

Chapter 1

UNDERSTANDING ETHICS

On January 2, 2002, the last day of his school's winter break, twelve-year-old J. Daniel Scruggs hanged himself with a necktie in the bedroom closet of the small apartment he shared with his mother and nineteen-year-old sister. Six days earlier, the Department of Children and Families had dismissed allegations of neglect against Daniel's mother due to a lack of evidence.

Daniel was small for his age, weighing only sixty-three pounds. He was different from his classmates in other ways, too. He liked wearing a jacket and tie to class; sometimes, in response to a teacher's question, he would stand up and act out the answer. He loved Harry Potter and magic shows. Although he had an IQ of 139, his school performance was much less impressive, and he was placed in special education classes for an undefined learning disability. However, the school dropped him from special education classes in the sixth grade without conducting the required testing to determine if he could rejoin a mainstream classroom.

Daniel was bullied a great deal in school. Other children reported that he was pushed, hit, kicked, and choked and had his belongings stolen on a regular basis. Daniel's home conditions were appalling and unsafe. He stopped showering and brushing his teeth, and in an apparent strategy to get sent home from school early, he would routinely urinate and defecate in his pants. Teachers reportedly covered their noses around him and appeared relieved when he was absent from class. The guidance counselor tried to work with him on hygiene but made no referrals in that regard. The school nurse stated that she was embarrassed to talk with him about his hygiene and, further, that doing so was not her responsibility. In the sixth grade, Daniel was absent or tardy over one-third of the school year. Of the seventy-eight school days before the winter break in his seventh-grade year, Daniel was

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absent forty-four days and tardy twenty-nine days, which means that he only spent five full days in school.

Daniel's mother, Judith, worked approximately seventy hours per week as a teacher's aide at Daniel's middle school and also as a part-time employee at a large national discount store. According to his obituary notice, Daniel had two married sisters, a married brother, and another sister, all living in the same state. Judith Scruggs claimed to have suffered physical abuse from Daniel's father, whose whereabouts were unknown. Daniel had reportedly been very close to his grandparents, who had died within months of each other less than two years before Daniel's suicide.

One year after Daniel's death, the Connecticut Office of the Child Advocate released a report of all the instances in which agencies and adults failed him. It recommended sweeping changes to the school system, the Department of Children and Families, and the juvenile justice system. On October 6, 2003, Judith Scruggs was convicted of felony risk of injury to a minor, which carried a possible ten-year prison sentence. Her attorney vowed to appeal, and her supporters contended that she was twice victimized: by unresponsive social and educational services and by the justice system. In 2004 she received an eighteen-month suspended sentence with five years of probation, mandatory counseling, and one hundred hours of community service. In addition, she was required to take a parenting class should she ever become responsible for or have occasion to supervise a child under the age of sixteen; in 2006 the conviction was overturned (Heyman, 2003; Makwana, 2003a, 2003b; Office of the Child Advocate, 2003).

Thankfully, few cases in the health and human service systems end as tragically as that of Daniel Scruggs. However, every day social workers and their colleagues in other helping professions strive to meet crushing human needs in an often fragmented and frustrating social service environment. While few cases generate the level of public attention that the Scruggs case warranted, there are cases every day in schools; hospitals; and child protective, residential, and other kinds of settings where a delicate balancing act takes place between the constraints of policies and resources and the needs of clients. In addition to providing services that are clinically sound and responsive to clients' needs, social workers must also be attuned to the ethical dimen-

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sions their cases present. They must apply principles such as confidentiality, informed consent, and self-determination with clients whose rights and choices are constrained by age and maturity, and legal and parental prerogatives. This book examines how social workers can ethically bridge those tensions to deliver effective, ethical services.

