A S I HAVE traveled around, giving workshops and teaching courses about legal issues in social work practice, I have come to realize that social workers need to learn more about the law itself rather than merely learning how to follow legal mandates. How do lawyers think? What is legal reasoning? What legal philosophy guides the decisions of a court? What is the purpose of arcane legal rules and procedures? What are the legal ramifications of following one course of action over another?

Previously, I have written and lectured about the ways that social workers can respond to the legal issues attendant to practice. In this book I have tried to deconstruct the law itself, to uncover the foundation of legal thinking and reasoning in order to demystify the law. My hope is that social workers will be able to use this legal knowledge to work more effectively in legal settings and to feel more confident about encounters with lawyers. Social workers are charged with the duty to be advocates for clients in legal systems and to consider ways to work for changes in legal processes to make them more therapeutic for all members of society. These goals can best be met by social workers who have a thorough understanding of the legal system and the legal concepts that support it.

This book begins with a broad perspective on the philosophical and historical foundations of the U.S. legal system. Social workers must be aware of these elements to appreciate the significance of structures, rules, and roles in the practice of law. I have included chapters that describe legal reasoning and the stages of litigation in order to provide social workers with knowledge of how to manage their involvement with legal systems. The material on constitutional law presents an overview of individual rights, essential information
for social workers committed to social justice. Finally, the last three chapters explore practical legal issues commonly encountered in social work practice, such as family law, probate matters, malpractice, and business law for private practice.

Preston-Shoot (1997) identifies four distinct but interrelated strands of social work and the law: First, statutes and regulations grant legal powers and duties to social workers. These laws provide guidance concerning the scope of social workers’ power and discretion to make practice decisions. Second, the profession has developed ethical guidelines and professional practice rules specifying the standards of care that social workers should abide by in their practice. Third, consumer complaints to courts and administrative agencies alleging misconduct or negligence enable a review of the actions of social workers and social services agencies, further defining specific duties and expectations for professional behavior. Finally, social welfare laws establish the rules, resources, and eligibility guidelines for social programs that provide services to people. These laws detail the role and scope of discretion for social workers who are providing social services under these rules. These four strands affect the practice of social work, and all social workers should become literate in the law in each area. Categorizing the sources of social work law in this manner enables social workers to conceptualize the purpose and scope of the law and thereby to become empowered through increased knowledge and understanding.

Part of the difficulty with learning about the law is the complexity of these legal sources and difficulty with the language, style, and accessibility of legal information. Many social workers have an expectation that the law can provide specific guidance concerning what course of action to take in a practice decision. Should I breach confidentiality when a client is not acting safely? Should I terminate a client who has not paid his bill for months? Should I disclose when a client is hiding assets in order to be eligible for an assistance program? The discomfiting truth is that the law will not answer most practice dilemmas of this sort with a conclusive opinion. Instead, social workers need to understand the law as a set of principles that can help them to meet the expectations of reasonable professional behavior. When social workers analyze a practice issue from this knowledge base, the result is a more empowered and confident course of action.

In many circumstances the law gives social workers power to act under legal authority. Understanding these legal powers and responsibilities allows social workers to use discretion to effectively meet the needs of their clients. This knowledge allows social workers to inform clients of options and to offer serv-
ices in a safe, fair, and just manner, thereby increasing client cooperation and empowerment. This knowledge also allows social workers to use professional judgment confidently within the authority provided under the law.

Knowledge of the law helps social workers to judge the scope of their discretion. Social work discretion includes both the substantive requirements of a particular program or service and the selection of methods, the development of the treatment plan, and many other practice decisions. Knowledge of the law also helps social workers to develop specific language for describing their practice to legal systems, to champion clients’ rights, and to retain control of essential decisions in practice.

It is important to understand a basic truth about the law. By its nature the law is a defender of the status quo, the power structure in U.S. society. Yet the law is an important context for social change. The law reflects American values of justice and equality while simultaneously reflecting social, racial, and economic myths and prejudices. This apparent dichotomy is an essential truth that social workers must understand in order to be players in the legal system. Social justice and civil rights are the tools within the legal system for balancing certain democratic processes (for example, those that reflect the views of the majority) that are less likely to allow changes that benefit dispossessed groups. The lack of money, power, influence, and organization create an impossible barrier to consistent and fair hearings by legislators and policy makers. Change on behalf of disfavored groups and individuals is possible only when they have advocates, information, and access to the legal system.

What is the proper legal role for social workers? The National Association of Social Workers’ *Code of Ethics* requires social workers to challenge social injustice (1999). The law provides an environment within which social workers can fulfill this mandate. The legal system also provides the context within which social workers can serve as advocates for clients and causes. Currently, social workers underuse the legal system as a tool for advocacy and social change. I hope that the legal insights gained from this book, combined with a commitment to a broader study of the law, will guide social workers to become confident and competent legal advocates.