.

American Psychological Association (2002). American Psychological Association code of ethics. http://www.apa.org/ethics/code2002 Retrieved 3/18/2004.

Avery, L. D. & Gressard, C. F. (2000). Counseling regulations regarding sexual misconduct: A comparison across states. *Counseling and Values, 45(1):* 67-77.

Barnett-Queen, T. & Larrabee, M. J. (2000). Sexually oriented relationships between educators and students in mental health education programs. *Journal of Mental Health Counseling*, *22*(1): 68-84.

Berkman, C. S., Turner, S. G., Cooper, M., Polnerow, D., & Swartz, M. (2000). Sexual contact with clients: Assessment of social workers' attitudes and educational preparation. *Social Work*, *45*, 223-235.

Blackmon, R. A. & Hart, A. D. (1990). Personal growth for clergy. In R. A. Hunt, J. E. Hinkle, Jr. & H. Newton Maloney (Eds.). *Clergy assessment and career development* (pp.36-42). Nashville, TN: Abingdon Press. As cited in Haug, I. E. (1999). Boundaries and the use and misuse of power and authority: Ethical complexities for clergy psychotherapists. *Journal of Counseling and Development, 77*, 411-417.

Borys, D. S. & Pope, K. S. (1989). Dual relationships between therapists and clients: A national study of psychologists, psychiatrists, and social workers. *Professional Psychology: Research and Practice, 20*, 283-293.

Bouhoutsos, J., Holroyd, J., Lerman, H., Forer, B., & Greenberg, M. (1983). Sexual intimacy between psychotherapists and patients. *Professional Psychology: Research and Practice, 14,* 185-196.

Case, P. W., McMinn, M. R. & Rhoads, M. K. (1997). Sexual attraction and religious therapists: Survey findings and implications. *Counseling and Values, 41*, 141-154.

Chapter 491, Florida Statutes (2004). http://www.flsenate.gov/statutes/index.cfm Retrieved 6/30/04.

Congress, E. (2001). Dual relationships in social work education: Report on a national survey. *Journal of Social Work Education, 37,* 255-266.

Corey, G., Corey, M. S., & Callahan, P. (1993). *Issues and ethics in the helping professions* (4th edition). Pacific Groves, CA: Brooks/Cole.

Council on Social Work Education (2001). *Educational Policy and Accreditation Standards.* Alexandria, VA: Council on Social Work Education.

Gartrell, N., Herman, J., Olarte, S., Feldstein, M., & Localio, R. (1986). Psychiatrist-patient sexual contact: Results of a national survey. *American Journal of Psychiatry, 143*, 1126-1131.

Haug, I. E. (1999). Boundaries and the use and misuse of power and authority: Ethical complexities for clergy psychotherapists. *Journal of Counseling and Development, 77,* 411-417.

Herman, J. L. (1987). Psychiatrist-patient sexual contact: Results of a national survey of psychiatrists' attitudes. *American Journal of Psychiatry, 114*, 164-169.

Jayaratne, S., Croxton, T., & Mattison, D. (1997). Social work professional standards: An exploratory study. *Social Work, 42,*187-199.

Miller, G. M. & Larrabee, M. J. (1995). Sexual intimacy in counselor education and supervision: A national survey. *Counselor Education and Supervision*, *35*, 332-343.

National Association of Social Workers (1999). *Code of ethics of the National Association of Social Workers.* Washington, DC: NASW.

National Association of Social Workers (2003). *PRN Datagram, Demographics, PRN 2:2.* Washington, DC: NASW.

Neukrug, E., Milliken, T., & Walden, S. (2001). Ethical complaints made against credentialed counselors: An updated survey of state licensing boards. *Counselor Education and Supervision, 41(1):* 57-70.

Pope, K. S., Levenson, H. & Schover, L. (1979). Sexual intimacy in psychology training: Results and implications of a national survey. *American Psychologist, 34,* 682-689.

Rawways, M. Y., Strutton, D. & Pelton, L. (1994). Ethical attitudes of mental health practitioners: Balancing therapeutic practices and treatment. *Journal of Business Ethics, 13 (8):* 597-608.

Reamer, F. G. (1995). Malpractice claims against social workers: First facts. *Social Work*, *40*, 595-601.

Rubin and Babbie (2005). *Research Methods for Social Work*. Belmont, CA: Brooks/Cole.

Sanders, J. L. & Freeman, L. T. (2003). Report of the ACA ethics committee: 2001-2002. *Journal of Counseling and Development, 81,* 251-254.

Strom-Gottfried, K. (2000a). Ensuring ethical practice: An examination of NASW code violations, 1986-97. *Social Work*, *45,* 251-261.

Strom-Gottfried, K. (2000b). Ethical vulnerability in social work education: An analysis of NASW complaints. *Journal of Social Work Education, 36,* 241-252.

Study cites most reported ethics breaches (1995, April). *NASW News*, p. 4

Thoreson, R. W., Shaughnessy, P., Helmer, P. & Cook, S. (1993). Sexual contact during and after the professional relationship: Attitudes and practices of male counselors. *Journal of Counseling and Development, 71*, 429-434.

SOCIAL WORKERS AND THE WITNESS ROLE: ETHICS, LAWS, AND ROLES

Susan Sarnoff, MSW, DSW, Assistant Professor, Ohio University, Department of Social Work, Morton Hall 522, Athens, Ohio 45701, 740.593.1301/telephone, 740.593.1301/fax, sarnoff@ohio.edu

Abstract

Social workers have increasingly gained acceptance as expert witnesses over the past two decades, although they have long informed the court about cases in which they were involved. To serve their clients and communities effectively, social workers must keep abreast of the often changing laws and ethics of the witness role. This article clarifies the differences among the various witnessing roles that social workers assume, explores the ethical and legal requirements for performing those roles, and discusses recent changes in standards of evidence accepted at the federal level.

Key Words: testimony, courts, experts, ethics, social work law

Introduction

Social workers have a long history of providing testimony in court, particularly in Family Court proceedings. Gothard (1989) noted that prior to 1980, few courts accepted expert testimony by social workers, and when they did, it was almost always to address child protection or custody issues. This has changed in the past two decades (NASW, 1998), but the change has brought liability risks for social workers who claim expertise inappropriately or who fail to observe either the law or their ethical obligations to clients. This paper will differentiate among the various witnessing roles that can be held by social workers and suggest areas of the law and ethics with which social workers should be familiar in order to maximize their effectiveness on the witness stand and avoid the risk of malpractice.

Legal Status of Social Workers as Experts

Prior to 1996, the states differed vastly as to whether, and under what circumstances, social workers were granted the right to act as expert witnesses (Gothard, 1989). In 1996 the U. S. Supreme Court, in *Jaffe v. Redmond*, granted social workers parity with other mental health professionals, effectively permitting them to act as experts in court. *Jaffe v. Redmond* further stated that, because the mental health professions are more alike than different, the highest practice standards adopted by any one apply to all (Jaffee v. Redmond, 1996; NASW, 1998).

