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Ombudsman Training for Juvenile Institutional Staff

Ombudsman Training for
Juvenile Institutional Staff

Workshop Objectives

At the conclusion of this workshop, you will be able to:

- Define the role of the Ombudsman
- Design a system for receiving complaints
- Investigate and systematically process complaints
- Design and maintain a record-keeping system
- Write a complete case report

Grant # 82-JS-AK-0038

Proposed Five-Day Schedule

OMBUDSMAN/ADVOCACY/GRIEVENCE COORDINATORS

	Day 1	Day 2	Day 3	Day 4	Day 5
8:30 A.M.	Orientation	Kinds of Complaints	Establishing Empathy		Problem Solving
to	Role of Ombudsman	Processing Complaints	Listening	Art of Investigating	Exercises
12:00 NOON	Legal Rights of Juveniles				

12:00-1:00

LUNCH

1:00 P.M.	Factors that help or hinder program implementation	Decision Making	Games residents, administrator, staff play	Report writing	Summary
to					Evaluation
4:30 P.M.					Graduation

LESSON SUMMARY

SUBJECT TITLE: OMBUDSMAN TRAINING

TOPIC TITLE: Role of the Ombudsman/Grievance Advocate

TARGET POPULATION:
Ombudsmen

TIME ALLOCATION:
2 hours

CLASSROOM OR AREA REQUIREMENTS:
U-shaped conference seating with adequate space for small groups

PERFORMANCE OBJECTIVES:

At the end of this session, you will be able to:

1. Discuss the expectations of Ombudsmen.
2. List constraints within which program must operate.
3. Define Ombudsmen.
4. Discuss elements of a successful program.
5. Compare the varieties of programs and jurisdictions.

EVALUATION PROCEDURES:

1 through 5 - oral feedback

METHODS:

Group discussions;
Brainstorming;
Small group discussions.

TRAINING AIDS, SUPPLIES, AND EQUIPMENT:

Overhead projector;
Flip chart;
Markers;
Tape

INSTRUCTIONAL CONTENT

NOTES TO TRAINER

Before we define the role of the Ombudsman, I would like to discuss my background and experience with Ombudsmen programs and hear the background and experience of each of you. I'd like to discuss why we're here.

Begin by introducing yourself and briefly summarizing your background and experience with the Ombudsmen program. Relate specific information about the program you work with, such as where it is organizationally located; how long it has been in operation, and its scope of jurisdiction.

Have each participant briefly introduce him/herself. Ask them to answer the questions:

- 1) Who are you?
- 2) Why are you here?
- 3) What is your relationship to the Ombudsmen program?

Let's begin to define the role of Ombudsman by discussing the history of the concept. Ombudsman, according to Webster, is a term that means a government official, as in Sweden or New Zealand, that is appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials. It is someone who investigates and reports complaints as from students or consumers; reports findings and helps to achieve equitable settlements. That's how Webster

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>defines it. Let's take a look at the term and see how it is applied to the Youth Justice System. Let's discuss the expectations of those involved with the Ombudsmen program. What are the expectations of an Ombudsman program for youth who are incarcerated within a juvenile justice system; their parents; facility staff; agency administration and the Ombudsmen themselves?</p>	<p>With newsprint and magic marker, list all of the expectations the group gives. Show the slide "Expectations as you list them.</p>
<p>Let's move on to constraints of the program. What are some of the problems that Ombudsman programs face and what are some of the considerations that an Ombudsman must make when deciding what the program can or cannot accomplish within the youth justice system? Let's list some constraints.</p>	<p>List constraints, then show slide "Constraints</p>
<p>Are there any other constraints that we have not mentioned?</p>	
<p>Let's list the roles of an Ombudsman. What is it an Ombudsman is expected to be to the youth in the program?</p>	<p>List out all the roles mentioned and then show the slide on "Roles of Ombudsmen."</p>
<p>Again, ask "Are there others we have not mentioned?" Again, let's brainstorm. What elements are needed</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>for a successful Ombudsman Program?</p>	<p>After brainstorming all four areas and using transparencies, ask participants to break into small groups with approx. 5 in each group.</p>
<p>Please form small groups and discuss the role of the Ombudsman in a residential facility for youth. I will give you a magic marker and newsprint and would like you to write the definition you come up with and share it with the others.</p>	<p>Give groups 15 min. for this task. Visit each group to assist them in focussing on the role of Ombudsman and inform group that they will need a recorder to tell the large group what they discussed. When the groups reconvene, have each one report their definitions and discussion. Have large group agree or disagree with each definition, but try to reach consensus.</p>
<p>Various states responded to the original survey of training needs for Ombudsman programs. Here is some of the information they submitted.</p>	<p>Show transparencies.</p>

TRANSPARENCIES FOR "ROLE OF OMBUDSMEN"

1. Expectations

Youth
Parents
Facility Staff
Agency Administration
Ombudsmen

2. Constraints

Turn over of clients
Authority to follow up
Independence
"Thickness of Skin"

3. Roles of an Ombudsman

Listens
Observes
Coordinates
Mediates
Investigates
Monitors
Advocates

4. Elements of Success

"Clout"
Rapport
Access
Knowledge: Youth rights
Justice System

5. Varieties of Jurisdictions (see attached)

6. Varieties of Programs (see attached)

7. Ombudsmen

A government official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials.

SIGNIFICANT EVENTS IN JUVENILE JUSTICE: A CHRONOLOGY*

- 1601 Poor Law of 1601 (Great Britain) Mandated the involvement of local communities for the care of dependent and neglected children as a delinquency prevention strategy.
- 1729 The first orphanage in the United States, Ursuline Orphanage, was located in New Orleans.
- 1823 Society for the Reformation of Juvenile Delinquents was created in New York City. It was the first large-scale private effort to officially alert the state to the need for separation of youth and adult offenders.
- 1825 New York House of Refuge - created for the shelter and education of dependent and neglected children, as well as for youths committing minor offenses. The legislation establishing the House called for the identification of "predelinquents" and early intervention to prevent more serious criminal acts. Youths committing serious acts were handled by the adult system. Funding for the House of Refuge consisted primarily of private donations and awards.
- 1836 Ex Parte Crouse is the Pennsylvania Court case establishing parents patriae power for the state which allows the state court to act as surrogate parent where the natural parents are unable or unwilling to provide appropriate care.
- 1847 The House of Refuge expanded into a state system with construction of a second Refuge in Rochester, New York. A third facility, the Elmira Reformatory, was built in 1876.
- The Massachusetts State Reform School for Boys opened as the first fully state-supported institution for juvenile delinquents.
- 1853 The Children's Aid Society was established with private funding to help destitute children in New York City. The Society established self-help lodging for girls and boys and popularized the "placing out" of delinquent children in new homes.
- The New York Juvenile Asylum opened as a state institution to remove children from the "corruptive influences" of the city and to make them more "useful" and industrious members of society.

*Adopted in part from "In Search of a National Youth Policy" (presubmission draft), March 1982, Prepared by the Center for the Assessment of the Juvenile Justice System of the American Justice Institute, Sacramento, California.

- 1855 The Massachusetts State Reform School for Girls was established as the first American institution for juvenile delinquents based on the family system.
- 1869 Formal juvenile probation services were established by the Massachusetts Board of Charities.
- 1879 The Society for the Prevention of Cruelty to Children was established in New York City by philanthropists who sought to prevent begging by children.
- 1877 A Massachusetts law was the first in the United States to utilize the principle of separate trials for juvenile offenders.
- The New York State Legislature passed the first concise law dealing with police treatment of juveniles: "Any child under restraint or conviction, apparently under the age of fourteen years, shall not be placed in any prison or place of confinement, or in any courtroom or any vehicle for transportation, in company with adults charged or convicted of crime except in presence of proper officials."
- 1899 Illinois Juvenile Court Act established a separate court for dependent, neglected and delinquent youth under the age of 16. Care of the "troubled youth" was to approximate a proper family life. Large correctional institutions were to be avoided as a disposition.
- 1907 The National Probation Association was formed for those interested in probation, parole and juvenile courts. Its name was changed in 1960 to the National Council on Crime and Delinquency (NCCD).
- 1909 Clinical approaches to juvenile delinquency causation began with laboratory research for the Chicago Juvenile Court.
- The first White House Conference on Children and Youth was called by President Theodore Roosevelt. Delegates emphasized the care of dependent and neglected children and gave impetus to the formation of the U.S. Children's Bureau.
- 1912 U.S. Children's Bureau was established to collect and disseminate information affecting the welfare of children.

- 1913 The first juvenile unit of a police agency was created in Portland, Oregon.
- 1916 The first federal child labor law, Keating-Owen Act, passed. It was declared unconstitutional in 1918.
- 1919 The Second White House Conference on Children and Youth was held, and child welfare standards were discussed. From the Conference came the first federal and state programs for maternal and child health and the eventual passage of federal and state child labor legislation.
- 1925 The Standard Juvenile Court Act was adopted and published by the U.S. Children's Bureau and the National Probation Association. The model legislation suggested that separate hearings be held for children: informal procedures be used in such hearings; a regular probation service be established for both investigation and supervisory cases; juveniles be detained in separate institutions from adults; special court and probation records be kept for juveniles, both legal and social; and that mental and physical examinations of juvenile delinquents be provided upon contact with the juvenile justice system. (Revised and reissued in 1928, 1933, 1943, 1949, and 1959).
- 1926 The U.S. Government began its first comprehensive effort to collect juvenile court statistics which measured the volume of children's cases disposed of each year by juvenile courts.
- 1927 All but one state, Wyoming, had adopted juvenile court laws. In 1945, Wyoming adopted a juvenile court law.
- 1930 The third White House Conference on Children and Youth established a "Children's Charter" which listed the fundamental rights of children.
- 1931 The Wickersham Commission gave national focus to juvenile delinquency problems with its reports on the conditions of delinquents who violate federal laws.
- 1932 The first Coordinating Council for delinquency prevention efforts was organized in Los Angeles to promote the coordination of work in the prevention field.
- 1933 The Civilian Conservation Corps (CCC) was created by Congress to help employ jobless males between 18 and 25 years of age.
- The first National Conference of Students in Politics was held in Washington, D.C.

