

## Chapter 5

### Agencies

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### 3. Agency goals

Unfortunately, though we have illustrated this truth about how difficult it is to be a social worker in many different ways, we have not exhausted the possibilities. In the third step of our method, we are to:

- (3) Determine what goals the participants had and what means they thought would achieve those goals; then determine what goals ought to be achieved and determine what means are best for achieving those goals.

This admonition turns out to be far more complicated than it may appear. When we examined 1.4 *Doing what the judge orders*, we were concerned with whether what the social worker, John, did made sense given what his goals were. We decided that John's convincing a judge to have AI tested for HIV made no sense if John was concerned to ensure the safety of the family AI was living with and AI's alleged girlfriend. We were looking in that case only at the goals of one person, but limiting ourselves to determining the consistency and sense of the goals of one person can become even more complicated when, as we saw in 5.2 *Buying friendship*, that person has one set of goals wearing one hat and another set wearing another.

We can readily see the progression up the ladder of complications. When we examine the goals of all the participants to an ethical problem, we then not only have to examine the

consistency and sense of each participant's goals, but also the consistency and sense of the set of goals of all the participants. And when one of the participants to an ethical problem is the agency for which one works, or an external agency or company whose policies and goals directly affect one's work, so that we are not just weighing against one another the competing goals of relatively equally situated participants, things get even more complicated. We shall consider some of those complications in this section.

#### **a. Discretion and benign neglect**

As we have seen, an agency's need for funding can cause problems for its director, but it can also cause problems for its employees. Consider in this regard the following case:

##### *5.4 Money or care?*

The state permits up to six children per foster home. The agency that places the children gets administrative money for each child placed -- over \$50,000 per foster home if the home takes in as many children as the state permits.

Ralph is head of an agency charged, among other things, with placing children in foster homes. The money the agency makes from the placement that is not used for the placement itself or for training the foster parents is used to support other agency activities. Because the agency places a great many children, it makes a great deal of money that way and is able to support a wide variety of other programs for the poor.

The problems that the foster parents face with the children can be remedied if they are the result of lack of proper training, and in the worst of cases, children are taken from the home. But there are always going to be marginal cases, 'gray areas,' Ralph says, and the agency has a new problem because the kinds of kids it is now getting have more serious problems and are more difficult to care for.

The agency has solved the problem of what to do with cases that fall into the 'gray areas' through 'benign neglect,' preferring to assume that the problems are not serious enough for the child to be taken out of the home. But this has caused problems for the social work practitioners who must work with the families. These problems cannot be resolved through training, and the practitioner can only tell the families that they must deal with them somehow.

The difficulty that some kids have more problems now is more serious, and the agency has responded by cutting the number of children it places in a foster home from six to four. That is better for the children, and better for the foster family too -- except that the family is getting less funding and so is the agency. Indeed, the agency's program is now losing money because of the way it feels it must handle this new difficulty.

Ralph certainly has a problem because he is director of the agency and the agency should at least break even in the program. But those who work for the agency in the homes have problems too. They are to judge whether the situation is clear or gray, and so the agency's policy gives them discretion. And when they judge that extra training of the parents will be helpful in alleviating the problem, they are permitted to give that. But when the problem is in a gray area, where it is not clear quite what would work, if anything, they are to do nothing, neglecting it, with the hope that the neglect will cause no harm. They are not

permitted to explore alternative ways of solving the problem such as changing the mix of children, or working more with the children, or providing therapy for the family, the children and the parents together. Such exploration can be expensive, as can such potential remedies, and the agency has decided, as a matter of policy, not to spend the money for that. Presumably if a practitioner were always to judge that situations need correcting, he or she would be told to intervene less or would be put into some other program. The clear intent of the policy is to save money, consistent with the agency's mission of helping those children it can clearly determine need help.

Such situations are typical for any agency. An agency must choose to maximize funding while providing the best service it can to those it is supposed to help. It would be as inappropriate for an agency to provide the best service it can without regard to any funding problems as it would be for it to try to maximize its funding without any regard to the service it provides (see the Code of Ethics 3.07(a) & (b)). Making either choice would cause harm to the agency's mission of helping those in need.

Because there are always going to be problems in placing children in foster homes, there will always be occasions for spending more money. The agency is likely to run out of money if it responds to every minor problem, and, in any event, it will be spending money for marginal gains in that program when it could be spending those funds for clearer victories in other programs. Yet if the agency decides to maximize its funding by not responding to any such problems, even clear ones, it will countenance and encourage situations where real harm will occur to those in its charge (see the Code of Ethics 3.07(b)). The agency's policy in Money or care? of 'benign neglect' in gray areas is presumably meant to be a middle ground, one that minimizes the harms while maximizing the benefits to those the agency is supposed to help (see the Code of Ethics 6.04(a)).