State courts do not have to comply with federal rulings due to jurisdictional differences and states' rights. If they do not, however, decisions can be reversed on appeal to federal courts. Most states had accepted social workers as experts before the federal courts did. Yet, because *Jaffe v. Redmond* increased the grounds for, and therefore the likelihood of,

appeals to federal courts, most courts now consider social worker expert witnesses on case by case bases, rather than rejecting them outright based upon their professional status alone. As a result, social workers have increasingly testified in a broad variety of cases over the past two decades, including not only child welfare (Gyurci, 1989), but mitigation in capital sentencing (Andrews 1991), victimization and trauma (Gothard, 1989; NASW, 1998; Schultz, 1990), alcoholism (van Wormer, 1988), forensics, commitment hearings, education (Pollock, 2003b), and myriad other issues.

By gaining parity with other mental health professionals, social workers also are by analogy held to the same standards as other mental health professionals, which the courts have interpreted as the highest standard of any mental health profession (NASW, 1998). That means, for instance, that because psychologists but not social workers have developed guidelines for forensic investigations and testimony (Annon, 1996), social workers who conduct forensic investigations or testify about them are held to the psychologists' standards.

Witnessing Roles

If social workers (and others) are unclear about the role of social workers as expert witnesses, one reason is that social workers have traditionally provided accounts of home visits, observation of injuries and other similar testimony in court. This is not expert testimony, but the same kind of testimony that any lay person can provide to the court in the role of fact witness (more commonly, but less accurately, referred to as an eyewitness).

One criterion that sets expert testimony apart from fact witness testimony is that only expert witnesses can draw conclusions, offer opinions based on hypothetical circumstances or interpret factual evidence (Barsky & Gould, 2002; Schroeder, 1995). Another is that experts always appear in court voluntarily, while a fact witness can be subpoenaed and compelled to offer testimony. In addition, experts charge fees for court appearances, while fact witnesses are obligated to testify–as professionals and as citizens (Barker & Branson, 2000).

A particularly significant difference is that each time professionals testify as experts, they must undergo a *voir dire* examination to ensure that their expertise matches the facts in need of expert interpretation. However, it is up to the judge in the case to determine whether a particular expert passes a given *voir dire*. The judge's determination often is affected by the opposing attorneys' arguments for and against the need for expertise in the case, the match between the needs of the case and the background of the expert and the judge's attitudes and experiences with experts (Barsky & Gould, 2002; Madden, 1998).

Treating Therapists as Experts

A confusing aspect of expert testimony is that some courts accept treating therapists as experts in cases involving their own clients (Linhorst & Turner, 1999; Madden, 1998). Therapy is based on relationship; thus any therapist who has treated an individual for enough time to testify may be too biased to act as an expert in that patient's case (Strasburger, Gutheil & Brodsky, 1997). Furthermore, few treating therapists have the skills or training required of court experts, which include understanding the expert role, understanding how that role differs depending upon whose behalf the expert is testifying,

and most important, having the expertise to be fully knowledgeable about the research in the area in which testimony is being offered.

Miller (1990) considers this separation of treating therapist and expert witness to be unworkable and inadvisable, given that many mental health professionals do not hold roles that are purely therapeutic. He cites workers in public inpatient facilities who offer limited confidentiality and who are accountable to the public rather than to their clients alone, clients dealing with extrapsychic problems who expect workers to influence systems impinging on their functioning and the limited services sometimes afforded by professionals due to managed care.

However, when workers perform the roles of both treater and expert in the same case they are sometimes referred to as "sanitized" expert witnesses—and why does anything need to be sanitized unless it is essentially dirty? This is more than a semantic, or even an ethical, characterization. Treating therapists who act as "sanitized" expert witnesses expose their clients to the likelihood of mistrials or appeals based upon their dual roles (Mason, 1992), due to their inherent incompatibility (Strasburger, Gutheil & Brodsky, 1997); and expose themselves to charges of ethics violations (Appelbaum, 1997). For this reason, Stone (1983) suggests that a potential expert should withdraw from that role the moment that an evaluation crosses the line into a therapeutic encounter. Similarly, therapists should, even if qualified, never provide expert testimony about a client they treated in the past.

Although the American Psychological Association permits its members to perform both roles if they clarify role expectations, the American Psychology-Law Society, the professional subgroup for forensic experts, considers performing both roles to present a professional conflict of interest, while the American Academy of Psychiatry and Law, the professional subgroup for forensic psychiatrists, opposes the practice even more vehemently (Strasburger, Gutheil & Brodsky, 1997). Similarly, the National Association of Social Workers does not address this issue specifically, but considers unavoidable dual relationships of any kind to be a violation of its *Code of Ethics* (NASW, 1996). Serving as both a treating therapist and an expert in the same case, then, clearly violates the *NASW Code*. In addition, because *Jaffee v. Redmond* (1996) holds all mental health professionals to the highest standard of*any*, it appears that social workers would be wise to avoid dual relationships as witnesses in court (Weinstock & Garrick, 1983). For instance, in one case, a mental health professional who originally acted as a fact witness but was pressured to testify as an expert, was later successfully sued for negligence for failing to carry out the investigatory tasks required of an expert (*Althaus v. Cohen & WPIC*, 1992).

The Ethics of Client Identification in Court Testimony

The law permits either party in a civil or criminal matter, or the court itself, to retain expert witnesses. Regardless of who hires the expert, in custody and child welfare cases the best interests of the child always predominate (Madden, 1998). That is to say that in such cases, no matter who selects the expert or pays the expert's fee, professional ethics dictate that the expert must always work on behalf of the child.

It is vital, particularly in such cases, that social workers make these facts clear to their clients and others that they interview in the course of evaluation. Such actions are dictated by the *Code of Ethics'* mandates in regard to client confidentiality and informed consent. It is best, in fact, to provide clients with a written document that both parties sign, which provides information about the social worker's role in evaluation and testimony, and the limits to privileged communication in these cases (Houston-Vega, Nuehring & Daguio,

1997). Courts recognize that mental health professionals conducting court-ordered evaluations are not subject to privilege rules (Pollack, 2003a; State v. Bush, 1994). However, mental health professionals can be held liable for failing to properly inform clients of the limits of confidentiality in such cases. In fact, a psychologist recently lost an appeal in New Jersey in which she violated privilege in response to a court order, because she had neither obtained the client's permission to divulge information nor forced the court to compel her testimony (Ackermann, 1999).

The Ethics of Responding to a Subpoena

NASW (1997a) anticipated such concerns when it issued guidelines on social worker response to subpoenas. The directive, *Social Workers and Subpoenas*, notes that social workers must respond to subpoenas but that they should try to obtain client permission before releasing data, and unless they receive permission, should file legal objections before making privileged information available to the court. This mitigates between social workers' obligations to maintain client confidentiality, provide for informed consent, and comply with the law.