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Our journey begins with a discussion of what we mean by ethics and ethical dilemmas. At its most basic level, ethics is the study of doing what is right or good and the bases by which we determine the “right” course of action. As we shall see in chapter 2, ethical practices in social work are shaped by a number of factors, including personal and professional values, organizational and social policies, laws, and the ethical standards found in codes of conduct and codes of ethics. Through our personal upbringing and professional socialization, we develop the capacity to distinguish right from wrong in our practice as social workers. Through virtue ethics (character) and principle ethics (our professional codes), we choose to do the right thing when faced with right-or-wrong choices such as taking a client’s money, divulging a client’s secrets to our friends, or reporting to our agency that we provided services we really did not. Yet having a clear compass for distinguishing right from wrong doesn’t spare us from ethical dilemmas. Ethical dilemmas commonly arise under five circumstances:

1. When the application or boundary of an ethical standard is unclear
2. When standards conflict with institutional demands
3. When there are conflicting loyalties
4. When a professional finds it difficult to adhere to an ethical standard
5. When good solutions seem unattainable

In each of these scenarios, the social worker must decide between two goods, or two compelling “right” choices. In the first case, the worker’s dilemma may concern carrying out a given standard. For example, what are the limits of confidentiality when a client is engag-

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ing in dangerous behavior, albeit behavior that falls short of the standard of creating “serious, foreseeable, and imminent risk to themselves or others” (NASW, 1999, 1.02)? It is good to comply with the Code and it is good to support one’s clients. Where should the worker draw the line on each?

This dilemma of how to apply standards is compounded in practice with minor clients, because the intent of the standard, even if it is clear, may conflict with other laws or policies granting parents rights. “Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals” (NASW, 1999, 1.02), but how does a clinician reconcile a youth’s rights with those of his parents, who may have referred him for treatment with an entirely different goal in mind? Is informed consent relevant for clients who have no legal right to give consent? What are the boundaries of confidentiality for a youth whose parents are paying for her treatment and are worried for her well-being? How should a social worker uphold his or her responsibility to the client and the commitment not to abandon the client when the child’s parents abruptly remove him from treatment? It’s easy to see how dilemmas can arise when the clarity of standards is applied to the vagaries of practice!

At other times, the dilemma may arise when an organization’s policies or practices conflict with professional standards. For example, a juvenile detention facility may store records in an area where all staff can have access to them, with the rationale that services are provided by a team and all members of the team need to keep abreast of cases. This is an admirable goal in that it is meant to facilitate continuity of care in a facility with twenty-four-hour interdisciplinary responsibility for high-risk youths. However, the social worker in the facility may be uncomfortable with that policy, in light of NASW (1999) standards about protecting information received from clients and guarding “the confidentiality of clients’ written and electronic records and other sensitive information. Social workers should take reasonable steps to ensure that clients’ records are stored in a secure location and that clients’ records are not available to others who are not authorized to have access” (1.071). It is possible that the agency’s authorization of a large number of employees to have access to records upholds the letter rather than the spirit of the standard. The type of information

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divulged to the social worker may be particularly sensitive and thus worthy of greater protection than the organization would afford it. Do the nurses on the night shift need to know that a youth is questioning his sexual orientation or that another's mother is a crack addict? If the social worker seeks clients' informed consent about this information-sharing arrangement, will that impair their trust and willingness to share their concerns?

A third type of dilemma arises when the worker has conflicting loyalties. Sometimes, as in the case above, that may mean loyalty to one's employer versus one's professional code or responsibilities. It is good to be loyal to both, but some situations render them mutually incompatible. At other times, these dilemmas may speak to conflicting responsibilities or conflicting loyalties to different parties in a case. If a teen in treatment discloses troubling behavior, such as drunk driving or a planned liaison with someone he or she met on the Internet, the social worker must choose between principles of confidentiality and safety and between loyalty to the client and loyalty to the parents or guardians.

The fourth category of dilemmas involves those that arise within the worker. A good deal of professional preparation involves personal development, as practitioners examine their motivations, vulnerabilities, and values and the ways that these may facilitate or impede effective practice. While important, that work does not preclude difficulties when a worker's values collide with an ethical standard. Cases frequently arise where the law requires that a report of child endangerment be filed but the clinician's experience indicates that the report will lead to little change, except greater risk and distress for the child. In other cases, such as those involving risk of harm, professional standards may urge confidentiality but the worker's values or apprehensions may favor openness. Even when it is clearly right to follow the law or put one's responsibilities to clients before one's own needs, is it always right to do so? How can the worker tell the difference?