But this policy will cause difficulties for the agency's practitioners working with the foster homes. It gives them discretion without guidance about how to respond to some hard cases. They may thus be unsure what to do in some cases, and make the wrong judgment, and the entire program may end up running in an inconsistent manner because the individual practitioners respond in different ways to the same sort of unclear problem.

For instance, what is a practitioner to do in a gray area if the likelihood of any harm's occurring seems small, but the kind of harm, or the amount of harm, that could occur is great? We had such a situation in Doing what the judge orders. Al's foster family was potentially at risk of getting AIDS since Al may have been HIV-positive. The likelihood of getting AIDS in such a situation is small, but the harm caused is immense, especially when it is multiplied by the number of people in the foster family. Since the likelihood of such harm occurring may be small, a practitioner may presume that nothing need be done, but because the magnitude of the harm that could occur is great, another practitioner may presume that something should be done. A policy giving discretion in such a gray area gives no guidance.

Someone may respond to the problem in Money or care? by arguing that given its charge to provide care for the children, the agency has an obligation to ensure that they are not harmed in any serious way and so has an obligation to intervene when the potential harm is great or the kind of harm is serious, even if the likelihood of such harm occurring is small. For the same reason, the argument would continue, it has an obligation to try to ensure that the families not be harmed in the same sort of situation. Minimizing the potential harm to the children and families is presumably one consideration in the agency's reducing the number of children it places in a home to four, but it should also be a stated consideration in its policy of benign neglect.

Of course, that would cost more money. Indeed, whatever policy is adopted will re-

flect a tradeoff between financial considerations and the potential benefits and harms to the agency's clients. Put another way, the agency's mission requires that it maximize both its financial resources and the help it gives to those in need, and these two goals are always in tension, given the limited resources any social work agency has.

## **b. Clarity of goals and professional discretion**

If the agency comes to have a clearer policy, that may not solve a social worker's problems. It may even be the source of problems. Consider the following case in which the relevant institution -- a hospital in this case -- has adopted a clear policy, but one which provides for no discretion on the part of its social work practitioners and also may cause great harm:

### *5.5 Limited number of visits*

Pat is a social work practitioner in a hospital and helps clients with alcohol and drug problems. Most of her clients are covered by health insurance, but the insurance companies are demanding full records -- partly in order to be sure that its clients are being served by properly accredited professionals and partly because, Pat thinks, 'if they can find any little thing that doesn't look right to them, they can disallow the claim. So they are going to try to get as much information as possible.'

But it is not in her client's best interests to have information that they are being treated for drug dependency or alcoholism getting back to their employers or even to the insurance companies. She had a client who gave permission for his insurance company to look at his files, but was later denied life insurance by the company because, it said, alcoholics die younger. They found out from the records he gave them that he was in treatment for alcoholism. In addition, employers can make life difficult for those of its employees it knows have been in treatment for drug dependency or alcoholism.

So one of Pat's problems is that she is caught in the middle, especially if the client refuses to give permission for her to reveal the complete record. She also thinks it a mistake for clients to give her permission to reveal their records. She thinks that information ought to remain confidential. But if clients do ask her to send their records on to their health insurance companies and a company then refuses payment, the hospital will have to pick up the cost for those clients who cannot pay for the therapy themselves.

One consequence of this problem is that the hospital has dropped its out-patient program. Too many of the clients in that program were being supported by the hospital. It also limited the number of sessions for those in therapy in the hospital to ten unless the hospital can determine ahead-of-time that they will be covered by insurance or are able to pay their own way.

If Pat's analysis is correct that the insurance companies are seeking as much information as they can so as to find something that allows them to disallow an otherwise acceptable claim, they are acting unethically -- though we may understand, and lament, the economic imperatives that are driving their attempts to disallow claims. Insurance companies are for-profit organizations, and with nothing to constrain their seeking profits wherever profits can be found, increasing the bottom line is the primary aim, driving everything

the company does. Managed care is under the same economic imperative, and we are witnessing the same driving force and its consequences for the sick and poor.

The hospital's response to the problem seems driven in part by that aim as well. After all, it closed the out-patient program, and it has put a limit on the number of visits a client is permitted when the hospital must pick up the bill. But that the hospital is willing to pay for ten visits means that it is also not acting just to increase its profits. It is giving away up to ten visits and so, to that extent, acting as a charitable organization, a not-for-profit institution that is willing to take a loss to provide a needed service. It has chosen ten presumably as a compromise to provide a service while keeping its losses down.