1935 The Social Security Act included provisions for grants to provide public services for children, including those in danger of becoming delinquent. The public child welfare services provision of the Act (Title IV-B) was financially amended several times: \$3.5 million was appropriated in 1946 and \$25 million in 1960. Between 1968-1975, \$266 million was authorized, but only \$56.5 million was appropriated.

The National Youth Administration (NYA) was created to administer work relief and employment opportunities for those between 16 and 25 who were from families on relief and not enrolled in school.

1936 The American Youth Congress was held and the first federal subsidies were made available to states through child welfare grants administered by the U.S. Children's Bureau, Delinquency Division, for the care of dependent, neglected, exploited, abused and delinquent youth.

1938 Federal Juvenile Delinquency Act provided the basic piece of legislation involving the federal government. In the Act, judicial procedures for juvenile defendants were established. Juveniles could be processed as such only if the Attorney General directed that they were juveniles. (Amended in 1949 and 1959.)

1940 Juvenile dispositions begin to emphasize individual treatment modalities.

American Law Institute approved the Model Youth Corrections Authority Act with state government guidelines on administering institutions and agencies for youth and young adults.

Fourth White House Conference on Children and Youth was held.

1941 California enacts the first Youth Authority Act in the nation. The Act gave the California Youth Authority (CYA) jurisdiction over all persons under 21 guilty of public offenses or who required treatment, training or education beyond the capabilities of local facilities.

1942 The National Commission on Children and Youth met to review the needs of children in wartime. A "Charter for Children in Wartime" and a ten-point program for state action were adopted.

1946 The National Conference on Prevention and Control of Juvenile Delinquency was held in Washington, D.C.

1948 Interdepartmental Committee on Children and Youth was created by the federal government to coordinate federal agencies involved with youth programs. This was the first effort in the nation to coordinate existing and newly-created youth-serving agencies.

1951 Federal Youth Corrections Act was enacted by Congress to provide methods for the training and treatment of federal youth offenders who were not appropriate for probation. Provisions of the Act created a Board of Parole under the Department of Justice and a Youth Corrections Division.

National Institute of Mental Health grants became available for research on juvenile delinquency.

1952 Department of Health, Education and Welfare (HEW) established a Juvenile Delinquency Branch.

1953 Hearings of the Subcommittee to Investigate Juvenile Delinquency held as part of the U.S. Senate Judiciary Committee. Hearings continued periodically between 1953 to 1958. The Subcommittee's recommendations were the passage of a bill to provide assistance and cooperation with states to help strengthen and improve state and local programs on delinquency prevention, control and treatment.

1955 Interstate Compact on Juveniles was adopted by the Council of State Governments to encourage cooperation among states for the return of delinquent and non-delinquent youths who were runaways or on probation or parole. (By 1967, the Compact had been adopted by 45 states.)

1957 International Juvenile Officers Association was established.

1959 National Research and Information Center on Crime and Delinquency was set up by the Rockefeller Brothers Fund to serve as a national clearinghouse on juvenile delinquency.

Congress requested a report on juvenile delinquency from the U.S. Children's Bureau and the National Institute of Mental Health; a joint report was submitted to Congress in 1960.

Standard Family Court Act published by the National Council on Crime and Delinquency called for the establishment of a family court division within the highest state court of general trial jurisdiction, the creation of a state board of family court judges and a state director of the family court. Family Court would have jurisdiction over all delinquent and neglect cases as well as other family problems of divorce, adoption, nonsupport and illegitimacy. The Act was soon adopted by New York, but very few states have followed suit.

- 1950's Juvenile dispositions emphasize group treatment
1960's modalities such as Guided Group Interaction. Delinquency prevention focused on work with youth gangs.
- 1960 President's Committee on Juvenile Delinquency and Youth Crime was established to take over the role of the 1949 Interdepartmental Committee on Children and Youth which had little success in coordinating the federal antidelinquency effort. The Committee produced the Juvenile Delinquency and Youth Offenses Control Act later in the year.
- 1961 Juvenile Delinquency and Youth Offenses Control Act passed by Congress as the first federal effort to provide both leadership and money to juvenile delinquency prevention. Thirty million dollars was authorized for three years to fund efforts to research and demonstrate innovative juvenile programs. The Secretary of HEW was given the responsibility for providing categorical grants to community institutions and agencies for planning and initiating prevention and control programs.
- 1962 A new legal category was created in New York and California to acknowledge the legal and correctional differences between status offenders and criminal offenders. Persons in Need of Supervision (PINS) defined the non-criminal basis of juvenile court jurisdiction and made status offenders separate from dependent and neglected youth. (By 1974, thirty-four states made such a distinction.)
- 1963 The federal Vocational Education Act was passed to fund updated institutional vocational training programs and to expand staff and facilities.
- The Equal Opportunity Act established by Job Corps for those leaving high school without a degree or marketable skills; Head Start for disadvantaged preschool children; and made funding available for community action programs.

The Manpower Development and Training Act passed to train teenagers without jobs and marketable skills for employment.

- 1964 Two-year extension of the 1961 Juvenile Delinquency and Youth Offenses Control Act passed. (The Act was again extended in 1966 but eliminated in 1967. Between Fiscal Years 1961 and 1967, the total amount of money expended on the Act was \$47 million.)
- 1965 The Law Enforcement Assistance Act was passed as the first legislation that provided federal assistance for strengthening state and local law enforcement agencies. This affected juvenile delinquency as it was the second federal law aimed at crime control, the first being the 1961 Act. Both laws worked together to increase the national effort of juvenile crime prevention.
- Congress passed the Elementary and Secondary Education Act of 1965. It was designed to remedy problems of differential opportunity in schools by providing supplemental funding for compensatory education. The Act was amended in 1967 to include two titles which dealt specifically with juvenile delinquency.
- The Department of Labor began operating two programs designed to provide local employment assistance to youth, The Job Corps and Neighborhood Youth Corps (result of 1963 Manpower Act.)
- 1966 Kent v. United States established the right of juveniles to receive a formal hearing before waiver to adult court.
- 1967 In re Gault extended certain due process safeguards to juvenile court proceedings.
- The President's Commission on Law Enforcement and Administration of Justice (appointed in 1965) released its report, the Challenge of Crime in a Free Society. One volume was devoted to juvenile delinquency.
- 1968 Juvenile Prevention and Control Act gave HEW the responsibility to provide assistance for a wide range of prevention and rehabilitation services to delinquent and predelinquent youth. Emphasis was placed upon developing new kinds of community-based programs. The Act was written with the intention of producing an integrated approach to juvenile delinquency.

Omnibus Crime Control and Safe Streets Act created the Law Enforcement Assistance Administration (LEAA) to provide block grants to states for the improvement and strengthening of law enforcement. Its broad crime control mandate authorized funding for delinquency control programs.

1970 In re Winship requires that the standard of proof in delinquency proceedings be "proof beyond a reasonable doubt."

Seventh White House Conference on Children held.

The Crime Control Act of 1970 amended the 1968 Omnibus Crime Control Act. The new Act introduced funding earmarked for corrections programs.

Federal Youth Conservation Corps Act passed to set up a summer employment program for youths between 15-18 under the joint administration of the Departments of Agriculture and Interior.

1971 McKeiver v. Pennsylvania denies the right to a trial by jury in juvenile proceedings.

Amendments to the Omnibus Crime Control Act redefined the role of the LEAA to include "programs relating to the prevention, control or reduction of juvenile delinquency" and authorized funding for community-based delinquency prevention programs.

Amendments to the Juvenile Delinquency Prevention and Control Act extended the legislation one year and established the Interdepartmental Council to coordinate all federal delinquency programs. HEW and LEAA involvement in juvenile delinquency was redefined with HEW to focus on prevention and rehabilitation programs administered outside the traditional juvenile corrections system and LEAA to concentrate on persons already in the system.

The first White House Conference on Youth was held with youths, rather than adults, serving as the primary leaders.

The National Advisory Commission on Criminal Justice Standards and Goals was appointed by LEAA Administrator to formulate the first National Criminal Justice Standards and Goals for crime prevention and reduction. The NAC published six volumes on police, courts, corrections, the criminal justice system, community crime prevention and a National Strategy to Reduce Crime. In 1975, the National Advisory Committee took the place of the Commission and one year later published the 822-page volume entitled Juvenile Justice and Delinquency Prevention.

The Juvenile Justice Standards Project was established by the Institute of Judicial Administration. The American Bar Association later joined IJA as a co-sponsor. The IJA ABA Joint Commission on Juvenile Justice Standards developed 23 volumes of standards by 1977. Twenty of the 23 volumes have been approved by the ABA House of Delegates.

1972 Amendments to the Juvenile Delinquency Prevention and Control Act extended the legislation until June 30, 1974, and created a new office in HEW, the Office of Youth Development and Delinquency Prevention Administration (OYDDPA).

1973 Morales v. Turman established operational minima for juvenile training schools.

Crime Control Act of 1973 amended the Omnibus Crime Control Act. For the first time, LEAA's enabling legislation specifically referred to juvenile delinquency in its statement of purpose: In order for states to qualify for funding they were required to provide "satisfactory emphasis on the development and operation of community-based correctional facilities and programs... for juveniles."

The Comprehensive Employment and Training Act (CETA) was passed by Congress. Its youth component, Youth Employment Programs and Projects (YEP) was designed to employ disadvantaged youth.

1974 Juvenile Justice and Delinquency Prevention Act amended the Omnibus Crime Control Act. This was the first federal effort to establish a specific agency to coordinate all federal programs affecting the prevention and control of juvenile delinquency. The Act created the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to provide three sources of assistance

to the states: discretionary grants given directly from OJJDP to public and private nonprofit agencies, individuals and organizations for prioritized areas; formula grants to the states which submit comprehensive plans for developing a coordinated approach to delinquency prevention, treatment and improvement of the juvenile justice system; and technical assistance for providing juvenile justice specialists to the states.