There is no clear standard regarding when or under what circumstances a court will require a social worker to waive privilege. *Jaffe v. Redmond* upheld social worker privilege in a murder case, although violent crimes are among the more frequent circumstances in which privilege is waived. On the other hand, in *Polotzola v. Missouri Pacific Railroad* the court found that privilege could not be maintained if a client sought to claim damages for emotional suffering (Pollack, 2003a; Polotzola v. Missouri Pacific Railroad, 1992), presumably because mental health records were the best evidence to support the client's claim.

Professional ethics and most state licensing laws, however, require that social workers resist releasing information unless clients waive privilege or until a court forces them to do otherwise after all legal forms of resistance have been exercized (Shroeder, 1995). In fact, this is the only way to avoid the possibility of malpractice charges. Even if a court requires that privileged information be divulged, social workers can request *in camera* inspection of records (review by the judge in chambers) to ensure that the information contained in them is necessary to the case, as established in *Commonwealth of Massachusetts v. Bishop* (1988); Pollack, 1997). Furthermore, social workers need only to respond to specific questions about information contained in their records, not provide the entire record to the court (Kagle, 1991).

The History of Legal Standards for Experts

Experts have been used in law since the fourteenth century (Hand, 1901). However, until the 20th Century, courts did not impose greater standards on expert testimony than on that of other witnesses (Weinstein, 1986). Then in 1923, federal courts introduced the *Frye* test for the admissibility of evidence. The *Frye* test used a two-step approach, requiring judges to first identify the scientific field of the testimony, then to determine that the principle to be introduced into evidence was generally accepted by scientists in the field (Puzniak, 2000), to ensure that given experts' theories met general acceptance within their disciplines (Hjelt, 2000). *Frye* was the subject of sporadic criticism over its seventy-year life span, as being unduly restrictive of newly-developed knowledge (Locke, 1996).

In 1993, the U. S. Supreme Court altered its standard of evidence. The new *Daubert* rule, which replaced *Frye,* ostensibly determined admissibility based upon whether the underlying

reasoning and methodology of the testimony is scientifically valid and can properly be applied to the facts at issue. To make these determinations, the Court suggested four general, nonexclusive factors:

1.) Whether the theory can be (or has been) tested.

2.) Whether it has been subjected to peer review and publication.

3.) Whether it has a known or potential error rate.

4.) Whether it has gained wide acceptance within the relevant scientific community (Locke, 1996).

Courts varied in how they interpreted *Daubert*. Some allowed expert testimony and scientific evidence without strict adherence to the criteria, and were criticized for promoting "expert-shopping," litigation-based research, and jury verdicts based on unreliable evidence (Locke, 1996). *Daubert* required that judges become more involved in assessing the reliability of experts' credentials and scientific theories, but not all judges were qualified to do this. In fact, few judges knew enough about the mental health professions to be able to evaluate expertise effectively. For instance, some judges assumed that the fact that mental health professionals have doctoral degrees ensures that they understand and have conducted independent research. However, fewer than 3% of the nation's colleges and universities are considered research universities, and more than half of the research and development funds in higher education are allocated to only forty institutions; although nearly 500 institutions offer Ph.D. degrees, and faculty members increasingly define a broad range of scholarly work as research (Straus, 1997).

On the other hand, some judges became extremely conscientious in response to *Daubert*. In one case, the judge hired his own experts; but in many other cases, judges simply refused to allow expert witnesses to testify (Schmitt, 1997). The Supreme Court supported such reticence, adding in an opinion to *Daubert* that, "A court may conclude that there is simply too great an analytic gap between the data and the opinion offered," according to Chief Justice William Rehnquist (Murray, 1998, 41).

In response, the American Association for the Advancement of Science is experimenting with providing the courts with candidates qualified to serve as neutral experts. The experts on this list represent science rather than any specific plaintiff or defendant. They are available to judges trying complex cases involving any form of scientific knowledge (Goodman, 1998).

Given the temporal proximity of *Daubert* and *Jaffe v. Redmond*, it is not surprising that many of the cases that created the most controversy during the *Daubert* period related to mental health and other aspects of the social sciences. Despite claims of "scientific rigor" in much social science research, it became clear during the successful appeals of a number of cases in which defendants were determined guilty largely on the testimony of "experts," that the *Daubert* rules were poor screens for scientific evidence (Nathan and Snedeker, 1995; Pendergrast, 1995;Wexler, 1990). What stood for tests of theory were often far from rigorous; peer review and publication in at least some professional journals depended more on holding opinions in common with the editors than in having used appropriate research methodology; without rigorous methodology, known and potential error rates were based on fiction; and wide acceptance within the relevant scientific community was sometimes

interpreted so loosely that only those professionals with common belief systems were seen as members of the *relevant* community (with *scientific* interpreted even more loosely).

Current Legal Standards for Experts

As a result, in 2000 Congress clarified the rules of evidence by adding text to Federal Rule of Evidence 702. To the original text, which read, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise," the following new text was added: if,

1.) the testimony is sufficiently based upon reliable facts or data;

2.) the testimony is the product of reliable principles and methods; and,

3.) the witness has applied the principles and methods reliably to the facts of the case (Brown 2001; Rule 702).

The aim of the new text is to enable judges to exclude what has been referred to as "consensus knowledge," concepts that professionals assume to be true only because other professionals make the same assumptions.

"Experts" Who Fail to Meet the Standards

Rule 702, like *Jaffe v. Redmond*, is limited to the federal courts (although, again, attorneys wishing to avoid federal appeals strive to remain within federal guidelines during state court proceedings). State courts are neither bound by Rule 702 or by *Frye* or *Daubert*, and generally have much lower "standards" for the acceptance of expert testimony than do the federal courts. As a result, many mental health professionals who have been accepted as experts by lower courts have lacked proper credentials, presented unreliable theories as facts, and intentionally confused or misrepresented issues and evidence (Schmitt, 1997; Sherman, 1997;Huber, 1991). Angell (1998) added that some "experts" cite experience or unpublished research as scientific evidence, and some are willing to support any claims of the attorneys who hired them, no matter how farfetched. This type of situation occurs, according to Huber (1991), because "maverick" experts who are shunned by more reputable colleagues are embraced by litigators. Schmitt (1997) noted that, as a result, the attorneys who can afford the greatest amount of expert time usually win. Ethically, social workers must testify only to conclsuions drawn from facts (Melton 1994); and never according to particular ideological beliefs or act as "hired guns" for the party which is paying their fees (Vandenberg, 1988). Expertise is never completely neutral or objective; but there is a clear difference between conclusions drawn from evidence and conclusions drawn without evidence, or despite contrary evidence.