We've talked so far about situations involving competing good or rights, as opposed to right-vs.-wrong dilemmas. But sometimes the dilemma seems to arise because there are no good solutions, and the decision seems to be one in which a choice between competing bad choices must be made. In fact, the word "dilemma" describes decisions

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that must be made between two unsatisfactory alternatives (Loewenberg, Dolgoff, & Harrington, 2000). A child must be removed from an abusive situation (protecting his safety) yet he pleads to be allowed to stay (upholding his self-determination). A young man is distraught about keeping his sexual orientation a secret yet knows that if he tells his family, he will be forced to leave home. A school social worker arranges for a young girl to get a winter coat, but her family makes her return it, refusing what they see as charity. Divorcing parents each insist on having custody of their children, and the children only want their parents to remain together. In each situation the dilemma emerges from the apparent absence of a desirable solution.

Understanding and categorizing dilemmas is an essential first step in beginning to solve them. Identifying the nature of the conflict allows the worker to move from discomfort and confusion to action. The categorization helps to isolate the elements of the dilemma so that options for resolution can be developed. The organization of dilemmas into the five types described above is one method for describing ethical problems. The next model offers a framework where the dilemmas come about as a result of the tension between competing principles.

Kidder (1995) suggests another paradigm for classifying ethical dilemmas. His, too, represents different types of right-vs.-right conflicts. While Kidder's research shows that all dilemmas fall into one of these four frameworks, he notes that some fall into multiple frameworks, which represent different types of tensions. The later chapters of this book are organized around these four polarities: justice versus mercy, short term versus long term, individual versus community, and truth versus loyalty.

In justice-vs.-mercy dilemmas the worker is caught between acting to uphold laws, policies, principles, or agreements in a fair and just manner and acting with forgiveness and compassion. This is exemplified by the troubled teenager who makes the track team and appears to be thriving in school as a result. When he is caught shoplifting, the coach and his counselor meet to tell him he will be dropped from the team for his clear violation of team and school rules. He begs for their forgiveness, making a case for how much progress he has made, and assuring them that he has learned his lesson and it won't happen again. He says regretfully, "I just didn't see any other way to get those running shoes."

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The coach and counselor must weigh two goods: upholding an explicit policy without making special exceptions based on the context of the situation or the individual involved, and showing leniency and sympathy due to the circumstances and individual involved. Each choice offers promises and pitfalls. In acting with justice, they validate the importance of following this and other school rules, and they ensure fairness for other students who may have been held to the policy's consequences in the past regardless of how compelling their case might have been. Upholding the policy may help the youth understand the seriousness of his actions and learn from the consequences.

In showing mercy, the counselor and coach may teach the youth a lesson about the consequences of his behavior, but the nature of the lesson is unclear. Will he swear off shoplifting after this close call, or will the lasting message be that he can avoid consequences by making a compelling argument? Making an exception in his case may keep him involved in pro-social activities and encourage his success in school, while holding a hard line may result in a discouraging turning point and the loss of his recent gains. When is a second chance an opportunity, and when is it an unfair exception? It is good to be fair and it is good to act with mercy, and it is difficult to do both at the same time.

As the name suggests, short-term vs. long-term dilemmas balance choices that may be advantageous in the short run with the resulting long-term effects. The case of the shoplifting teen could be construed as a short-term vs. long-term dilemma in that the options can be examined in light of the immediate and eventual consequences they will have on the youth and other stakeholders. As another example, consider the advertising some child welfare agencies use to secure adoptive homes for hard-to-place children. Children available for placement are pictured and profiled in newspaper columns, brochures, and public service segments on the television news, with the hope of attracting interested families. Is this ethical? Do the ends justify the means? What are the short-term effects on the children involved, and are these outweighed by the prospect of the child being placed permanently with a loving, stable family? Is it right for other principles such as the right to privacy and dignity to be sacrificed for a greater good down the road?