- 1975 Breed v. Jones continued the judicial move toward a "justice" model for juvenile proceedings. "The court held that subjecting a child to a criminal trial as an adult, after he had been adjudicated a delinquent in a juvenile court proceeding for the same offense, violated the double jeopardy clause of the Fifth Amendment.."
- Title XX of the Social Security Act was signed into law to provide federal reimbursements to states for several social service goals affecting youth: achieving or maintaining economic self-support to prevent, reduce or eliminate a delinquency and dependency; to prevent or remedy neglect, abuse or exploitation of children and adults incapable of self-protection; to prevent or reduce inappropriate institutional care by providing for community-based or home-based care; and referral or admission for institutionalized care when other forms of care are not appropriate.
- National Advisory Committee on Criminal Justice Standards and Goals established the Task Force on Juvenile Justice and Delinquency Prevention which researched and published National Standards for Juvenile Justice and Delinquency Prevention in 1976.
- 1976 Amendments passed for the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970. The new legislation called for special emphasis grants to states and public and private nonprofit agencies for "underserved populations, such as...youth."
- 1977 Juvenile Justice and Delinquency Prevention Act Amendments of 1977 extended state compliance with the de-institutionalization of status offenders from two to three years and stated that dependent and neglected children could no longer be placed in detention and correctional facilities.

Institute of Judicial Administration/American Bar Association Joint Commission published 23 volumes of juvenile justice standards.

1978-
1979

American Correctional Association/Commission on Accreditation for Corrections published four volumes of juvenile correctional standards:

Manual of Standards for Juvenile Community Residential Services

Manual of Standards for Juvenile Probation and After-care Services

Manual of Standards for Juvenile Detention Facilities and Services

Manual of Standards for Juvenile Training Schools and Services

1979

Justice System Improvement Act (JSIA) provided a Congressional mandate to reorganize the LEAA. In addition to a total restructuring of LEAA (OJJDP included), three new agencies were established--the Office of Justice Assistance, Research and Statistics (OJARS) serving as an umbrella support organization to LEAA and the other two new agencies; the National Institute of Justice (NIJ); and the Bureau of Justice Statistics (BJS). In March 1980, drastic budget cuts forced a change in the 1979 JSIA intent - no money was authorized for LEAA, thus eliminating the 12-year old agency.

The federal Drug Abuse Office and Treatment Act of 1972 was amended to provide formula grants to states and project grants to public service providers for drug use prevention with youth.

1980

The National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC) published standards for the administration of juvenile justice.

The Juvenile Justice and Delinquency Prevention Act of 1974 was amended to require all participant states to remove all juveniles from adult jails and lockups by 1985.

1981

Rhode Island was the first state to have a juvenile training school accredited by the Commission on Accreditation for Corrections. The first juvenile detention center to be accredited was also in Rhode Island.

The first juvenile parole or aftercare service to be accredited by the Commission on Accreditation for Corrections was in Nebraska.

1982 The first juvenile community residential services program was accredited by the Commission on Accreditation for Corrections in Berrien County, Michigan.

1983 American Correctional Association/Commission on Accreditation for Corrections published second edition manuals of juvenile correctional standards.

Standards for Juvenile Community Residential Facilities

Standards for Juvenile Probation and Aftercare Services

Standards for Juvenile Detention Facilities

Standards for Juvenile Training Schools

26

Challenges to Conditions of Confinement

26.1 SCOPE OF THE CHAPTER

This chapter is concerned solely with conditions and treatment in postadjudicatory juvenile delinquency facilities, generally referred to as training schools, reform schools, or industrial schools. It does not cover children committed to mental health institutions, jails or children detained pretrial in jails, juvenile detention centers, and other such facilities. Some references to the leading cases concerning those facilities, however, will be made whenever appropriate. For assistance in challenging commitment to jail or a detention facility, see NATIONAL JUVENILE LAW CENTER, CHILDREN IN JAILS: LEGAL STRATEGIES AND MATERIALS Clearinghouse No. 16,650. (For a discussion of all types of pretrial detention facilities, see Chapter 8.)

A brief summary of the major cases in this area is presented in Section 26.2. Section 26.3 discusses treatment programs and their evaluation. Sections 26.4 through 26.16 deal with specific institutional deficiencies that may be subject to litigation. The last section is a selected bibliography.

It is not the intent of this chapter to be a comprehensive litigative manual for challenging children's institutions. For this assistance, see NATIONAL JUVENILE LAW CENTER, ALL YOU EVER WANTED TO ASK BUT WERE AFRAID TO KNOW ABOUT JUVENILE INSTITUTIONS: A LITIGATIVE GUIDE Clearinghouse No. 19,312 [hereafter cited as LITIGATIVE GUIDE].

26.2 MAJOR CASES

It should be noted at the outset that commencing institutional litigation can be a monumental task, involving vast resources of time,

money, and personnel. At the same time, the results can be staggering, as in the landmark case, *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974). Lesser scale litigation can be quite successful: attacking one institution in a state system may bring substantial changes with a limited expenditure of human and monetary resources. A good example of this is *Harris v. Bell*, 402 F. Supp. 469 (D.C. Mo. 1975), in which a consent decree resolved all the issues raised in the case.

Generally institutional litigation consists of two broad areas of concern: (1) conditions of confinement and (2) treatment or rehabilitative programs. The conditions issues closely resemble prison cases, and decisions often parrot the language of those cases. Issues such as solitary confinement without due process, discipline without due process, mail censorship, restrictions on visits by friends and attorneys, open restrictions, and deprivations of personal property arise with regularity.

The treatment or rehabilitative program question is an additional element in juvenile institutional litigation that is not found in prison cases, but is very similar to cases in the mental health field. See, e.g., *Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala. 1971), *aff'd sub nom. Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir. 1974). For a full discussion of the meaning of the right to treatment in such litigation, see LITIGATIVE GUIDE, *supra*.

The first of these cases, *Lollis v. New York State Dep't of Social Servs.*, 322 F. Supp. 473 (S.D.N.Y. 1970), was brought as a class action on behalf of all children confined in training schools in the state of New York "who are forced to endure extended periods of solitary confinement." A companion case, *Pena v. New York State Dep't of Social Servs.*, 322 F. Supp. 473 (S.D.N.Y. 1970), sought class action relief for children subject to solitary confinement, to the binding or handcuffing of their hands and feet, and to the intramuscular use of thorazine or other tranquilizing drugs. In both cases, the plaintiffs alleged that they suffered cruel and unusual punishment in violation of both the Eighth and Fourteenth Amendments. Injunctive and declaratory relief were sought, as well as damages. The decision in *Lollis* upheld the allegation of cruel and unusual punishment on the issue of solitary confinement, and the defendants were enjoined from isolating the named plaintiffs pending trial; however, the statewide injunction was denied without prejudice. In the companion case, similar relief was granted in regard to the isolation of the named plaintiff (*Pena*), but no preliminary relief was afforded him on the handcuffing issue, since there was "too sharp a dispute of facts."

In addition, the court in *Lollis* directed the defendant to file

proposed standards concerning other conditions in the institution. In a subsequent opinion, *Lollis v. New York State Dep't of Social Servs.*, 328 F. Supp. 1115 (S.D.N.Y. 1971), however, the court reversed itself in regard to the propriety of this part of its former order, holding that "except in most extraordinary circumstances, it is not a proper function of a federal court to impose regulations for the administration of custodial institutions." *Id.* at 1119.

A recent development in *Pena* was the entry of findings of fact and conclusions of law on February 11, 1976, Clearinghouse No. 12,293 C, by Federal District Judge Constance Baker Motley. Judge Motley found that all three of the challenged practices—solitary confinement, physical restraint, and medical "restraint"—were used punitively and antitherapeutically in violation of plaintiffs' right to treatment under the Fourteenth Amendment and were cruel and unusual punishment prohibited by the Eighth Amendment. Although Judge Motley could not conclude that these measures in every instance were unconstitutional, the defendants were enjoined from violating their own new regulations (declared to be minimal constitutional standards) considering their past "doleful record of noncompliance."

In *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972), another class action, plaintiffs alleged that the conditions of their confinement (including a maximum-security adult correctional institution, a former women's prison, and the wing of an adult medium-security prison) violated their rights to due process and equal protection and constituted cruel and unusual punishment. A wide variety of relief was sought, including a preliminary injunction against any confinement in the maximum-security building in the adult prison, in the women's prison, or in the maximum-security cells of the medium-security building in the adult institution, as well as any transfers to the youth correctional center in the absence of procedural protections. The plaintiffs requested the establishment of minimum standards for conditions of confinement and the institution of programs of rehabilitation, vocational training, drug rehabilitation, and psychiatric counseling. They also sought full school days, three hours of daily exercise outdoors, and more flexible mealtime regulations.

The following relief was granted in *Inmates*:

(1) The facility in the old women's prison was ordered permanently closed because the conditions in it were so deplorable that they constituted cruel and unusual punishment and violated equal protection and due process of law.

(2) Boys confined in the adult correctional facility were to be

allowed three hours of outdoor exercise daily as well as educational opportunities equivalent to those afforded children in the boys training school.

(3) The defendants were ordered to provide the following minimum conditions in all its facilities:

- (a) A room equipped with lighting sufficient for reading until 10 P.M.
- (b) Sufficient clothing to meet seasonal needs
- (c) Bedding, which must be changed once a week, including blankets, sheets, pillows, pillow cases, and mattresses
- (d) Personal hygiene supplies, including soap, toothpaste, towels, toilet paper, and a toothbrush
- (e) A change of undergarments and socks every day
- (f) Minimum writing materials, that is, pen, pencil, paper, and envelopes
- (g) Prescription eyeglasses, if needed
- (h) Equal access to all books, periodicals, and other reading materials located in the Training School
- (i) Daily showers
- (j) Daily access to medical facilities, including the provision of a twenty-four hour nursing service
- (k) General correspondence privileges.