Hagen (1997) pointed out that mental health practitioners are largely ineffective in making determinations about human behavior—and least effective in making predictions about future behavior—regardless of the evidence of past activities, and no mental health technology enables a practitioner to predict future behavior. Yet "experts" have testified to the likelihood that a particular person "will kill again" or "has been rehabilitated" or "has

been abused"—and courts have acted on these spurious claims. Dawes (1994), observed that what little the mental health industry can offer in the sense of "statistical likelihood" is also prone to "identify" innocent people as criminals, and criminals as either "innocent" or not guilty.

Many clinicians who lack research training and skills testify based on their own clinical experiences, which tend to be extremely narrow at best (Hagen, 1997). Questionable "experts" also tend to use "tools," such as Rorschach and other projective tests, which have never proved predictive (Dawes, 1994; Hagen, 1997). For example, Robert Davis, a Diplomate of the American Board of Professional Psychology and a consultant to the Oregon Parole Board, uses the "Palo Alto Destructiveness Test" to determine the degree of violence to which offenders are prone—but no such test exists (McIver, 1997). Some "experts" are nothing of the sort. In one case purporting Satanic abuse in day care centers, an "expert" on Satanic cults was found to be a fraud who falsified his education, experience and professional affiliations (Rubinstein, 1990).

Dineen (1998) opined that what she calls "bogus experts" can be divided into four groups: *fakes* - whose "credentials" consist of outright lies; *sophisticated fakes*—who have degrees from diploma mills and have been published (if at all) in non-peer-reviewed, self-promoting journals; *self-promoters* - who exaggerate their credentials and experience and rehash common knowledge or recognized theories with fancy jargon and as "syndromes;" and *ideologues* - who have developed theories around pet ideas that have not been adequately tested or that test poorly.

Professional social workers can fall into the first two categories if they exaggerate their professional successes, embellish their *curriculum vitae* or obtain advanced degrees from programs more interested in tuition than academic rigor. However, even legitimate professionals must guard against falling, or being perceived as falling, into the latter two. It is clearly unethical to exaggerate credentials or use jargon to purposely confuse. It is similarly unethical for social workers to so strongly advocate for a point of view that they espouse theories in the name of expertise when the area can claim no experts, because there is so little research demonstrating their validity. Clearly, such behavior violates the *Code of Ethics'* requirements for professional competence, honesty and avoidance of conflicts of interest.

The Ethics of Representing the Social Work Knowledge Base

There has been a recent flood of civil and criminal litigation against mental health professionals who have served as expert witnesses, but misrepresented information and/or their qualifications on the witness stand (Hagen, 1997). Some of this litigation has been directed against social workers (Barker & Branson, 2000). Much of this litigation has been successful, and in several cases, when it was not, only professional immunity (often extended to social workers in government investigative capacities, such as child protection) kept the social workers from being found guilty or liable (Sarnoff, 2001). Note that guilt is established in criminal courts, while liability (for monetary damages) is established in civil courts. These cases have, in fact, resulted in legislative changes limiting social worker immunity in many jurisdictions.

Over the past few years, NASW has issued several specific position statements, professional standards and clinical indicators (NASW, 1998; NASW, 1997a; and NASW 1997b), in

addition to having expanded its *Code of Ethics* (1996). The most up-to-date list of these can be found at NASW's website: http://www.naswdc.org. All of these reconfirm that social workers may represent themselves as experts only within the bounds of the education, training, licensing, consultation and supervision they have received. The *Code* also specifies that social workers are required to keep current with the knowledge base through continuing education and to critically examine research evidence and evaluations of practice methodologies (Reamer, 1998).

The Ethics of Interpreting the Testimony of Clients

One of the most challenging areas of social worker testimony is that of interpreting the testimony or demeanor of others. This type of testimony is required when a witness is unable to offer testimony, or to offer testimony that is readily comprehensible by an average citizen juror, due to youth, age or physical or mental impairment.

Interpretation of testimony can be required from a social worker as a fact witness, when the worker is familiar with the client's behavior and can explain (usually by analogy to previous actions) what circumstances might have triggered a reaction, or what the client means by a particular response. Or it may constitute expert testimony by a worker who has studied behavior in a given age cohort or among people with a discrete mental health diagnosis or disability (Gutheil, 1998b).

While it is not unethical to interpret client behavior under such circumstances, workers who do so must exercise extreme caution. In particular, they should be careful to use precise language to explain that certain phenomena are common, or statistically likely, rather than certain. They should also be careful to specify how and why they reach conclusions, sharing their evidence, basing their testimony on fact and research rather than opinion or theory, and being sure that they have not been biased by the opinions of others (Gutheil, 1998b).

For instance, a social worker who works with a woman who states that she was beaten by her husband can testify that the client told her she was beaten by her husband, that she spoke to the husband and that he admitted or denied the abuse, and that she observed bruises consistent with the client's claim. What the social worker cannot legally do is testify that the client was beaten by her husband–unless she actually observed the beating. Note that this clarification does not diminish the social worker's ability to testify effectively; in fact, it sharpens the testimony by incorporating details that objectively support the claim.

Other Ethical Challenges

In addition to all of the ethical concerns already discussed, there are still further reasons to consider the ethical ramifications of testifying as an expert in any given situation. Gutheil(1998a) observes that, because all expert witnessing involves limited if any confidentiality, that it always challenges professional ethics. Further, any inaccuracies in testimony given under oath constitute perjury.

Issues of competence and bias are ever-present concerns for expert witnesses. It can completely undermine a case if an expert is shown not to be fully cognizant of the most current research regarding the aspect of the case about which the expert is hired to testify. And just as demonstrating that the expert has a treatment relationship with the client can threaten a case outcome, the same is true if there is any type of personal relationship with the attorney or any other party to the litigation. Similarly, personal involvement with an issue (such as a worker who was seriously injured by a drunk driver testifying in a DUI

case) or ideological adherence to a viewpoint can jettison a case and place the challenged expert at risk of malpractice litigation. Bias can be suggested by a failure to reject even a small proportion of cases reviewed, consistently reaching the same conclusions about cases reflecting widely disparate facts or demonstrating that the testimony conflicts with those expressed in the expert's publications (Gutheil, 1998a).

Preparing for the Witnessing Role

Regardless of how many times a social worker has testified in court, each case offers the opposing attorney and the judge the right to accept or reject the expert anew. Not only do judges and court jurisdictions vary in the degree of expertise they require, but a social worker who is an expert in one subject area may not have the expertise to testify about another (Barker & Branson, 2000).

As noted, the qualification procedure used by the court to determine expertise is called a *voir dire*. To prepare for a *voir dire*, social workers should ask for a detailed explanation of the questions to which they will be asked to respond. They should also review the factors that demonstrate their expertise in the subject, such as courses taken, papers written and research conducted (NASW, 1998). Even more significant, social workers should review their resumes, highlighting the areas of interest to the court, and making certain that they are accurate, because, as noted, any misstatements made to the court can be considered perjurous (Barsky & Gould, 2002).