Both the insurance company's activities and the hospital's policy cause Pat problems, and they are connected in at least one way. Were she to encourage her clients not to give the insurance companies what they want, then (a) those who were unable to afford to pay for the sessions themselves would cost the hospital, and (b) they would only be entitled to ten sessions. Each of these consequences causes problems.

(a) Pat works for the hospital, and so, if she were to suggest that her clients not have their insurance companies pay, she is costing her employer money -- putting at risk, among other things, its ability to serve other clients she is committed to serve, as the hospital's dropping its out-patient program makes clear. So the advice she thinks she ought to give her clients about how to handle the insurance companies is not cost-free. Either the clients will be asked to pay, or the hospital will pay for some sessions if the clients cannot, or, as she discovered, she will not be able to serve any of those who could only use the out-patient service. Besides harming her professional concerns, advising her clients not to give the information requested by the insurance companies also may harm her personal interests because the hospital is not likely to be pleased with her advising clients not to have their bills paid. Even her own position may be at risk because as the hospital's costs mount, it will need to cut back, perhaps by cutting staff.

(b) The hospital's limiting the number of visits to ten when there is no funding, however charitable that may be, constrains what Pat may judge to be the right treatment for particular clients. Some clients may need fewer than ten sessions, but others may need significantly more. Setting a limit of ten may seem a compromise between the hospital's imperatives of obtaining sufficient funding to provide services and providing free services when the need is great, but it draws a line that appears relatively arbitrary -- why not twelve? or eight? -- and, more importantly, prevents Pat and other social work practitioners in the hospital from providing for particular clients what they may judge is in the clients' best interests. Drawing a line limits Pat's autonomy as a social work professional (see the Code of Ethics 1.01 & 6.04). The hospital is saying that given its overarching need to cut costs, it wants to ensure that her judgments about what is in the best interests of her clients are also consistent with the hospital's interests.

So the insurance's companies' insistence on complete information from her clients creates a complex set of difficult ethical dilemmas for Pat. On the one hand, if she counsels her clients not to provide that information, they will be harmed, she may be harmed, the hospital will be harmed, and unclear numbers of other needy individuals will be harmed because they will not be served. On the other hand, if she counsels her clients to provide the information, they may be harmed. She could provide no advice, letting her clients do as they wish, but her choice is not ethically neutral. It is a choice between competing ethical demands. She knows what harm can come from either choice, and not giving advice means not informing her clients (see Code 107(d)). She would then be responsible for their making decisions that may vitally affect their interests without full information, without, that is, informed consent.

Of course, part of Pat's problem arises because of the hospital's response to the situation. In the interests of economy, it has decided on a clear policy -- a limit of ten visits per client -- that both constrains her professional judgment as a social work practitioner and may cause harm to some of her clients because ten visits may not be sufficient to help them with their problems. That such a policy is the usual way in which hospitals, for example, handle these sorts of situations does not make Pat's problem any less difficult.

An additional source of problems for her is that she is the one in the middle, acting as a go-between for the insurance companies. She is to ask the clients for permission to release the information, and she is then to send it on to the insurance companies.

Her options to try to resolve these problems are relatively limited. She can try to change the policy of the insurance companies (see the Code of Ethics 6.04(a)). That would presumably mean working at the state level to change the relevant legislation. She can try to change the hospital's policy. The Code of Ethics obligates social workers not to 'allow an employing organization's policies, procedures, regulations, or administrative orders to interfere with their ethical practice of social work' (3.09(d)). Pat thus has an obligation to work within her organization to convince it either that it is not going to cost any more to give the social work practitioners the power to make judgments about how many visits are needed for each client or that, if it is going to cost more, the cost is worth it to serve clients well. Obviously, what ought to matter in setting a policy is not just cost, but what is ethical.

Or she might try to change her position between the insurance companies and the clients. In acting as a go-between, she is effectively working for the insurance companies. She could set up a process whereby she routinely sends on to insurance companies the information she thinks is appropriate and sufficient to justify payment, having obtained the clients' informed consent to do that, and she could deflect all further inquiries by telling the companies they will have to contact the clients directly to get their permission. Obtaining that permission from the clients, without her help, may cost the insurance companies enough that they will be deterred from seeking more information, at least in every case. But she would still be sharing private information with the insurance companies, and she would still be caught in the middle with the additional problem of having no clear way to determine what information to send and what to keep and how private what information she sends will remain.

Another option might be to provide the hospital administration and the insurance companies any research that provides evidence for the number of sessions needed for particular problems (see the Code of Ethics 5.02(c)). Or, if she thinks the policy cannot be changed, she might advocate on a case-by-case basis for each client -- a time-consuming task.