(4) The defendants were ordered to submit plans for a psychiatric counselling program.

The court refused to temporarily enjoin all transfers to the adult facilities or impose judicial hearings on the transfer process, although it stated that "the loss of liberty entailed by a boy . . . [in such a transfer] . . . may well require that such transfers be done in accordance with due process of law." *Id.* at 1370. The court felt that it needed more expert testimony before ruling on these issues. It also found the expert testimony insufficient to justify granting the requested preliminary injunction against the isolation of children for periods in excess of two hours unless a psychiatrist certified in writing that such isolation was necessary; however, isolation could in no event exceed twenty-four hours in a seven-day period.

Subsequent negotiations in *Inmates* resulted in extensive stipulations and a permanent order that granted broader relief on the issues of solitary confinement and treatment programs. (These detailed proposals are available from Clearinghouse, Nos. 5121 C,D,E,F,G,H.)

Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972), *aff'd*, 491 F.2d

352 (7th Cir. 1974), *cert. denied*, 417 U.S. 976 (1974), was a class action seeking declaratory and injunctive relief against various practices at the Indiana Boys School, which allegedly offended First, Fifth, Eighth, and Fourteenth Amendment rights. These practices included supervised beatings, indiscriminate use of tranquilizing drugs without competent medical supervision, solitary confinement without procedural protections, mail censorship, and religious discrimination.

After an initial hearing, the court ordered an immediate cessation of the beatings and the institution of procedural protections prior to solitary confinement, as well as the implementation of standards for detention in solitary confinement and the enjoining of all mail censorship, except the inspection of incoming parcels reasonably likely to carry contraband. No relief was granted in regard to the religious issue, since it was found that the plaintiffs did not adequately support that claim.

In a supplemental opinion, on February 8, 1973, the court addressed itself to the broad issue of the right to rehabilitative treatment, finding such a right guaranteed by the Indiana and United States Constitution. The court concluded that the program of treatment appeared to be one more of form than substance and that the defendants had failed to provide minimal efforts. Both parties were directed to file specific proposals for reform by July 1, 1973.

These orders were appealed by the defendants, but on January 31, 1974, the Court of Appeals for the Seventh Circuit affirmed both of the district court's orders. *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974). The defendants' writ of *certiorari* was denied by the United States Supreme Court, *Heyne v. Nelson*, 417 U.S. 976 (1974).

On remand to determine the minimal treatment required to comport with constitutional due process, the court conducted two days of hearings in June 1975. After receiving proposed treatment plans from both sides, the court issued its memorandum opinion dated February 1, 1976. Taking what it called a "middle course" and adopting neither plan *in toto*, the court laid down "general guidelines for the individualized treatment of the youths housed at the Indiana Boys School." *Nelson v. Heyne*, Civ. No. 72-S-98 (N.D. Ind., filed Feb. 1, 1976).

The court ordered the following plan implemented:

(1) *Medical and Professional Care:* Complete diagnostic evaluation (by extra staff, if needed) of each child's physical and emotional state "sufficiently and reasonably calculated to arrive at a determination

of the student's individual needs so that a responsive personalized plan can be developed and implemented." *Id.* at 5-6.

(2) *Individualized Treatment:* Individualized plan of vocational or academic training or both, considerable contact with community-based groups and organizations in a wide range of experiences, and continuing and unencumbered availability of individualized counseling by the professional and counseling staff. *Id.* at 6-9.

(3) *Physical Treatment and Sanctions:* Written rules of conduct and sanctions for breaches thereof must be provided each student: in order to impose solitary confinement, as a minimum, the procedures outlined in the original order of June 15, 1972, must be followed; and arbitrary, severe, cruel, or unusual and degrading punishments are banned. *Id.* at 9-10.

(4) *Adolescent Needs:* An adequate and nutritious diet and the opportunity for exercise and recreation, adequate sanitary facilities, and association with family, friends, and other youths, including the opposite sex, must be provided. *Id.* at 10-11.

(5) *Mail Censorship:* In light of *Procurier v. Martinez*, 416 U.S. 396 (1974), censorship is permitted of letters: (1) concerning the sending of contraband in or out of an institution; (2) concerning plans for proposed criminal activity; (3) in code; (4) that are obscene; (5) concerning plans for activities in violation of institutional rules; or (6) concerning plans to escape, to no greater extent than necessary to protect defendants' interests of security, order, and rehabilitation. *Id.* at 11-14.

In the area of institutional litigation, one case emerges as an excellent example of the issues that should be raised and illustrates the tremendous difficulties and complexities involved. *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd and remanded*, 535 F.2d 864 (5th Cir. 1976). Despite the fact that the case has been reversed and remanded on the ground that a three-judge court was required under 28 U.S.C. § 2291, the case still serves as an example for potential litigation.

The effect of the most recent decision in *Morales* on the significant prior decision is unclear, since the recent decision does not address the issues raised below. Moreover, the court indicated that the massive records and testimony compiled at trial could be used by the three-judge court to dispose of the case. 535 F.2d at 874. Caution is advised in using the decision that discusses the significant issues (383 F. Supp. 53) as precedent. Further compounding the situation is the repeal of the Three-Judge Court Act, effective August 12, 1976. Plaintiffs are presently petitioning for *certiorari* to the United States Supreme Court to remedy this anomaly. In the interim, the court's earlier holding and preliminary injunction ordering basically the

same relief as the subsequent decision still stands. See *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973). It is expected, however, that the state will attack this decision based on the argument that the Fifth Circuit in a footnote implicitly considered the preliminary injunctive relief and revoked it with the final injunction.

Because of the significance of the *Morales* case, the record developed, and the decision on the merits, this case is examined in detail to provide a checklist of issues and to illustrate the progression of an institutional case. The decision is not cited as controlling, nor is it intended to be used as such. To the extent that the three-judge court rules consistently with previous decisions in the case, the arguments offered there will be valid. The litigator is cautioned to check the states of these decisions carefully before briefing and arguing cases in this area.

Litigation began in *Morales* as a class action suit on behalf of juvenile inmates under the jurisdiction of the Texas Youth Council (TYC) seeking and obtaining a preliminary injunction that prohibited TYC officials and their agents from interfering with the inmates right to confer in privacy with counsel and from opening, reading, or delaying in any way inmate-attorney mail. *Morales v. Turman*, 326 F. Supp. 677, 680 (E.D. Tex. 1971). This was later modified to prohibit harassment of any person for exercising his or her rights under this injunction.

One year later, the complaint was amended so that the suit became a broad right to treatment and conditions law suit encompassing the entire TYC system in Texas. The suit had as its class of plaintiffs, all juveniles who were presently, have been in the past, or may be in the future adjudicated delinquent, involuntarily committed to the custody of TYC, and assigned to one of its six schools. The plaintiffs were supported by the United States Justice Department Civil Rights Division and other prestigious *Amici*. After a six-week trial, plaintiffs successfully obtained what the court deemed "Emergency Interim Relief" (pending the filing of briefs and final order) on August 31, 1973. *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973). The court found that defendant's practices of physical abuse, use of tear gas, solitary confinement without limitation, imposed silence, and "make work" details violated the Eighth Amendment prohibition against cruel and unusual punishment; that defendants' practices of mail censorship and use of English only violated the First Amendment freedom of expression provisions; that its transfers of juveniles to maximum-security institutions without procedural protections or hearings violated the Fourteenth Amendment due process guarantee; that racial segregation violated the Constitution; and that practices such as homosexual segregation,

denial of contact with family and friends, withholding of casework, psychological, and other services from children in solitary confinement, lack of grievance procedures, less than twenty-four hour nurse availability, and poor personnel screening and training violated the constitutional right to treatment.

The court issued an injunction prohibiting these practices, placing stringent rules on the use of solitary and "secure" confinement, and creating standards for minimal conditions in confinement situations. In addition, transfers without certain procedural protections were banned. To oversee the maximum-security facility, the court appointed an ombudsman for juveniles held there. Much of this order later became permanent relief in *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974), which laid out in detail the concept of treatment within the context of a child's right to treatment in the juvenile justice system.

Reviewing its previous Emergency Interim Relief order, the court made permanent the injunctive relief granted therein, except for practices of confining children in large dormitories and of screening personnel, which were left to a plan to be developed by the parties consistent with the opinion. *Id.* at 77-78. The court added new procedural protections and standards for the use of "solitary," "security," and "dorm confinement" and on transfers to the maximum-security facility. *Id.* at 83-85.

In the right to treatment area, the court covered a wide range of standards governing: (1) assessment and placement, (2) academic evaluation, (3) vocational education, (4) institutional life, (5) team treatment, (6) environment, (7) medical and psychiatric care, and (8) casework and child care. In order to implement the mandate of assessment and placement, the court ordered that individual assessments be made, supervised by social workers with caseloads limited to 15 per week; that daily contact must occur between the child and caseworker, that psychiatrists must conduct the interviewing, that Wechsler individual IQ tests must be employed, that culturally biased tests must be eliminated, and that psychological testing be for a period of 15 hours, by psychologists with caseloads of no more than three children per week. *Id.* at 88.

Similarly, the court ordered that as a part of academic education, there must be nonbiased testing, including special testing, cultural representation similar to that of the child among the staff, and family input for mentally retarded children. Special education teachers were to be trained to work with emotionally disturbed, mentally retarded, or brain-damaged children, obtain in-service training, and work in a one to eight teacher to child ratio. Also an education diagnostician for every 150 to 200 TYC students and a

speech therapist were to be employed. Bilingual education for Mexican-American children was to be part of the curriculum of the institution. *Id.* at 89.

As to vocational education, the court required an employability plan, placement procedures, work release on the job training, remedial services in math and reading, and limits on institutional "work experience." *Id.* at 92.