To prepare for testifying, social workers should review the latest research and controversies about the topic and consider how best to translate this information to lay people. If the issue is complex, it may be useful to prepare charts or slides to explain the concept in court (NASW, 1998).

Ethical expert witnesses do not have to convince a judge or jury of the guilt or innocence or liability or lack thereof of parties at trial. Instead, they should act as teachers who explain the state of knowledge on issues about which they have current expert awareness to those who will use that knowledge to make decisions (Madden, 1998).

The role of expert is a particularly important one, because jurors give considerable weight to the testimony of experts (National Institute of Justice, American Academy of Forensic Sciences, American Bar Association, National Center for State Courts, Federal Judicial Center & National Academy of Sciences, 1999). Furthermore, inaccurate testimony can result in a faulty case outcome, and if that can be proven, the expert can be held liable for malpractice because actual harm resulted from the act.

Finally, it is important for social workers who seek advice from other mental health professionals who have experience testifying in court to determine in what level of court they testified and during which period. Testimony that was permitted during the *Daubert* period may not stand the newer tests of the revised Rule 702.

The Ethics of Record-Keeping for Court

No social worker relishes having records subpoenaed by a court. However, every record should be written with that possibility–no matter how remote–in mind. Changing a record

after it has been subpoenaed, even to correct a mistake, is a felony: it constitutes tampering with evidence. In addition, good practice dictates that clients be treated equally, and writing good records all of the time builds skills that ensure that any records that do eventually appear in court will be able to withstand the scrutiny to which a court will subject them (Kagle, 1991).

There is no limit to the time a record must be retained if there is the possibility that it will be subpoenaed in court (Gutheil, 1998a). The availability of electronic technology that reduces the space required for storage and simplifies copying of records eliminates any excuse for prematurely or erroneously destroying a record subject to subpoena (Dickson, 1998).

Conclusions

Social workers have the right and the obligation to act as witnesses, including expert witnesses, when it is appropriate to do so. Appropriateness hinges upon both their awareness of the issues under consideration and whether confidentiality considerations take precedence. Legal and ethical factors must both be taken into account to ensure that social workers obey the law and protect their clients' rights, and do not risk malpractice charges in the process.

Social workers who offer expert testimony must keep abreast of the latest research in their fields, and must be able to determine both the validity of the research about which they testify and its relevance to the facts in the case. Social workers must also keep abreast of current evidentiary standards. Court testimony is one of the most powerful tools available to social workers. As such, it incorporates inherent dangers as well as benefits, and must be used wisely and well.

Bibliography

Ackermann, Matt. (1999, June 21) Patient can seek damages from psychologists who violate privacy. *New Jersey Law Journal,* 4.

Althaus v. Cohen & WPIC, Federal Civil Action 92-2435 (1992).

Andrews, A. B. (1991, September). Social work expert testimony regarding mitigation in capital sentencing proceedings. *Social Work, 36* (5), 440-5.

Angell, Marcia. (1998, December 9). Trial by science. *New York Times*, A29.

Annon, Jack S. (1996, Summer/Fall). Psychologists who make unqualified public statements about litigants whom they have not examined: a cautionary note. *Issues in Child Abuse Accusations*. 8, (3/4), 170-173.

Appelbaum, P. S. (1997). Ethics in evolution: The incompatibility of clinical and forensic functions. *American Journal of Psychiatry.* 154, 445-446.

Barker, Robert L. & Branson, Douglas M. (2000). *Forensic social work*, (*2nd ed.)* NY: Haworth Press.

Barsky, Allan E. & Gould, Jonathan. (2002). *Clinicians in court*. NY: Guilford Press.

Brown, Duncan. (2001). *The new 702: How it affects the use of experts*. Alexandria, VA: American Prosecutors Research Institute.

Commonwealth v. Bishop, 402 Mass.449 (1988).

Dawes, Robyn M. (1994). *House of cards: Psychology and psychotherapy built on myth.* NY: Free Press.

Dickson, Donald T. (1998). *Confidentiality and privacy in social work*. NY: Free Press.

Dineen, Tana. (1998). *Manufacturing victims, (2nd ed.)* Montreal: Robert Davies Publishing.

Federal Rule of Evidence 702 (rev. Dec.1, 2000).

Goodman, Ellen. (1998, February 24). Court program could trash junk science. *The Statesman Journal*.

Gothard, Sol. (1989). Rules of testimony and evidence for social workers who appear as expert witnesses in courts of law. *Journal of Independent Social Work*, 3 (3), 7-15.

Gutheil, Thomas. (1998a). *The psychiatrist as expert witness*. Washington, DC: American Psychiatric Press, Inc.

-----. (1998b). *The psychiatrist in court*. Washington, DC: American Psychiatric Press, Inc.

Gyurci, R. (1989, March). Social worker testimony in dependency and neglect cases. *Journal of Law and Social Work*, 1(1), 32-7.

Hagen, Margaret. (1997). *Whores of the court.* NY: ReganBooks.

Hand, Learned. (1901). Historical and practical considerations regarding expert testimony. *Harvard Law Review*, 15, 40-42.

Hjelt, Stephen. (2000, January). Professional psychology: A view from the bench. *Register Report*, 8-13.

Houston-Vega, Mary Kay, Nuehring, Elane M. & Daguio, Elisabeth R. (1997). *Prudent practice: A guide for managing malpractice risk.* Washington, D. C.: NASW Press.

Huber, Peter. (1991). *Galileo's revenge.* NY: Basic Books.

Jaffee v. Redmond, 518 U. S. 1, 17 (1996).

Kagle, Jill. (1991). *Social work records (2nd ed.)*. Belmont, CA: Wadsworth.

Linhorst, D. M. & Turner, M. A. (1999). Treatment of forensic patients: An expanding role for public psychiatric hospitals. *Health and Social Work*, 24, 18-26.

Locke, R. Christopher. (1996, Spring). Expert testimony in the post-Daubert era. *CPA Expert*.

Madden, Robert G. (1998). *Legal issues in social work, counseling and mental health, 2nd edition*. Thousand Oaks, CA: Sage.

Mason, M. A. (1992). Social workers as expert witnesses in child sexual abuse cases. *Social Work, 37*, 30-34.

McIver ,William F. II. (1997). Behind the prison walls. *Issues in Child Abuse Allegations*, 9, (1/2).

Melton, G. B. (1994). Expert opinions: 'Not for cosmic understanding'. In Sales, B. D. & VandenBos,.G. R. (eds.). *Psychology in Litigation and Legislation.* Washington, DC: American Psychological Association, 59-99.

Miller, R. (1990). Ethical issues involved in the dual role of treater and evaluator, in Rosner, R. & Weinstock, R., (eds). *Ethical Practice in Psychiatry and the Law.* NY: Plenum Press, 129-150.

Murray, Frank J. (1998, January 26). Justices curb 'junk science.' *Insight*, 41.