How successful any of these initiatives may be is unclear. But there seem no other ways out of the complex ethical dilemmas Pat faces, and yet, as we have just seen, those solutions are as constrained by external forces, not within her control, as her professional judgment is constrained by the hospital's rule of limiting visits to no more than ten. Unlike Skimming, where Linda could do something to salvage her autonomy, it seems that unless Pat works to change the external factors causing her difficulties, she can do little to change the complex ethical dilemmas she finds herself in and, in particular, little to regain control over what ought to be professional judgments about how long particular individuals need care. What Limited number of visits shows, that is, is that social workers sometimes must work for change in the system that creates the ethical problems they face (see the Code of Ethics 6.04(a) & (b)).

### **c. Lack of clarity about goals**

This case and Money or Care? both concern the problems created for social work practitioners by the institutions they work for needing funding to sustain or further their missions. But such institutions may act altruistically, and such an institution's acting in this way may cause as many ethical problems for its practitioners as its striving to maintain or increase its bottom line. In the following case, an agency considers whether to expand its mission to meet a new need and it becomes unclear what its goals are:

#### *5.6 Taking on more than it can chew*

When crack cocaine hit the streets, its quick spread wrought social havoc, and, except for the police, human service agencies were the only institutions with any kind of experience in dealing with drug use and the harm it causes families and other social institutions. The crack epidemic spread so quickly, and so overwhelmed the agencies that traditionally dealt with drug dependency, that Jeffrey's agency was asked to take on a new role to help with the problem.

The agency had no serious financial difficulties, and it was successful in its other programs. That was one reason it had been asked to take on this new problem. But it also had no experience in drug dependency programs, and taking on a new program would stretch its resources. There was no promise yet of any new money, and so the main problem, as Jeffrey put it, was that he and the Board 'had to balance the long-term financial stability of the agency with the mission of responding to emerging social problems.'

Jeffrey was extremely reluctant to have the agency take on the new cause, but some members of the board argued that the problem was so overwhelming they had no ethical choice but to help, despite the problems that might cause. They felt they could not just sit back and hope that the crack epidemic would run its course without significant harm to the community it was their mission to serve. They were also concerned that the problem might harm some of the activities the agency was currently engaged in and that they would end up having to take on the new mission in any event. 'We might as well do it at the beginning,' they said.

Jeffrey agreed that taking on the new cause would further the agency's mission, but, he worried, unlike practitioners in other agencies whose mission had included working with drug dependency, the agency's employees had no special training or particular experience in working with drug dependency. They would need to be trained, and the new program and the need for training would take them away from the agency's regular programs and leave those programs underfunded as well as understaffed. Jeffrey was thus concerned that the agency's practitioners were not the best ones for the job and that the agency's other programs would be jeopardized by the transfer of money and personnel to the new program.

No agency can do everything. However important an agency's mission, and however deeply committed to it the agency may be, no mission can be so powerful as to overwhelm all other considerations such as whether an agency is competent to take on a new program, even one that furthers the agency's mission. Even deep ethical commitment should not preclude practical questions. But, then again, some agencies must respond to new social problems that arise. Agencies cannot rest content to till the same field over and over. Otherwise, no one would respond to the new social problems that strike us all too frequently.

In considering such problems, therefore, the questions to ask are whether a new program is a good fit, a natural extension of programs an agency is already involved in, or whether, if it is not, the problem is so important that the agency must take it on in any event and train its workers to handle the problem. The crack cocaine problem is not a natural fit for Jeffrey's agency.

One consideration in deciding what to do is, as Jeffrey put it, whether taking on the new social problem is consistent with 'the long-term financial stability of the agency.' Clearly the answer to that question is contentious, given the different responses of Jeffrey and the Board, and without more information, we cannot take one side or the other. The answer is not obvious, that is, given what we know.

What is obvious is that any answer ought to consider the impact on the agency's practitioners, for when an agency takes on a problem it is ill-equipped to handle, its practitioners will face special problems they would not face otherwise, and both the old programs and the new program will face special problems. Any arguments for or against taking on the new problem must thus have as premises claims about the following:

(a) With money and personnel going from the old programs into new ones, and the old programs thus being short-handed and not as well funded as they have been, what harms will occur? This question in turn has two parts. First, if the old programs become short-handed and underfunded, will either of those shortages cause harms for those the programs are designed to help? Second, will those working in the programs face any kind of special problems because they do not have enough personnel to help them or enough money? There is likely to be an impact for the worse both on the beneficiaries of the existing programs and on those administering the program.