In the area of institutional life, the court held that minimal elements to develop were establishing sexual identity, developing intellectual and occupational skills, independence from parents, capacity for intimate relationships, and a moral code for future actions. *Id.* at 92-93. The court held that each and every employee must approach the child's treatment from the team treatment view in a cooperative manner. *Id.* at 93-94.

The court ordered that children have a constitutional right to be subject to the least restrictive environment consistent with their rehabilitation, requiring, therefore, adequate casework services, a physical plant maximizing personal security, dignity, and privacy, freedom from unnecessary confinement in close quarters, the opportunity for adequate recreation, exercise, and leisure activities, freedom from unnecessary invasions of privacy, adequate diet, free communications, coeducational living, freedom to select personal matters, such as dress, hair, clothing, and freedom to express emotions. *Id.* at 100-101.

The court held that medical and psychiatric care required an adequate infirmary, access to medical staff, psychological and psychiatric staff, individual and group therapy, psychiatric nurses, effective preventative and curative care, and freedom from indiscriminate medication. *Id.* at 105. In addition, the court required staff in sufficient numbers to guarantee individual attention and personalized care, before and after employment training, family involvement in therapy, and a cohesive treatment strategy to suit individualized needs in the area of child care and casework. *Id.* at 119, 120. Furthermore, the court held that plaintiffs had a constitutional right to care that at least conformed to minimal professional standards in receiving medical, psychiatric, and casework care.

In addition, the court ordered the ombudsman expanded to a statewide monitoring system. *Id.* at 120-21. It also ordered the closing of two facilities that were found to violate the Eighth Amendment and the child's right to treatment, holding that the history of brutality and inhumanity at the facility precluded the possibility of reform. *Id.* at 121, 122.

Finally, in what may be the most significant policy issue in the

entire case, the court held that TYC had violated plaintiff's right to be confined in the least restrictive alternative circumstances by confining all children committed to TYC to institutions. The court held that TYC must act affirmatively to create alternatives to confinement and must limit institutionalization. It further ordered TYC to develop a plan for community treatment of children throughout Texas. *Id.* at 124-25.

Unlike the case in Texas, in other instances extensive and time-consuming litigation may be avoided. In *Harris v. Bell*, 402 F. Supp. 469 (D.C. Mo. 1975), for example, a consent decree was agreed upon that ended years of use of isolated, solitary confinement cells and established due process disciplinary procedures at Booneville, the only maximum-security state facility for delinquents in Missouri. The stipulation of fact details the past practices and conditions at the facility, highlighted by data showing 857 separate uses of solitary confinement in 1972, 130 of which were for more than 10 days. Present monitoring of the facility by plaintiffs' attorneys pursuant to the consent judgment shows that usage of solitary confinement (in air conditioned, newly renovated, fully supervised facilities) has diminished to several times per month on the average and, for periods averaging a day, under conditions outlined in the consent judgment.

In re Washington, No. 73-J-2783 (Cir. Ct. Ill. March 2, 1976) (mem. and order) (final order, March 11, 1976), presents a unique way to litigate in the institutional field. Using a statutory device, "Report of the Custodian," as a vehicle, Washington's attorneys convinced the juvenile judge to correct abuses reflected by such reports by granting class action injunctive and declaratory relief pursuant to the court's general trial court powers.

In its first opinion regarding procedures incident to the imposition of disciplinary isolation or solitary confinement at a medium-security juvenile correctional facility, the court declared that certain constitutional, statutory, and regulatory provisions required that the minors confined therein were entitled to specific procedural protections prior to the imposition of disciplinary isolation as punishment for violation of the institution's rules and standards of conduct. The court specifically declared that disciplinary isolation procedures must include advance written notice of charges, a hearing before a three-member staff committee at which the minor is given an opportunity to explain his actions and to present evidence on his behalf, and a written statement of the committee's decision on the charges. (Clearinghouse No. 15,939 F.)

Subsequently, the order was clarified to specify that prehearing isolation was not prohibited under "emergency" circumstances, that

is, if the facts demonstrated a danger to the safety of persons or to the security of the institution and if the duration of prehearing isolation was minimized. Thereafter, a number of hearings were conducted by the juvenile court during which the custodian's plan for implementation of the declaratory judgment was considered. The custodian's written plan consisted of five separate exhibits that described the proposed disciplinary procedures, as well as specified circumstances in which the institution intended to use isolation other than as discipline for rule infractions. Respondent filed written objections to the custodian's plan.

The trial court has now entered a memorandum opinion, March 2, 1972 (Clearinghouse No. 15,939 H), and an order enjoining prehearing detention in nonemergency disciplinary cases. The court declined to rule on many other aspects of the plan to which objections had been filed, inasmuch as correctional authorities agreed to modify their plans to avoid the objectionable features. Those agreements, which are included in the court's order, specify that: (1) Inmates will receive written notice of institutional rules, the violation of which would result in disciplinary isolation; (2) the notice of charges will specifically indicate the time that notice is given and include a notation acknowledging receipt by the inmate of the notice; (3) in emergency isolation cases, a report will specify statements of fact to demonstrate that prehearing isolation is warranted in order to provide an adequate record for administrative, and if necessary, judicial review; and (4) the staff committee's decision must specifically contain: (a) a statement of a decision regarding the guilt or innocence of the child or the need for protective isolation, (b) a statement of the facts utilized in reaching the decision, and (c) a statement of the duration of isolation authorized and the supporting rationale, including reasons for why some less restrictive alternative was not imposed.

The order also contained a declaratory judgment stating that isolation may not be imposed solely on the basis of prior residence in or transfer to a maximum-security setting. This nondisciplinary use of isolation was first disclosed in the custodian's plan. The court, however, has issued a final order vacating the declaratory judgment on this nondisciplinary use of isolation on the basis that the record did not demonstrate that the practice had been applied to the respondent and that he therefore had no standing to raise the issue. The final order is now on appeal to the Illinois Supreme Court (with the exception of the issue of transfers to the maximum-security facility, which was vacated for lack of standing) concerning the interpretation of due process by the court and the propriety of the court's injunctive relief.

Significant right to treatment issues remain in the case, which the court specifically reserved for later adjudication; developments in this phase of the litigation should be followed as well as the appeal of the court's final order on isolation.

A major new case that merits careful scrutiny is *McRedmond v. Wilson*, 402 F. Supp. 1087 (S.D.N.Y. 1975), filed on behalf of 450 PINS children confined in four rural training schools in New York, challenging confinement therein as a failure to provide treatment, as cruel and unusual punishment, and as a denial of equal protection, of freedom of association, and of the right to travel. Although the case was dismissed under the abstention doctrine, it was subsequently reversed in part and affirmed in part on appeal, 533 F.2d 757 (2d Cir. 1976). The case, however, may become moot due to the passage of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5601, which bans states from receiving funds unless all status offenders are removed from secure detention and treated in the community. New York authorities are apparently going to seek funds under the Act; therefore, the training schools in question could no longer be used for incarcerating status offenders.

Several cases recently filed are also of interest. *Santana v. Rios*, No. 75-1187 (D.P.R., filed Oct. 17, 1975), Clearinghouse No. 18,757; *Manning v. Rose*, No. NC-75-34 (D. Utah, filed June 30, 1975), Clearinghouse No. 15,726. *Santana* is a consolidated class action of three § 1983 suits against two institutions for delinquents located at Mayaguez and Maricao, Puerto Rico. The institution at Mayaguez, a security facility, is being challenged for its inadequate staff, physical environment, lack of rehabilitative treatment, disciplinary procedures, unsanitary conditions, physical brutality, abuse of children, involuntary servitude, use of solitary confinement, and general inhumane treatment and conditions. The institution at Maricao is an open "camp" setting, and although challenged for some similar deplorable conditions of confinement, the suit focuses on the lack of treatment programs and the substitution of involuntary servitude therefor.

Still in the discovery stage, plaintiffs in *Santana* recently moved for and were granted the right to conduct a "participant observer" study of the two institutions, patterned after the same motion and study in *Morales v. Turman*, which was the first of its kind, 59 F.R.D. 157 (1974). See Clearinghouse No. 18,757 E. This study will consist of a team of plaintiffs' experts, including among others, a psychiatrist and psychologist living at each of the institutions for a period of three or four days and a group of graduate students staying for

longer periods. Reports will be compiled from these direct observations to form the basis of trial testimony in plaintiffs' case.

Manning is a class action suit brought on behalf of all juveniles presently confined or who in the future may be confined at the Utah State Industrial School, a coeducational facility and the only state delinquency facility in Utah. Shortly after filing, the court issued a preliminary injunction, thereby requiring due process procedures and hearings in disciplinary cases involving solitary confinement, and a permanent injunction prohibiting mail censorship. Clearinghouse No. 15,726 C.

The court also certified the class, allowed an amendment regarding out-of-state transfers and a special segregation status, and appointed a jointly approved special master to review treatment records at the school. Clearinghouse Nos. 15,726 F, G, H. The master's report and recommendations are now before the court. Clearinghouse Nos. 15,726 J, K. A trial is expected by early 1977.

26.3 TREATMENT PROGRAMS

All too often juvenile institutions merely warehouse children during their confinement: the promise of treatment is unfulfilled. When evaluating the possibility of litigation, counsel must quickly ascertain if treatment plans are implemented in the institution. The scope of the lawsuit will be defined largely in accordance with the degree to which actual treatment is delivered. (See Chapter 25 for a discussion of treatment programs currently in vogue.)

Counsel should not rely on the statements of institutional personnel or the descriptions of programs available in the institution's brochure, but rather must investigate to determine the existence of a treatment program. Furthermore, the programs actually implemented in the facility may not be inadequate. In assessing the treatment programs and general conditions in the institutions, the following basic questions should be considered:

- (1) Is there elasticity in the adopted treatment plan, or are all children subject to identical regimens?
- (2) Are all children involved in a treatment program, or is it denied to or interrupted for some children while in isolation or segregated status?
- (3) To what extent are personnel committed (or hostile) to the treatment program?
- (4) Are staff members encouraged to use imaginative or creative

624 • LAW AND TACTICS IN JUVENILE CASES

techniques that may not be defined by the particular program adopted?