Nathan, Debbie and Snedeker, Michael. (1995). *Satan's silence*. NY: Basic Books.

National Association of Social Workers. (1997a, March). Social workers and subpoenas. *NASW News*.

National Association of Social Workers. (1997b). Social workers and the law. *NASW News*.

National Association of Social Workers. (1998, January). Take the stand: A primer for expert witnesses. *NASW News*.

National Association of Social Workers Delegate Assembly. (1996). *Code of ethics of the national association of social workers*. Washington, DC: National Association of Social Workers.

National Institute of Justice, American Academy of Forensic Sciences, American Bar Association, National Center for State Courts, Federal Judicial Center and National Academy of Sciences. (1999, April 15-16). Jury's comprehension of scientific evidence: a jury of peers? *Proceedings of the National Conference on Science and the Law.* Washington, DC: National Institute of Justice.

Pollack, Daniel. (1997). *Social work and the courts: A casebook*. NY: Garland Publications.

Pollack, Daniel. (2003a). *Social work and the courts: A casebook (2nd ed.)*. NY: Garland Publications.

-----. (2003b). Social workers as expert witnesses: What you should know. *ABA Child Law Practice*, 21 (12), 190-91.

Polotzola v. Missouri Pacific Railroad, 610 So. 2nd 903 (La. App.1 Cir. 1992).

Pendergrast, Mark. (1995). *Victims of memory, (2nd ed.)*. Hinesburg,VT: Upper Access.

Puzniak, Janusz. (2000, Fall). Expert evidence: The road from *Daubert* to *Joiner* and *Kumho Tire*. *Court Review*, 32-41.

Reamer, Frederic. (1998). *Ethical standards in social work*. Washington, DC: NASW Press.

Rubinstein, Alan. (1990, March). *Report: Investigation into Breezy Point Day School*. Boylestown, PA: Office of the District Attorney.

Sarnoff, Susan. (2000). *Sanctified snake oil*. Westport, CT: Praeger Publishers.

Schmitt, Richard B. (1997, June 17). Who is an expert? In some courtrooms, the answer is 'nobody.'*Wall Street Journal*, A1 and A8.

Schroeder, Leila Obier.(1995). *The legal environment of social work, (rev. ed.)*. Washington, D.C.: NASW Press.

Schultz, LeRoy. (1990). Social workers as expert witnesses in child abuse cases: A format. *Journal of Independent Social Work*, 1 (5), 69-87.

Sherman, Lawrence W. (1997, February). *Preventing crime: What works, what doesn't, what's promising*. Washington, D. C. U. S. Department of Justice.

State v. Bush, 442 S. E. 2nd 437 (W. Va. 1994).

Stone, A. (1983). Sexual misconduct by psychiatrists: the ethical and clinical dilemma of confidentiality. *American Journal of Psychiatry*, 139, 195-197.

Strasburger, L. H., Gutheil, Thomas G. & Brodsky, A. (1997). On wearing two hats: Role conflict in serving as both psychotherapist and expert witness. *American Journal of Psychiatry*, 154, 448-456.

Straus, Jon C. (1997, July 17). College costs too much, fails kids. *USA Today,* 15A.

Vandenberg, G. H. (1988). *Court testimony in mental health: A guide for mental health professionals and attorneys.* Springfield, IL: Charles C. Thomas.

Van Wormer, Katherine. (1988, Summer). Facts on alcohol and alcoholism for courtroom testimony. *Journal of Independent Social Work*, *2*(4), 31-42.

Weinstein, Jack B. (1986). Improving expert testimony. *University of Richmond Law Review*, *20* (473), 474-75.

Weinstock, R. & Garrick, T. (1983). Is liability possible for forensic psychiatrists? *American Journal of Psychiatry*, *140,* 1300-1304.

Wexler, Richard. (1990). *Wounded innocents*. Buffalo, NY: Prometheus Books.

ETHICS FORUM: ETHICAL STANDARDS FOR JOURNALS

Commentary by
Joel Fischer, University of Hawaii, School of Social Work, 1800 East-West Road, Honolulu, HI 96822 and Charles Mueller, University of Hawaii, Department of Psychology, Honolulu, HI, 96822

ABSTRACT

Discusses a number of issues related to publication lag and violations by journals of social work ethical principles. Develops several recommendations for remediation, and invites readers and journal editors to engage in a dialogue.

KEY TERMS: Ethical standards, journal, publication lag.

Some 35 years ago, one of the authors submitted a manuscript-- written in a doctoral seminar-- for publication in a new journal. There was no response from the journal, and, in the midst of completing his dissertation, graduating, and settling into a new job, the manuscript was forgotten. Five years later, the author received a letter from the journal stating that they intended to publish the manuscript, which they did the following year, thereby creating a six-year publication lag.

Since that time, at least in social work, there has been an explosion of new journals as well as a large increase in graduates of doctoral programs-- the main source for editorial boards and journal submissions (Pardeck et al., 1995; Thyer et al., 1994; Klein and Bloom, 1992). It is not unreasonable to hope that the increasing proportion of highly trained doctoral graduates would lead to a corresponding increase in journal standards and ethical practices. Unfortunately, that is not uniformly the case.

Three recent incidents involving both authors of this article can serve to illustrate the nature, if not the extent, of the problem. A l0-year review of the state of clinical practice in social work was solicited from one of the authors for a special issue; it was written in 1990 for publication the next year in one of social work's leading research journals. The article was not published until 1993, with virtually no chance for the author to update its contents to reflect new developments, even though the article was supposed to reflect the current state of knowledge.

Another manuscript by the same author was submitted for publication in May, 1993. Since no word about even the receipt of the article by the journal was received by the author, a series of letters and phone calls to the journal editor in the summer of 1994 resulted in a begrudging response: "Well, I'm waiting for one more review, but it looks good." With no contact for another year, two additional phone calls to the editor in September, 1995 produced a phone message from the editor that the article was accepted for publication, "but could you please send another hard copy? I've lost mine." No date for publication was offered.

The third incident took place over a number of years. One of the authors submitted a manuscript to a social work journal in December, 1993, and included the stamped, self-addressed envelopes that the journal required, one to be used to inform the author that the manuscript was received. After receiving no acknowledgement from the journal, in February, 1994 the author began a series of telephone inquiries. While the author was able

to reach the voice mail of the editor and, on occasion, his secretary, no calls ever were returned. In late March, a letter was sent to the editor describing this lack of communication and requesting a status report on the manuscript. Two new, stamped, self-addressed envelopes were included. No reply was received. Over that summer, the author contacted a member of the journal's editorial board, who said she knew of no special circumstances that would justify the situation, which she described as "not acceptable."