(b) With money short and with practitioners who are inexperienced in the new field the agency is to take on, what harms will occur? Just as there will be an impact on the old programs and on those working in the programs, so there will be an impact on the new program and on those working in it.

First, the new program is likely to be as underfunded as the old programs. With enough money to cover its existing programs, and not enough to cover an expansion of services, the agency will need to take money from all its programs to fund the expansion. It is not likely to fund the new program to its fullest. Or, more accurately, any judgment to do that must be weighed against the greater harm that would then occur to its existing programs. So one question that must be considered and answered in order to decide whether to take on the new program is how to distribute the harms that will occur to the old and the new programs by the subsequent shortfall of money.

Second, Jeffrey would no doubt check among the agency's employees to see if any happened to have had any training or experience in drug dependency, and those employees would presumably be first in line for the new program if they can be spared from the other programs. But if there are not enough of them, or not enough can be spared, employees will have to be trained, which will cost the agency funds, and then they will need to be put to work in the new program with no experience. Just as the new program is as likely to be as underfunded as the old programs, given the shortfall of money, so the new program is as likely to be understaffed as the old programs. The harms that occur from understaffing are many -- from the staff being overworked to their being overwhelmed -- and so one question that must be answered to decide whether the agency should take on the new program is how best to distribute the harms that will occur from understaffing. Would it be better to put a lot to work in the new program, to get a jump on the problem, even though that decision will leave the other programs more severely understaffed, or would be it best to spread the harms more evenly (see the Code of Ethics 3.07(b))?

Again, we cannot know the answer to this question, or the other questions we have raised, without more information. We cannot be sure what kinds of problems the practitioners will face in this new area. In Money or care?, those working in the foster homes were not given adequate guidance about what to do, and in Limited number of visits, Pat was given a guideline that was clear, but seemed arbitrary and unresponsive to the real problems she faced in tailoring therapy to particular clients. In those cases, the institutions in question were operating well-established programs. But if there can be those kinds of problems for the practitioners in those sorts of programs, it is unreasonable to assume that the practitioners in Jeffrey's agency will not have any serious problems in taking on a wholly new project, in an area in which they have little or no experience.

Some might argue that no one could be prepared to tackle the problems created by the crack epidemic, especially given its magnitude and the persistence of the dependency, but at least those practitioners with previous work in substance abuse programs would have some idea how to proceed with this new variety of addiction. In deciding whether the agency ought to respond to the new cause, Jeffrey and the Board will thus certainly need to consider not only how well taking on the new problems fits with its existing mission and with its existing programs, but also what new problems the practitioners of the agency may have. They have a large stake in the answer Jeffrey and the Board give. It is, of course, as difficult to anticipate what kinds of problems those in the new program will face as it is to anticipate what kinds of problems those in the existing programs will face because of fewer resources. But these are problems that will matter in making the right choice.

What is missing so far in this discussion of the various harms that may occur given one choice rather than another is what ought to be guiding the discussion. As the third step of our model tells us, we need always to be clear why we are doing whatever it is we decide to do: what do we intend to accomplish? We cannot begin to determine which sets of harms and benefits the agency ought to choose without first understanding what goal or goals the agency is committed to achieving. For instance, one issue the case raises is why this agency was asked to take on this problem. Why was not an agency with experience in substance abuse approached? It might be that this agency has some special goals that fit well with handling the new social problem, or it may be that the agencies that handle substance abuse have special problems that make them inappropriate choices to handle this problem. We do not have enough information to know one way or the other, but we will need to know what the agency's goals are before we can determine what the agency ought to do.

We may find, were we to investigate this issue, that other agencies in the community are better prepared than this one, but that discovery leads into the questions we shall examine in the next section.

to go instead to the agency. In fact, county money that is earmarked for the county shelter to provide housing for the homeless is being sent to this agency on the mistaken assumption that it provides housing. The checks are made out to the agency, and Delores is using the money for the agency's programs. The agency's advertising has clearly caused confusion about what the agency does. The agency's accountant also works part-time for Janet, has told her of the misdirected funds, and is unsure what to do.

Janet's agency has not only lost funding, but it has had to spend additional money for 'outreach therapy' at the agency. 'We have to go in there,' Janet says, to assess the needs of the clients so it can try to provide homes for those who need them. The agency was unwilling initially to provide office space for that, and, though

it now does that, it charges them 8 cents for each phone call and makes it difficult in other ways for Janet's agency to do its job.