- (5) Is the focus of the program on return to the home and community, or is it on a successful adaptation by the child to requirements of the institution, which may be unrelated to the goal of return?
- (6) Is the staff properly qualified and trained to implement the program that has been adopted?
- (7) What is the attitude of the inmates? Do they see the program as a hoax, or is there sincere participation?
- (8) Is there an on-going system of evaluation of the program or any evidence that such evaluation has produced modifications?

If the answers to these questions are favorable, then it is unlikely that grounds for a broad right to treatment suit exist, even when clear legal abuses exist in the institution (such as mail censorship or solitary confinement). Such abuses can properly be dealt with in a law suit limited to those specific conditions in a particular institution.

26.4 INSTITUTIONAL RULES

Most juvenile codes contain language to the effect that the purpose of confining juveniles is to rehabilitate, not to punish; children are to be removed from their homes only when their welfare or the protection of society mandates such action. After a child is removed from the home, most codes require that a child be treated in a manner equivalent to the care a "good parent" would provide. Moreover, adjudication does not have the effect of a criminal conviction, nor is an adjudicated child deemed a criminal. Accordingly, unnecessarily restrictive rules in juvenile institutions are subject to attack.

Rules should be clearly posted, and each child should be provided with a personal copy upon admittance. Rules should bear a rational relationship to the treatment programs established within the institution and should not be designed merely to facilitate regimentation and order or to facilitate the easy administration of the institution. For example, regulations demanding that children march in formation to and from all buildings, limitations on visitors, limitations on reading materials, unnecessary "make-work" tasks,

the setting of meal times and bed times so that staff can be released early, and unreasonable regulations concerning hair and dress are suspect. In a broad right to treatment suit, a showing that the institution is geared only toward administrative efficiency may well buttress a finding that there is mere confinement rather than genuine efforts at rehabilitation.

Often juveniles are not provided with any list of rules when they enter institutions and therefore have no notice concerning what conduct is expected of them until they violate the unwritten code. See, e.g., *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972); *Inmates v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972). This situation is to be watched for, especially in institutions that have broad treatment programs, such as Positive Peer Culture, that do not entail the use of rules and sanctions on a formal basis. If the sanctions are severe, notice is required, whatever the alleged "treatment." Fairness and due process cannot be abrogated in the name of treatment.

On the other hand, if rules are established, they may be attacked on their face as being unconstitutional. See, for example, the court's holdings in the *Morales* cases, in which: (1) A rule prohibiting inmates from conferring privately with counsel was struck down and (2) a requirement that inmates speak only English was found to violate the Constitution. *Morales v. Turman*, 326 F. Supp. 677 (E.D. Tex. 1971), *aff'd*, 364 F. Supp. 166 (E.D. Tex. 1973).

In certain areas, however, a paucity of rules may be a good sign: it may evidence a policy of nonrestrictiveness that is in line with the legal argument that nonpunitive confinement should entail the choice of the least restrictive alternative at many different levels.

In the third *Morales* opinion, the court recognized that some type of structured atmosphere with well-defined limits is necessary so that the child knows what is expected of him, but went on to hold that even a well-intentioned treatment program can become worthless if the child is subjected to ordinary "indignities, discomforts and harassments." *Morales v. Turman*, 383 F. Supp. 53, 101 (E.D. Tex. 1974). The court concluded that institutional rules that are not part of the normal structured atmosphere violate "the juvenile's right to be confined under the least restrictive circumstances consistent with their rehabilitation." *Id.* at 101. Among its recommendations, the court listed the necessity for providing freedom from unnecessarily close quarters or restrictions on legitimate activities, freedom from unnecessary or arbitrary invasions of privacy, and freedom to choose clothing, hair styles, and personal friends. (See Section 26.2 for a discussion of the effect of the most recent *Morales* decision on this language.)

26.5 DISCIPLINARY PROCEDURES

The Supreme Court decision, *Wolff v. McDonnell*, 418 U.S. 539 (1974), sets forth the procedural requirements that must be met before an adult prisoner can be punished through a deprivation of good time or an imposition of disciplinary confinement. The due process requirements are that the prisoner: (1) must be given advance written notice of the violation, (2) must be given a written statement of the evidence relied upon at the disciplinary hearing and the reasons for the disciplinary action, and (3) may call witnesses and present evidence "when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." *Id.* at 566. The right to confront and cross-examine witnesses is "not generally required," but is left to the "sound discretion" of the prison officials. *Id.* at 567. The prisoner has no right to retained or appointed counsel, though illiterates may have the assistance of staff or inmates. The restrictiveness of the Court's ruling on the availability of procedural protections for adult prisoners is based on the alleged disruptions, turmoil, and reprisals that would result from the institution of wider protections, for the broad need for personal security that exists in prisons, and a reluctance to involve the judiciary in issues and discretionary decisions arising in the daily administration of prisons.

Two recent Supreme Court decisions have greatly limited the extent to which procedural protections are necessary in inter-institutional transfer proceedings. *Montanye v. Haymes*, 427 U.S. 236 (1976); *Meachum v. Fano*, 427 U.S. 215 (1976). In these cases, the Court held that due process does not apply in intrastate transfers, unless the state statute guarantees the prisoner certain rights at this stage. Absent a state-created right, due process is not applicable. As noted in a dissent by Mr. Justice Stevens, under these rulings the adult inmates' protected liberty interests are no greater than the state permits.

The reasoning employed in adult cases may be distinguished in a juvenile case. It can be argued that juveniles have a state created right to treatment under the juvenile code; therefore, procedural protections are necessary to insure that the transfer promotes rather than impedes rehabilitation whenever a decision to transfer is made. The Supreme Court has found a state created right to attend school that is protected by due process by referring to state laws establishing schools and compulsory attendance requirements. *Goss v. Lopez*, 419 U.S. 565 (1975). Similar reasoning could be used in this situation. Furthermore, the procedures guaranteed by *Wolff v. McDonnell*, *supra*, 418 U.S. at 539, should be granted to juveniles.

The factors considered by the court in deciding if the procedures place a burden on the orderly administration of the prison are greatly vitiated at the juvenile level. Treatment and rehabilitation, not institutional safety, are the primary purposes for the confinement of juveniles, when there is little danger of violent reprisal of an accused against his accuser and when the constitutional right to treatment must be enforced. Counsel in an institutional suit should argue that children be afforded full procedural protections. These protections include the rights of confrontation and cross-examination and the right to call witnesses prior to the imposition of any disciplinary measures, such as punitive isolation, increased length of stay, labor details, or cancellation of home visits, which deprive the child of significant rights and privileges. "If the correction system fails to exercise its power justly, it will defeat its rehabilitative purposes by breeding more bitterness, cynicism, and lack of respect of the law by the juvenile. The fundamental means of administering fair and efficient justice is by following procedural due process requirements." Note, *Procedural Due Process for Confined Juveniles*, 2 NEW ENGLAND J. PRISON L. 173, 176 (1976).

Similar reasoning was employed by the court in *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), in which it was held that prior to confinement in solitary detention, children must be made aware of institutional rules, sanctions, and administrative procedures; there must be an "expeditious" hearing, prior to which the child must be informed of the charges. Further, there must be an opportunity for the child to confront his accusers and to present any evidence on his own behalf; the hearing officers must not include the complainant, and a written record of the proceeding must be preserved that is capable of administrative review.

In *Inmates v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972), the court held that the administrative transfer of children from the Boys' Training School to the maximum-security Adult Correctional Institution violated due process and equal protection. Following this initial ruling in *Inmates v. Affleck*, negotiations resulted in stipulations and a permanent order regarding disciplinary procedures at the school. An order dated April 19, 1973, Clearinghouse No. 5121 D, adopted stipulations dated April 17, 1973, Clearinghouse No. 5121 C, which included, *inter alia*: (1) no transfers to the Youth Correctional Center without court order (except in emergencies if 26 hours were allowed to obtain the order); (2) all rules and regulations regarding disciplinary action to be published and posted; (3) punishments to be limited to reprimand, loss of privileges, and transfer to a control cottage (21-day limit); (4) no suspension from on-grounds educational or vocational programs or off-grounds

activities or transfers to the control cottage without the following procedural protections: (a) timely written notice, (b) prior hearing by three-person panel, (c) presence at hearing, (d) right to be represented by a school counselor, (e) right to disclosure of evidence against student, (f) opportunity to be heard, to present witnesses, and documentary evidence, (g) right to confront and cross-examine witnesses against the student, (h) written decision, and (i) right to appeal; (5) transfers to control cottage for assault, destruction of property, larceny, and AWOL only with weekly reviews of control cottage placement by a treatment team.

Referring to the practice of "Isolation and Segregation," the order allowed confinement to one's room for a maximum six hours per week provided notice was given each time to the superintendent (later a mental health professional when added to staff), who was to make a series of determinations about visiting the child, providing medical care, room furnishings, attendance at school programs, length of stay, and observance of the child's rights if isolation lasted more than one hour.

In the first decision in *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), the court held that a transfer to a maximum-security unit absent a hearing violates the Fourteenth Amendment. The court described three types of confinement requiring due process protections: (1) solitary confinement (placement alone in a room other than a locked room in the inmate's own dormitory), (2) "security" (placement in a locked building that may contain solitary confinement rooms), and (3) dormitory confinement (placement alone in locked room in inmate's own dormitory). *Id.* at 177. Although the court did not require preconfinement hearings, a stringent standard was established limiting initial use to cases of imminent danger, harm, or escape and requiring reports in three days by the caseworker. *Id.* More important, the court, in a variance from its emergency order, held that after five days solitary or ten days security confinement, the child would be guaranteed: (1) a hearing before an impartial tribunal, (2) written findings within forty-eight hours of hearing, filed with the executive director of TYC and the court and counsel, and (3) right to representation by advocate of choice, right to call witnesses, and right to cross-examine witnesses against him, at the hearing. *Id.*

For transfers to the maximum-security unit, the court, varying again in favor of more protections than outlined in its emergency order, imposed a standard of "exceptionally dangerous" to be determined by a panel of well-qualified psychiatrists and psychologists at a hearing. *Id.* In addition, the court required: (1) written findings by the panel, (2) the right to representation and

presence at the hearing, (3) the right to ask any questions or make statements, (4) the right to call witnesses and present other evidence, and (5) a copy of written findings and decision. (But see Section 26.2 before citing this case.)