In September, 1994 the author initiated a new set of telephone calls to the editor and, out of frustration, to the associate editor as well. During that time period, the author spoke to the associate editor who initially indicated no knowledge of the manuscript, follow-up letter or telephone calls, but later admitted the manuscript had been lost and was "now found." The author asked for written acknowledgement of receipt and soon thereafter received a copy of a publication submittal form to sign. Despite frequent messages to the journal, no other word was received by the author for a period of two years, when the journal finally accepted the article for publication. It is particularly ironic and sad that one author of the submitted manuscript was a social welfare doctoral student who naturally wondered what this whole process says about social work knowledge development. A final irony was that, during this same time period, this journal announced a call for submissions for a special issue, as though there was not enough work to be done on their current backlog.

Ironically, published data on review time and publication lag (time to print after acceptance) exists for two of these four journals. For one, the specified review time is three to six months with a 12-24 month publication lag, while for the other journal, the review time was specified as three weeks with a 3-5 month publication lag (Mendelsohn, 1992).

A recent note by Thyer (2004) confirms that these publication lag violations likely have existed for decades in social work, and suggests that the anecdodal evidence cited above may indeed be representative, particularly for the NASW flagship journal, *Social Work.* In fact, Thyer argues convincingly that unfair publication lag has an even more insidious negative effect on authors by virtually negating the impact factor used by the Social Sciences Citation Index (SSCI) to measure journal quality. Since that impact factor is calculated by “dividing the number of citations in any one year with items published in the journal in the *previous two years*” (Thyer, 2004, p.361), social work authors typically must cite papers published more than two years previously because of the multi-year publication lag of the later papers. Thus, the original authors are deprived of the credit in the SSCI since social work journals typically are considered low quality journals because of low impact scores. Indeed, Thyer suggests this publication lag problem is widespread in social work since not a single social work journal had an impact score greater than 1.0, while many journals in other fields have high impact scores (greater than 4.0). For example, the *American Psychologist*, the journal that, like *Social Work* for our profession, is the one journal all psychologists receive, had an impact score in 2002 of 5.9 (Thyer, 2004)!

These incidents constitute serious breaches in the ethical (and business) practices of these professional journals. In fact, given a central ethical principle of social work, as codified in the National Association of Social Workers’ Code of Ethics (NASW, 1996; available online: http://www.socialworkers.org/pubs/code/code.asp), that “social workers should aspire to contribute to the knowledge base of their profession,” these incidents actually constitute possible violations of our profession’s Code of Ethics. Indeed, the responsibility to publish is specifically a part of the NASW Code of Ethics. Thus, long publication lags may be seen as violations of this responsibility by inhibiting publication, as can be seen in Standard 5 of the Code which deals with “Social Workers’ Ethical Responsibilities to the Social Work Profession,” as described in Standard 5.01d: “Social workers should contribute to the

knowledge base of social work and share with colleagues their knowledge related to practice, research, and ethics. Social workers should seek to contribute to the profession's literature…" (emphasis added). This article, focusing on ethical standards for journals, attempts to do exactly what the Code of Ethics prescribes.

Two other ethical standards of NASW may also be violated when journals refuse to communicate with authors, engage in sloppy practices or hold articles for a matter of years. The first is Standard 2, "Social Workers' Ethical Responsibilities to Colleagues," as codified in Standard 2.01a, "Respect." This standard specifically states that, "Social workers should treat colleagues with respect." One can hardly argue that refusal to communicate and loss of submissions is respectful to colleagues. The second violation relates to Standard 4.01, "Competence." Standard 4.01c specifically states that, "Social workers should base practice on recognized knowledge, including empirically-based knowledge relevant to social work and social work ethics." Thus, a publication lag of years constitutes a possible ethical violation affecting the entire profession because it deprives social workers of the current knowledge necessary to conduct their practice.

These violations are particularly ironic and hypocritical in the face of uniformity among professional journals regarding the standard that multiple submissions of manuscripts is a breach of ethical practices on the part of authors, and will not be tolerated. This standard of course, is, completely self-serving on the part of journals. It does nothing to ensure the fastest possible presentation of new work into the marketplace of ideas to benefit consumers —the readers of journals and, ultimately, their clients.

Since journals have a near monopoly in professions on dissemination of new ideas (at least in written form), journal prohibitions against multiple submissions, along with slow review and publication processes, severely limit the speed with which new ideas can surface in the literature. In the world of business, such monopolistic collusion is illegal, in large part because it reduces or eliminates competition. In the same way, the ban on multiple submissions, wherein some journals keep manuscripts for periods up to several years, reduces or eliminates the competition among journals for the fastest publication of the best ideas. And, in the end, the consumer is the real loser.

In the professions, ethical standards for researchers, for practitioners, and for authors are clear and, we assume, widely followed (see, e.g., NASW Code of Ethics Standard 5.02, "Evaluation and Research"). Sanctions are available for non-adherence. Why, then, should journals, our most important outlet for on-going professional development, not be held to similar standards?

Recommendations

While our intent in this article largely is to bring this problem to the attention of the profession and the boards of professional journals so that a debate on resolving these issues can begin, we do have a series of recommendations as a starting point for the debate. In fact, we want to encourage other authors, editors and editorial board members to respond to our comments in the hope that an ongoing dialogue will help journals move to resolve some of these ethical violations.

First, we recommend that all journals publish yearly data about their review process, including the mean, standard deviation, median and range of time for reviews and for publication lag. Since there appears to be a discrepancy between what some journals do

and what they say they do, we must be prepared to push journal editors to be accurate in those figures, a sort of "truth in advertising" principle for journals.

Second, we recommend that all journals publish the dates of initial receipt of a manuscript, date of receipt of subsequent submissions, and date of manuscript acceptance for every article. This, of course, is standard practice in other fields such as psychology.

Third, data on review time and publication lag should be published every year in a journal such as Social Work in the same way that the American Psychologist publishes a yearly summary report of journal operations for American Psychological Association (APA) journals.

Our other recommendations are an attempt to address the power imbalance between journals and authors by revising the currently accepted standards of the review process itself.

First, if a journal does not respond within one month in writing to an author that the manuscript has been received, the author may submit the article to another journal without notifying the first journal, even if belated notice that the first journal has received the manuscript is sent. The author then may proceed with either journal depending on speed of acceptance.

Second, if the author has not received an initial review within three months of submission of the manuscript, he or she may submit to another journal without notifying the first journal and may proceed with either journal, depending on speed of acceptance.

Third, if an accepted manuscript is not published within 12 months of acceptance, the author may submit the manuscript to another journal without notifying the original journal, and proceed with either journal as he or she sees fit.

We specifically have not called for a completely open process of multiple submissions in recognition of the huge amount of duplicative work this would entail for journal reviewers. On the other hand, if journals cannot find competent reviewers who are willing to conduct their reviews in an efficient manner, and in response to the limited proposals we have made, then journals need to reevaluate those reviewers' standing as well as their own review process.