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The third category of dilemma weighs the tensions between the interests of the individual vs. the community or between individuals. Imagine a teen who learns that he is HIV positive and refuses to tell his parents because the diagnosis will raise suspicions regarding how he acquired the disease. While the clinic social worker might understand his apprehensions, he or she may also feel that the parents have a right to know that their son has a grave condition. The dilemma exists between two goods: the benefits the teen might reap in keeping his diagnosis a secret, and the benefits for his family, who may feel it is their right and responsibility to monitor his health care.

Truth-vs.-loyalty dilemmas are essentially dilemmas of promise keeping. The case of the HIV-positive teenager can also be viewed through this framework. The social worker, having made a commitment to keep the client's information confidential, must do so (acting with loyalty or fidelity) even though he or she might feel that honesty requires him or her to tell the truth to concerned others or to persuade the teen to do so. As we can see from this dilemma, the principles of truth and loyalty are not simply personal values. Rather, they spring from the social worker's professional duties and responsibilities. The worker is true to the promises made to the client not simply because he or she is a trustworthy person but because the professional role demands it.

Privacy is accorded a high priority in clinical practice because it is the basis on which clients feel safe to share their histories and their deepest troubles and aspirations. Minors are typically accorded confidentiality on matters involving sexually transmitted diseases on the presumption that it encourages them to seek help and thus stem the transmission of diseases. The right to an expectation of privacy (and the limits of it) is articulated explicitly through informed consent procedures at the outset of the treatment relationship. Hence, the client expects the clinician's loyalty to this principle and to the contract. However, there are many situations in which truth telling is also a responsibility of practice, such as when a child is being abused or when a person is placing him- or herself or another in danger. Social workers who serve minors often have a responsibility to tell the truth to parents, in their capacity as the child client's legal guardians and concerned stakeholders, and this responsibility may conflict with the

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expressed and implied loyalty to the child. Can the professional be both loyal and honest? How can those principles be reconciled when they are in conflict? This is the crux of the truth-vs.-loyalty dilemma.

Like the five-type categorization of dilemmas, Kidder's framework gives us the tools and language to dissect and discuss ethical problems. Both schemas address competing-goods or rights-vs.-right dilemmas, as there should be no struggle when one is choosing right from wrong.

Each framework views dilemmas as clashes between principles, standards, values, or roles. In this way, ethical quandaries are distinct from clinical quandaries. There are an infinite number of problems that may arise in clinical practice: a child is ineligible for a promising program, a therapeutic group appears to be of no benefit to some members, a treatment team is in conflict over the most efficacious intervention, a supervisor is unhelpful, a parent is resistant to family therapy, funding is cut for an after-school program. There is no doubt that these are vexing problems for the professionals involved. They clearly lead to dilemmas, but they are not evidently ethical dilemmas. As a result they are not amenable to ethical analysis and decision making. The classifications described above and the decision-making framework introduced in the next chapter are built on different premises and principles. As we look back to the case of J. Daniel Scruggs, there may have been an array of clinical problems in the case, but there no doubt were ethical dilemmas as well. In the next section, we use the two classification systems to analyze some of them.

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As bystanders reviewing the case of Daniel Scruggs, how might examining the problems in the case through the lens of ethics help us better understand them? Let's select three issues for review: Judith's care of her son, the school's response to Daniel's bullying and hygiene, and the Department of Children and Families' decision not to substantiate neglect charges.