In *Harris v. Bell*, 402 F. Supp. 469 (D.C. Mo. 1975), the consent decree specified that upon arrival each juvenile was to be given written notice of the offenses that would result in solitary confinement, a hearing no later than twenty-four hours after confinement, an impartial three-person hearing panel, adequate time to prepare, assistance of a person of his own choosing, confrontation and cross-examination of all witnesses appearing against him, and the right to present witnesses on his own behalf.

In *Pena v. New York State Division for Youth*, 70 Civ. 4868 (S.D.N.Y. Feb. 11, 1976), the court held that the state's regulations, adopted after the litigation was underway, were minimal constitutional standards. These permit room confinement only by the prior authorization of the superintendent in cases in which the child constitutes a "serious and evident" danger to himself or others; confinement beyond twenty-four hours is permitted only by the prior authorization of the director of the State Division of Youth.

A stipulation in *Pena*, dated September 2, 1976, further provides for monitoring of room confinement at Goshen Center, beginning September 30, 1976. It requires: (1) written reports of room confinement (defined as a locked door or order not to leave) to be sent to plaintiffs' attorneys, and (2) a subcommittee to oversee room confinement and the court's declaratory judgment of February 11, 1976, consisting of a jointly agreed upon juvenile justice professional, a New York State Division for Youth representative, and one of the plaintiffs' attorneys. The committee, ombudsman, and plaintiffs' attorneys are to have access to all division files, ombudsman reports, and staff members regarding room confinement practices.

In *Manning v. Rose*, No. NC-75-34 (D. Utah, filed June 30, 1975), Clearinghouse No. 15,762 C, a case still in the pretrial stages, a consent judgment was entered shortly after filing, which provided for: (1) notice in writing of all violations of rules that result in "isolated confinement" for more than three hours, (2) preplacement hearing with the exception of "exigent circumstances," (3) written notice of the violation, (4) adequate time to prepare (minimum 48 hours), (5) a hearing within seven days, (6) a three-person supervisory staff panel (excluding the charging staff member), (7) the right to be represented by staff member of choice, (8) the right to present testimonial/documentary evidence on his or her behalf, (9) the right to confront and cross-examine witnesses at the hearing, (10) a decision on evidence presented only, (11) a written decision

with reasons, specifying the violation and the duration of isolation, and (12) the right to appeal to the superintendent. "Exigent circumstances" are defined as those in which a student is determined to be: (a) an immediate escape risk or (b) an immediate threat to him or herself, others, or the physical security of institutional property.

A yet unreported case, *Fenner v. Luger*, 73 Civ. 5522 (S.D.N.Y., filed Dec. 28, 1973), Clearinghouse No. 11,963, involving challenges of transfers of children from New York Training Schools to the Goshen Center (focus of the *Pena* case, *supra*) is presently under an experimental proposal by stipulation of the parties, dated June 6, 1975, Clearinghouse No. 11,963 B. The proposal set forth: (1) twenty-four-hour written notice prior to transfer, setting forth the grounds for transfer; (2) hearing within forty-eight hours of notice; (3) assistance by school staff member of the child's choice; (4) confidential meetings with staff member; (5) right to have witnesses present; (6) outside hearing examiner experienced in child care, but not an employee of the Division for Youth; (7) presence at hearing; (8) ombudsman may attend; (9) tape-recorded hearing; (10) substantial evidence required for transfer; (11) decision binding on both parties; and (12) written decision, with evidence relied upon and grounds for decision. The aforementioned procedures apply whenever a child is a serious danger to himself or others, is unsuitable for the program at Warwick, and for a child in need of protection from other children, except in emergency cases, when transfer may occur pending a hearing at Warwick. A similar stipulation is expected in *Rodriguez v. Luger*, 75 Civ. 199 (S.D.N.Y., filed Jan. 14, 1975), Clearinghouse No. 14,297, which has been adjourned, pending the development of a settlement for procedures and monitoring of the use of solitary confinement and physical restraints in New York State Training Schools.

(For a discussion of a state court's approach to these questions, see *In re Washington*, No. 73-J-2783 (Ill. Cir. Ct.) at Section 26.2.)

Although the juvenile institutional litigation cases have focused on disciplinary procedures for solitary confinement, training schools can essentially punish children in many ways, including general segregation and dropping from regular school classes. Several recent Supreme Court cases offer some new possibilities for adding protections to the imposition of such punishment.

These decisions, confirming the right of public school students to due process safeguards prior to the imposition of discipline, are *Goss v. Lopez*, 419 U.S. 565 (1975), and *Wood v. Strickland*, 419 U.S. 935 (1975). Together the cases require some type of procedural protection before a suspension from school of any length, absent extraordinary circumstances. Moreover, *Wood* adds considerable force to the decision by holding that school officials might be liable for

damages under the Civil Rights Act of 1871, for failure to afford these protections.

The Court in *Goss* found that the students had a "protected interest" in attending school, evidenced by various state laws establishing schools and requiring attendance. Furthermore, a suspension from school may result in damage to reputation and a possible limitation on future opportunity, thus invading a protected liberty interest. In regard to invoking Fourteenth Amendment protections, the Court stated:

The Fourteenth Amendment forbids the State to deprive any person of life, liberty or property without due process of law. Protected interests in property are normally "not created by the Constitution. Rather they are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)." 419 U.S. at 572.

The Court went on to hold that *de minimus* harm to a "protected interest" was sufficient to invoke due process protections, citing *Snidach v. Family Finance Corp.*, 395 U.S. 337, 342 (1969) (Harlan, J., concurring), and *Board of Regents v. Roth*, 408 U.S. 564, 570 n.8 (1972).

In determining the procedures that are due, the Court apparently distinguished three situations in which the required procedures might vary: (1) simple short-term suspension, (2) unusual short-term suspension, and (3) long-term suspension or expulsion.

In *Goss*, the Court limited its discussion of procedures to the simple short-term suspension, at which a student is entitled to effective notice of the charges (which may be either written or oral), an explanation of the evidence in support of the charges, and an opportunity to present his or her side of the story. These safeguards must *precede* the simple suspension, unless "continuing danger to persons or property or an *ongoing* threat of disrupting the academic process," (419 U.S. at 572) is presented by the student's behavior. If this occurs, then a hearing must be held as soon as possible after the suspension. In the simple short-term suspension, the right to call witnesses, the right to cross-examination, or the right to have counsel are not required.

In *Goss*, the majority concluded its discussion of the required procedures noting that if resort to simple procedures alerts the disciplinarian to serious factual disputes that cannot be resolved by such procedures, then the disciplinarian "may" permit a student the right of cross-examination, the right to present witnesses, and the right to counsel. 419 U.S. at 572. See Roos, *Goss & Wood*, *Due*

Process and Student Discipline, 20 *INEQUALITY IN EDUCATION* 42 (1975).

It has been suggested that the word *may* implies the mandatory term *shall* and in any case of genuine factual dispute calls for the following procedures:

[P]resentation of witnesses and other evidentiary material, confrontation and cross-examination and right to counsel. Further, upon a showing of the need for these more formal procedures, the notice requirement should be converted into a written notice and adequate time should be given to prepare for the "hearing." *Id.* at 44.

The court left open the long-term suspension or expulsion situation of *Goss*. Most lower court decisions, although not uniform, hold that at least the following are required:

- (1) The right to written notice clearly specifying all of the evidence upon which the alleged violation is based.
- (2) The right to have adequate time to prepare for the hearing.
- (3) The right to present witnesses.
- (4) The right to cross-examination.
- (5) The right to counsel.
- (6) The right to an unbiased determiner of facts.
- (7) The right to specific findings of fact.

Since training schools are under a statutory and constitutional mandate to provide treatment and rehabilitation, the state invades a protected interest when it interferes, denies, or substantially affects this right to treatment by imposing various forms of punishment. In addition, the child's liberty interest, as in *Goss*, is often invaded. In one sense, training schools can be conceived of as one large "schoolhouse," and any form of "suspension" from the "schoolhouse" activities invokes the due process safeguards if suspension results in *de minimus* harm to the right to treatment (a "protected interest") or to liberty interests, or both. One might even argue that prior to entry into the training school program, due process requires a hearing if the school procedures are deficient in due process protections and predictably will impinge on protected interests in their application.

In any event, the institutional litigator should consider utilizing these decisions, especially in establishing due process protections for "punishment" far less weighty than solitary confinement. For additional assistance, see CENTER FOR LAW AND EDUCATION, *THE CONSTITUTIONAL RIGHTS OF STUDENTS: ANALYSIS AND LITIGATIVE MATERIALS FOR THE STUDENT'S LAWYER* (1976).

26.6 SOLITARY CONFINEMENT

The use of solitary confinement cells is very common in juvenile institutions. Attorneys arguing against such facilities are not limited to due process arguments, but can also argue that in the case of children such confinement violates the Eighth Amendment protection against cruel and unusual punishment. As the court stated in *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973):

Experts [are] unanimous in their opinion that solitary confinement of a child in a small cell is an extreme measure that should be used only in emergency situations to calm uncontrollably violent behavior, and should not last longer than necessary to calm the child . . . the child should not be left entirely alone for long periods . . . prolonged confinement of a child to a single building can be harmful unless the child is receiving a great deal of attention during the time of confinement. Experiments in sensory deprivation have shown that the absence of many and varied stimuli may have a serious detrimental effect upon the mental health of a child. *Id.* at 172.