This is a complex case, raising many different problems, not the least of which is that the agency Delores is in charge of is taking public money that does not rightfully belong to it and using it for purposes other than what it is supposed to be used for. It may be using that money for some good purposes, but it is not spending it for the purpose it was given. It is not a difficult ethical judgment that this situation is wrong.

The accountant has a professional obligation to inform the county that it is making a mistake, but now, because Janet knows about the problem, she has an obligation as well. How Janet can best fulfil that obligation is another issue (see the Code of Ethics 2.11(a)-(d)). If she cannot convince the accountant to act, she may need to write the county authority informing them that, somehow, the money is mistakenly not being sent to the agencies that provide housing for the homeless.

The source of the accountant's professional obligation is that the money is being misappropriated and the accountant knows it. Janet's obligations are more complicated. She has an obligation to allow the accountant to act before she acts because, if she acts first, the accountant will be in difficulty. But she also has an obligation to act -- either by allowing the accountant to act or, if the accountant will not act, by acting herself. The source of that obligation is that she knows that the homeless are being harmed and she now knows how they are being harmed. She has the obligation any of us would have to help those who are being harmed, through no fault of their own, when we can help them. She has an additional reason for acting because she and her agency are trying to help provide housing for the homeless and are having a more difficult time of it because of the misallocated funds.

How she should act is another question. It is always important to try to talk through the issues with those involved, and so her first obligation is to talk with Delores, explain what she thinks the problem is and then listen to what Delores has to say (see the Code of Ethics 2.11(c)). She will then be far better positioned to determine whether she needs to do anything else or whether, somehow, she may have misunderstood something about the situation.

It is a situation that, as Janet now understands it, clearly needs to be turned around. Among the other problems are these:

(a) The agency is misrepresenting what it does. That is itself a harm because it is taking money from the public under false pretenses, but Janet's worry ought to be that harm will come to the other social work agencies in town when the truth comes out. People who have given to that agency and then discover that they have been taken may be less likely to give in the future to any such agency, not knowing which are misrepresenting what they do. After all, if one cannot trust a minister in charge of an agency, why should one trust others who claim their agencies will help?

(b) The agency is giving the homeless a band-aid when major surgery is needed. What the homeless need, it may be argued, is a long-term solution that provides them with housing, not just small bars of soap so they can 'travel light.' That Janet's agency has had to create an 'outreach' program to go into the community to reach the homeless to determine what their needs are and try to meet them is a rather obvious sign that the homeless need more help than the agency is giving them -- help with filling out forms, for instance, so that they can get other aid they are entitled to from other agencies.

(c) Because the homeless are not being housed, they are presumably still in the neighborhood at night, sleeping in lobbies of businesses and on the streets, causing resentment among business owners and the public in general who are then less willing to give

since the dollars they think they have been giving for the homeless are not solving the problem.

(d) The agency has turned what ought to be a cooperative endeavor among the various agencies in the community into a competitive enterprise, harming the interests of the homeless in the process, obviously, but also making it significantly harder for the other agencies to provide the aid the homeless need.

If Janet, or the accountant, do what they are obligated to do regarding the county checks, that may in itself set in motion a train of changes sufficient to turn the situation around. Taking on Delores may be difficult, given her popularity, but her popularity is bound to fall once it is known that she has been using money for one purpose that was allocated for another.

But a long-term solution requires a concerted community effort, one in which various agencies do not find themselves in competition for the limited funds that are going to be available. Since Janet coordinated the original agreement among the agencies about how to help the homeless, she has a special obligation now to try to reinvigorate that agreement, perhaps bringing in the county or other governmental agencies not only to ensure that any public funding goes to solve the long-term problems, but also to provide a check against the Lone Ranger mentality of the agency in question. What is needed is oversight as well as a long-range solution, and only through a coordinated effort with the other social work agencies and with governmental bodies can Janet hope to deal with the various problems this agency has created.

## **b. Cooperative endeavors**

*Agency Misrepresentation* presents a particularly complicated set of ethical issues. These are caused in part because of the agency's misrepresentation, but, rather obviously, conflicts may occur between agencies even where there is no misrepresentation and where the agencies involved are both committed to the same ethical goal. The free-market system encourages that, and when a not-for-profit agency has the same goal as a for-profit company, the conflicts may be particularly difficult to resolve. Consider the following case:

### *5.8 An adoption agency*

Adoption agencies are licensed by the state, and the state restrictions are all designed to ensure that the best homes are found for adoptive children. One agency, which we shall call 'Homes for Babies,' is advertising that 'it will get you a baby,' according to Joan, the director of another adoption agency. The advertisement also says that Homes for Babies does not always get 'the cream of the crop,' or, as Joan puts it, 'a baby of Caucasian parents, with excellent medical backgrounds, no mental illness, prenatal care, a healthy attitude towards adoption, a willing father.' So they are 'tagging babies,' Joan thinks, making distinctions between them that are inappropriate.