Finally, there is a clear gap in our profession in identifying professional bodies that can respond to ethical violations by journals. Our final proposal, then, is to use the ethical commissions of our existing professional organizations, e.g., NASW and APA, as conduits for ethical complaints against journals. Since most journals have clear professional affiliations, the ethical commissions of the profession with which the journal identifies would be authorized to make the final decisions in such cases, with journals and authors bound to accept their decisions. Thus, the journals would be subject to the same disciplinary bodies and actions as are individual members and other organizations of the profession.

References

Klein, W.C. and Bloom, M. (1992). Studies of scholarly productivity in schools of social work. *Journal of Social Work Education*, 28, 291-299.

Mendelsohn, H.N. (1992). *An author's guide to social work journals* (3rd Edition). Washington, D.C.: NASW Press.

Pardeck, J.T., Chung, W.S., and Murphy, J.W. (1995). An examination of the scholarly productivity of social work journal editorial board members and guest reviewers. *Research on Social Work Practice*, 5 223-234.

Thyer, B.A., Boynton, K.E., Bennis, L., and Levine, D.L. (1994). Academic affiliations of social work journal articles: A publication productivity analysis from 1984-1988. *Journal of Social Service Research*, 18, 153-167.

Thyer, B. A. (2004). Evaluating social work journal publication systems. *Journal of social work education, 40,* 361-363.

Editor's Note: *The Journal of Social Work Values and Ethics* is pleased to present the Values and Ethics Forum. Within this forum, social workers are given an opportunity to address values and ethical issues that generate personal and/or professional concern. Readers are encouraged to submit responses to issues addressed in the forum. Readers' comments will be included within the same issue of the original commentary. Thus, please return to this URL to review how readers have responded to the commentary. Commentaries and responses to commentaries presented in the Values and Ethics Forum section are *not* refereed as the articles in the main section. In addition, the opinions expressed are solely those of the author(s) and not the journal, the publisher, or the editorial board.

{moscomment}

Book Review

Reichert, E. (2003). *Social Work and Human Rights: A Foundation for Policy and Practice*. New York: Columbia University Press. 250 pages plus appendices, $24.50 paper, $62.00 cloth.

Elizabeth Reichert, Diplom Sozialarbeiterin (Manheim, Germany), MSSW, Ph.D., is an Associate Professor of Social Work at Southern Illinois University, Carbondale. She has extensive clinical experience in child welfare and has worked internationally in social development. Her teaching areas are child welfare practice, social policy, and international social work, including study abroad courses. She has authored numerous articles on human rights, international social work, and child welfare. This is her first book.

Human rights may well be one of the most central issues of the 21st Century. The human rights movement has its roots in works of philosophy, religion, political theory, the law, and activists throughout the centuries. The movement took on new meaning and a sense of urgency in the 20th Century. Confronting the horror of the Holocaust, in 1945 world leaders founded the United Nations, with its focus on peacekeeping and protecting human rights. Within three years, under the leadership of Eleanor Roosevelt, the new world body had created the Universal Declaration of Human Rights (UDHR). Since that time, the UN, governmental, and non-governmental organizations worldwide have been developing a complex framework for assuring the implementation of the UDHR. Although in the United States the social work profession has not (with some exceptions) used the term *human rights*, much of the ordinary work that social workers do can be viewed as human rights work.

Dr. Reichert's purpose in writing this book is to promote knowledge of human rights among U.S. social workers, giving them an enhanced perspective on their roles as helping professionals and a new look at issues that are of central importance to the profession. Dr. Reichert points out that the global social work profession has embraced human rights as a guiding principle, whereas the U.S. profession has been slow to do so, focusing instead on social justice—a more limited concept, in her view.

The author does not specifically identify her intended audience, but she indicates that her book "does not pretend to be anything more than an elementary or beginning text on linking the social work profession to human rights" (p. 14). It could be used in an introductory social work course to establish the profession within a global human rights framework or at any level to give students a fresh perspective on their profession. Any social worker with limited knowledge of human rights could benefit from this introductory work.

The book is divided into an introduction, eight chapters, and appendices that contain the full text of the three major United Nations human rights instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, with its Optional Protocol, and the International Covenant on Economic, Social, and Cultural Rights. In the first chapter, after a very brief summary of the historical roots of the human rights movement, including the role of social workers, the author introduces readers to the most important terminology used in human rights documents. In the next three chapters, she discusses the three major human rights instruments—their purposes, specific provisions, and the social work perspective on each. She also discusses the complex issues involved in creating and meaningfully implementing universal standards of human conduct in a diverse world. Throughout this analysis, she demonstrates how human rights guidelines might be

used to determine approaches to recent global crises and to ethical challenges encountered by social workers. In Chapters 5 and 6, she focuses on vulnerable groups—women, children, persons with disabilities, gays and lesbians, older persons, and persons affected by racism. The author provides ample illustrations of how human rights documents address the rights of members of vulnerable populations. Issues such as child labor, capital punishment, foster care and adoption, trafficking in women and children, access to health care, slavery, and female genital mutilation are discussed as they affect vulnerable groups internationally and locally.

In Chapter 7, the author moves to a discussion of the third generation of human rights—the right to development and the need for international cooperation to assure that right for peoples in the developing world. Dr. Reichert provides a convincing argument that the social work profession has a responsibility to work towards a "fair and equitable global system" (p. 203). This requires an understanding of not only the needs and rights of peoples in the developing world but the roles and impacts of international organizations such as the International Monetary Fund and the World Bank. The final chapter is devoted to applying the human rights perspective to social work policy and practice. The author challenges social workers to become aware of the many obstacles that stand in the way of assuring human rights to all. She demonstrates how major social work interventions (challenging oppression, empowerment, the strengths perspective, ethnic-sensitive practice, feminist practice, and cultural competence) all are tools to link social work with human rights. She then shows how the NASW Code of Ethics, although not using the term *human rights*, has considerable overlap with human rights principles. Nine case studies, with integrative questions, test the reader's understanding of how human rights principles apply to work with client systems.

The author's major thesis is that, by educating themselves about human rights, social workers will enhance their understanding of the profession. Her point is well made. The reader will come to appreciate how the value base of the social work profession is grounded in principles common to those in the human rights movement and how, in their daily practice, social workers are advancing human rights—of their clients, communities, nation, and world. Having a sense of solidarity with others—in other fields of endeavor and in other countries—should help social workers to experience a sense of community with a social movement that is, perhaps, the best hope for our troubled world.

Social Work and Human Rights: A Foundation for Policy and Practice provides an excellent introduction to the concept of human rights and to the central UN human rights declarations and covenants. It does not provide a comprehensive history of the human rights movement, nor does it provide much discussion of the role of national governments and the extensive array of non-governmental organizations in advancing human rights. Other authors have done this. Although it stimulates the reader to consider how human rights principles might apply in practice situations, it does not attempt to adapt practice theory to incorporate a human rights framework. That task will be left for future authors.

Reviewed by Diane S. Falk, Ph.D., LCSW
The Richard Stockton College of New Jersey