Judith

In reports on the case, Daniel's mother was criticized for keeping a filthy home, for not ensuring that Daniel attended school, and for

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being noncompliant with the school's recommendations. A clean home and active, responsive parenting are both good things to provide. Judith Scruggs's case might simply be viewed as a right-vs.-wrong decision where she failed to do what was morally and legally correct. On the other hand, if you were working as Judith's advocate or as the family's social worker, what other insights might emerge as you consider the ethical dilemmas in this case? Perhaps her failure to keep a clean home and ensure Daniel's attendance stemmed from her own history of deprivation or a depression that made it difficult to do more than the basics of daily life: work and sleep. It is right to expect parents to care for their kids, but it is also right to sympathize with and assist people who lack the knowledge or ability to do what we ask of them. In this framework, hers is a justice-vs.-mercy paradigm where the laws and societal standards would hold her accountable for her son's care, but a belief that she was doing the best she could against terrific odds might engender mercy.

We might also wonder what effect Judith's work schedule had on her ability to keep up with her housework and her son. Was she caught between competing responsibilities to her employers and to her son? Is a society that requires parents to work seventy hours a week in order to make a living wage ethical? Perhaps she was trying to reconcile two incompatible imperatives: maintaining a clean home and making enough money to provide the home in the first place. In that case, hers is an example of a short-term vs. long-term dilemma where excessive work hours led to short-term benefits but at long-term costs. As such, it may have also reflected a bad-vs.-bad dilemma, where no acceptable options were apparent. In the absence of a caring social network, it is not surprising that good options were hard to come by.

The School

The investigation into Daniel's death held the system responsible for not addressing Daniel's bullying and for the failure of key staff, including the nurse and guidance counselor, to respond to his needs. What are the ethical elements in this finding? Competence would be a concern if the workers failed to understand their jobs or did not possess the diagnostic or therapeutic tools necessary to understand Daniel's hygiene and behavioral problems. While it is wrong for people

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to practice without the competence to do their jobs, perhaps these staff members were focusing on problems that were more common in the school, leading to a right-vs.-right, individual-vs.-community, competing-loyalties dilemma where the needs of some students were weighed against the needs of others. In a similar vein, we might imagine the school board and administrators facing a competing-responsibilities paradigm as they sought to make effective use of scarce funds. One can understand how the school's need to choose between required services such as special education and important but not required services such as social work or bullying prevention is also an ethical dilemma.

The workers may also have been stymied by Judith's unresponsiveness. They might have embraced their professional responsibilities in the case but faced dilemmas about how to carry them out without the consent of the student's mother. Perhaps confidentiality (an ethical issue) or fractures in the service delivery system (a clinical issue) meant that the service providers in the case lacked the capacity to share their perspectives with each other and thus act on full case information. If so, this would constitute a truth-vs.-loyalty dilemma.

Department of Children and Families

The Department of Children and Families' decision not to keep the Scruggs case open by substantiating educational or physical neglect is troubling, as it might have provided an avenue to bring services to the family and would have reinforced the importance of Daniel's school attendance. Surely the workers in the case understood their mandate from the state and the importance of securing child safety. Why would they fail to substantiate a case as clear as this? Perhaps the workers had a competing imperative, to limit their caseloads or to conserve resources for the most critical cases (individual versus community, ethics versus institutional demands). Perhaps they assessed that a youth of Daniel's age was capable of taking care of his hygiene and getting himself to school and therefore constituted a low priority for their intervention or protection (competing loyalties or responsibilities). Perhaps they assessed that his poor attendance was caused by the bullying he was experiencing and thus a remedy was out of their jurisdiction (a bad-vs.-bad scenario).

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The available records on Daniel Scruggs's case don't reveal the inner thoughts of the employees of the Department of Children and Families or school personnel. As a result, we can't speculate about whether personal values were in conflict with ethical standards or even if the workers ever perceived the ethical dimensions of this case. Yet from the extensive examination the case received due to its tragic conclusion, we can consider the perspectives of various actors in the case to uncover and identify ethical dilemmas that might have been addressed.

SUMMARY

This chapter introduced you to the purposes of the book and the ethical and clinical dimensions of practice with children, using the Scruggs case as a guide. We covered examples of right-vs.-right dilemmas in practice with minors and Kidder's classification system in order to help you hone your skills in identifying and understanding ethical dilemmas. Now that we have developed some efficacy in identifying dilemmas, what do we do about them? The next chapter will offer a guide for ethical decision making.