Joan has had several cases where she or one of her social work practitioners has been working with a client for several months, only to go to the hospital to discover a representative of the other agency there. In most cases the birth mother has said that she wants to work with the other agency.

Joan is concerned that such agencies are being licensed. They charge a great

deal of money for an adoption, and the adoptive families pay the medical and other expenses. Her agency and the other non-profit adoptive agencies charge their expenses and do not let the adoptive families pay any of the medical or other expenses. One former client told Joan that the Homes for Babies would allow her to meet with the adoptive parents when Joan's agency would not allow that, and Joan is concerned that the agency may be paying the birth mother, which is illegal.

She is even more concerned that the agency is not doing right by the children. One concern is that the home studies are not as thorough as they should be. The agency has an incentive to keep its costs as low as it can and so may not pay enough to provide a sufficient check on the adopting families. But the main problem for Joan is that while her agency starts with the children and tries to find the right home for them, Homes for Babies starts with those who want to adopt and makes a profit only if it finds a baby for them. It thus has a financial incentive to place children in homes that may not be best for them.

We have some problems in this case similar to those we had with the agency in *Agency Misrepresentation*. For one thing, the relation between the two adoption agencies is more uncooperative than Joan's agency thinks relations ought to be between agencies providing the same sort of service. If she thought the other agency's primary concern were for the welfare of the children, Joan might call this new agency if her agency had a child it could not place well. Yet her concerns about what Homes for Babies is doing means that she must hold back in order to ensure that the child's best interests are met. And Homes for Babies is not likely to call her should it run across a baby it cannot place right away. To maintain its profits, it is more likely to keep that knowledge to itself until it can find a set of adoptive parents for the child.

This non-cooperative attitude extends to the services the two agencies provide for the birth mother too because, as Joan's experience in several cases made clear, Homes for Babies is aggressively recruiting birth mothers whom Joan's agency had worked with right up to the birth date.

Homes for Babies is apparently not misrepresenting what it does. Indeed, its advertising that it does not always get 'the cream of the crop' may be thought to be like a product warning label: 'Look before you buy!' But, of course, that warning may also be a defense against potential lawsuits from any parents who end up being dissatisfied with the adoption. The agency can always say, 'We told you so.'

But the agency's concentration upon finding babies for adoptive parents rather than finding homes for children may cause harm in at least the following ways:

(a) Rather obviously, that concern to find babies rather than homes for babies may mean, at a minimum, that it will not provide the best home environment for the babies that is possible and, at the worst, that it will provide a bad home environment for them. If its primary incentive is to increase its bottom line, it is more likely to overlook potential problems than to proceed as cautiously as it should were its concern only the baby's well-being.

(b) A second area of concern is that it will not do the best that can be done for the birth mothers. They need prenatal care, but they also need extensive support. It is not easy giving up one's baby, and the sort of counseling needed both before and after the birth is time consuming and so expensive. Homes for Babies has some incentive to ensure that a birth mother obtains good prenatal care because it presumably wants to ensure that the adoptive parents have a baby which is healthy enough to satisfy them, and it has some incentive to provide counseling before the birth because it does not want a prospective mother to change her mind. But counseling that encourages a prospective mother to give

up her baby is not neutral and, rather obviously, may not be in the prospective mother's best interests -- or the baby's, for that matter (see the Code of Ethics 1.06(b)).

In addition, the agency has little incentive to ensure the extensive support a birth mother needs after giving up a baby. The agency will want to keep its expenses low so that it can be competitive with other for-profit agencies and so that it can earn more without charging so much as to discourage potential adoptive parents. So the agency has an incentive that the woman not change her mind, and so an incentive to counsel her after the birth, but again not with a neutral frame of mind.

(c) Another source of harm is that non-profit agencies will have fewer babies to offer adoptive parents. Indeed, Joan may object that, as its name suggests, Homes for Babies does get the cream of the crop since its aim is to find adoptive homes for babies, not all children who need them. Since most adoptive parents prefer babies to older children, they are more likely to work with that agency than agencies like Joan's, which will come to have fewer babies and more older children, the more successful Homes for Babies is. Potential adoptive parents will become more and more likely to work with for-profit agencies than with non-profit agencies, who will have fewer and fewer babies to offer, and potential parents who might have come to consider adopting older children may not come to the agencies that would have given them that opportunity.

(d) In addition, the agency's primary concern to increase its profits may cause it to overstep the bounds for placement. For instance, it may have paid the expenses of the birth mother, getting the money from the prospective adoptive parents and providing a real incentive for her to give her child up and to give it up to that agency rather than to Joan's. Joan suspects Homes for Babies of providing funding for the birth mothers because that seems the most reasonable explanation for why that agency is able to take over birth mothers Joan's agency has been working with. But that financial inducement makes it seem to Joan as though the agency were buying babies.

(e) Another source of harms is that if the agency is failing to match well the needs of the babies it places with the families who adopt them, not only will the babies be harmed, but the families and society at large may have to pay heavy prices for the consequences.

(f) Any failures of such agencies as Homes for Babies will harm the reputation of all adoption agencies among those who fail to distinguish, or are unable to distinguish, between the ones that operate for profit and those that do not. So, just as in Agency misrepresentation, the long-term consequences of one agency's failures may harm innocent agencies engaged in the same sort of activity and so harm their fund-raising capacity and thus the services they are trying to provide.

Of course, all these harms, real, likely, and possible, must be balanced, as our method tells us, against the good that such agencies as Homes for Babies do. In advertising that it does not always get 'the cream of the crop,' it is saying that it is willing to place infants whom other agencies may have trouble placing. So some babies who would not get homes, or who would not get homes until they were older, will get homes. And that is a benefit. In addition, some couples who would like to adopt children will no doubt get them through such agencies when they might have had a long wait with non-profit agencies, and that is a benefit -- provided, of course, that they ought to be parents and that they ought to be parents to the particular baby they have adopted.

So what ought Joan to do, if anything, to mitigate the harms she thinks are occurring, or are likely to occur, given the entry of for-profit adoption agencies like Homes for Babies into the adoption market? She faces the same sort of problem Janet faced. There is little she can do within the system to mitigate the harms.

In fact, it is striking what potential remedies will not work in either case. The sort of

consultative process that ought to be the norm for how social work practitioners work out problems is likely to be ineffective in either case. Homes for Babies has no incentive to change its way of operating, except perhaps in regard to some features it might be called to account for legally, and though Janet has an obligation to talk with Delores about the problems her agency is causing, the problem is that there is a need for a long-term community-wide program for the homeless. Whatever Delores may agree to do, what is required to achieve the needed end is a broader consensus among the interested parties than Janet can achieve just by talking with Delores. For one thing, other agencies will have to be brought into the process. What they will need to do, to achieve their ends, is to change the structure of the systems which are producing the problems they have.

In other words, as we work through the harms in the existing system and ask ourselves what Janet or Joan might do to mitigate those harms, we find ourselves turning, once again, to ask what goals are in question. If Janet's goal is to ensure that the county spends its money properly, she could go to the county to complain about Delores's misrepresentation. There may be no other way of getting the county to reconsider what it is doing with that money, but if Janet's goal is to find long-term housing for the homeless, the problems Delores is causing are minor irritants -- an occasion for remedial action to change the system. Of course, Janet has an obligation, in any event, to hold Delores accountable to the Code of Ethics and if Delores is not willing to stop the misrepresentation, to file a complaint with NASW or with the state licensing bureau.

The same is true of Joan. Ticking off the harms Home for Babies causes could initiate an inquiry which would consume a great deal of the for-profit's time and thus a great deal of its profits. But the most likely way to prevent the multitude of harms she thinks such agencies cause would seem to be for the state to make such agencies illegal or so to regulate them that they operate for the benefit of the babies being placed. To achieve either of those ends, Joan would undoubtedly have to work together with other non-profit agencies to lobby the state legislature to change the existing laws and licensing requirements.

The problems Janet and Joan face are no different in kind from those faced by other organizations. We expect sometimes fierce competition between corporations like General Motors and Chrysler, but even non-profit organizations can clash. The Red Cross might seem a paragon of disinterested benevolence, but it controls the nation's blood supply, and when it increased prices to its customers and a variety of competitors sprung up in response, it played economic hardball to retain its customer base. One lesson of the cases we have examined is thus that governmental or non-profit social work agencies are as subject as for-profit organizations to the collision of competing interests.

We may think it should make some difference when the clash is between social work agencies when they have a common mission, for that ought to make it easier to set up cooperative arrangements to settle the sorts of jurisdictional disputes raised by Agency misrepresentation. And when organizations are working for the same end, as in An adoption agency, it might seem easier to create the kind of collaborative programs that Joan would like. But as those two cases illustrate, agencies can come into conflict with one another or with other organizations, like Homes for Babies, for a variety of reasons, and one or both of those organizations having an ethical mission neither prevents such conflicts nor allows for easy resolutions.