The *Morales* court, without reaching the procedural issue, held that the placing of children in solitary or in "secured facilities" without any legislative or administrative limitations on the intensity or duration of the confinement constituted cruel and unusual punishment.

As in the case of disciplinary procedures (see Section 26.5), counsel for children must stress that the law as it applies to adult prisoners—solitary confinement has not been held to constitute cruel and unusual punishment in and of itself, *Courtney v. Bishop*, 409 F.2d 1185 (8th Cir. 1969); *Burns v. Swenson*, 430 F.2d 771 (8th Cir. 1970)—does not necessarily apply to juveniles: Children in institutions have not been criminally convicted, and the goals of confinement are rehabilitation, treatment, and return to society, rather than punishment, deterrence, and retribution. There are enormous physical and psychological differences between children and adults. Therefore, comparisons cannot be made on an equivalent basis; the dangers of irreparable physical and psychological harm to children caused by solitary confinement cannot be overemphasized. A strong case, though one that like *Morales* does not go so far as to hold that isolation per se is unconstitutional, is *Lollis v. New York*, 322 F. Supp. 473 (S.D.N.Y. 1970), in which the court found that the two-week confinement of a fourteen-year-old girl in night clothes in a bare room with no recreational facilities or reading matter violated the ban on cruel and unusual punishment.

The *Lollis* court set forth the kinds of standards to be used to assess the constitutionality of solitary confinement. These standards

included: (1) the maximum period of confinement; (2) the place of confinement; (3) the facilities to be afforded the child within the place of confinement, including normal furnishings, bed and chair, reading materials, recreation such as exercise and air; (4) the extent to which the child can join in common activities, even during the period of isolation; (5) the visitation by staff members; (6) the maximum number of times of confinement within a larger period, such as one year; and (7) regular reports concerning confinements. Unfortunately, in a later order based on *Sostre v. McGinnis*, 442 F.2d 178 (2d Cir. 1971), the *Lollis* court decided that it was not a proper function for it to sanction administrative regulations; rather, these should be established by statute. Nevertheless, the court strongly suggested:

The maximum period of isolation permitted under the Eighth Amendment in the case of adolescent persons in need of supervision . . . might well be limited, on the basis of the evidence presented, to 24 hours, and under conditions including reasonable facilities and furnishings in the place of isolation, 328 F. Supp. at 1119.

On the other hand, the court in the second *Morales* opinion made a detailed order pertaining to punitive confinement of three different sorts ("solitary confinement," "security," and "dormitory confinement") with requirements in regard to the causes of such confinement, visits by case-workers and medical personnel, lengths of stay, furnishings, recreation, and schooling, 364 F. Supp. at 177-78. The third *Morales* opinion further refined these requirements and makes clear that those who are most disruptive deserve the most intensive treatment, 383 F. Supp. at 120.

Another helpful decision is *Inmates v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972), in which the court held that isolation in a cold dark cell, called "bug-out rooms," containing only a bed, sink, and toilet (or in some cases, only a toilet and a mattress on the floor) was cruel and unusual punishment. Though prohibiting the use of these particular cells, this court refused to impose restrictions requested by the plaintiffs on the maximum time during which children could be held in solitary confinement, but urged the utilization of "individualized methods of treatment." In an order dated April 17, 1973, following the stipulated agreement of the parties, the court ordered that minimal conditions of confinement in any part of the facility, not simply the "cottages," must include:

- (1) A room equipped with lighting sufficient for an inmate to read by until 10 P.M.
- (2) Sufficient clothing to meet seasonal needs

- (3) Bedding, which must be changed once a week, including blankets, sheets, pillows, pillow cases, and mattresses
- (4) Personal hygiene supplies, including soap, toothpaste, towels, toilet paper, and a toothbrush
- (5) A change of undergarments and socks every day
- (6) Minimum writing materials, pen, pencil, paper, and envelopes
- (7) Prescription eyeglasses, if needed
- (8) Equal access to all books, periodicals, and other reading materials located in the Training School
- (9) Daily showers
- (10) Daily access to medical facilities, including the provisions of a twenty-four-hour nursing service
- (11) General correspondence privileges
- (12) A meal at 5 P.M. or after, regular access to canteen services twice a week, and access to food brought in by parents and friends
- (13) Two hours daily of organized physical education
- (14) Religious services and clergymen in accordance with the child's preference.

(See also Section 26.5, *supra*.)

These provisions were further modified by an order entered June 19, 1973, Clearinghouse No. 5121 F, which adopted a Comprehensive Classification and Treatment Plan, Clearinghouse No. 5121 G, and Academic and Vocational Plan, Clearinghouse No. 5121 H. The order requires that children in solitary be engaged in a program designed to prepare the child to return to less secure confinement and eventually the community. Furthermore, vocational and academic training must be conducted, even in the closed units.

In *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), *aff'd*, 491 F.2d 352 (7th Cir. 1974), *cert. denied*, 417 U.S. 976 (1974), the court held that in addition to the procedural protections surrounding the use of solitary confinement, "the decision to confine must be subject to regular, periodic review by professionally competent treatment personnel familiar with the effect continuing isolation has on the detainee." 355 F. Supp. at 456. In a subsequent memorandum opinion, the court specified that if serious punishment were necessary, "the student so sanctioned [should] have unencumbered access to the professional and counseling staff members, who, through contact and discussion with the student, can attempt to achieve a rea-

sonable and workable understanding under the circumstances." *Nelson v. Heyne*, Civ. No. 72-S-98 at 10 (N.D. Ind. Feb. 1, 1976) (mem.).

There are very few cases in this area to guide the litigator; of the cases that have been litigated, not all are reported. In order to convince a court to act in an institutional case, it is helpful to present a detailed order for the court's consideration. Because consent order and memorandum opinions are often not easy to obtain when unpublished, the contents of such orders are given *in part* to assist counsel in preparing an order for a particular case. (As indicated the orders and opinions are available from the National Clearinghouse for Legal Services.)

In *Harris v. Bell*, 402 F. Supp. 469 (D.C. Mo. 1975), the consent decree mandates that the following conditions be met in solitary confinement: (1) a visit each day by the basic education teacher and provision of material necessary to keep the child current in studies; (2) shower every day; (3) prompt notice to parents or guardians of such confinement; (4) incoming mail may be inspected for contraband only, mail between the attorney and the client may not be touched, no limits with whom or how often the juvenile corresponds; (5) right to see minister or priest; (6) one hour's recreation daily outside cell, including vigorous physical exercise; (7) nonacademic reading materials of a broad variety regularly provided; (8) eat two meals outside cells; (9) may wear normal, casual clothes; (10) adequately heated, cooled, and ventilated cells according to season; (11) individual lighting, adequate for reading; (12) staff member within calling distance at all times; (13) cells cleaned and hygienic materials supplied to keep clean; (14) clean, disinfected mattress and cover; (15) clean, fresh bedding, including sheets, pillowcases, pillows, and blankets; and (16) regular supplies of soap, towels, washcloths, toothbrush, toothpaste, and toilet paper.

In *Manning v. Rose*, No. NC-75-34 (D. Utah, filed June 30, 1975), the consent judgment that was entered shortly after filing provides for the following conditions for any period of isolated confinement exceeding three hours: (1) checked every fifteen minutes by supervisor and a record made; (2) functioning toilet and wash basin in cell; (3) equipped with mattresses, sheets, blankets, pillows, and pillow cases; (4) daily showers; (5) retain personal clothing; (5) one hour of big muscle exercise each day; (6) regular educational, rehabilitation, and treatment programs otherwise available to students at the institution; (7) same meals and beverages as rest of students; (8) same visitation rights as other students; (9) equal access to phones to call families and attorneys; (10) no denial of phone use; (11) reasonable hygienic materials, including bath brushes, toilet paper, soap, towels, and washcloths; (12) right to possess reasonable

number of books, magazines, newspapers, or other reading material; and (13) no opening or censorship of outgoing mail; incoming mail inspected only for contraband and only in the presence of the resident. Clearinghouse No. 15,726 C.

In *Pena v. New York State Division for Youth*, 70 Civ. 4868 (S.D.N.Y. Feb. 11, 1976), Clearinghouse No. 12,293 C, the court approved minimal standards for solitary confinement, set forth in the footnotes of the order. The standards require: (1) a lighted, heated, ventilated place, similar to other comparable living areas in the institution; (2) bed, chair, desk or chest, mattress, pillow, sheet, blanket, and other items necessary for the health and comfort of the occupant must be furnished; (3) visit daily by a member of the administrative, clinical, and medical staff; (4) educational and recreational reading material within twenty-four hours; (5) daily recreation and exercise outside the cell for at least thirty minutes daily; (6) maximum twenty-four hours of confinement.

26.7 ACCESS TO COUNSEL AND COURTS

A child who has been committed to a juvenile institution clearly retains the right of access to the courts to raise issues relating to the lawfulness of his commitment and the conditions of his confinement. No institutional rule or administrative policy can possibly exist to justify denying a child access to the courts. This principle is supported by the reasoning of numerous decisions involving adult prisoners, holding that any refusal to allow free communication between prisoner and court is unlawful, and further, that any reading or censorship of a prisoner's letters to the courts is forbidden. See, e.g., *Procunier v. Martinez*, 416 U.S. 396 (1974), denial of access to law students and paralegals held an unjustifiable restriction on prisoner's access to the courts; *Kuell v. Bensinger*, 489 F.2d 1014 (7th Cir. 1973), denial of permission to consult a jailhouse lawyer or to use the prison library while in punitive isolation held to constitute an effective denial of access to the courts; *Clayborne v. Thompson*, 368 F. Supp. 324 (M.D. Ala. 1973), inmates in punitive isolation may not be deprived of access to the courts; *Souza v. Trivisono*, 368 F. Supp. 959 (D.R.I. 1973), bar against the use of paralegals held a denial of effective access to the courts.

A juvenile case directly on point is the first opinion in *Morales v. Turman*, 326 F. Supp. 677 (E.D. Tex. 1971), in which it was held that the refusal to allow inmates to confer and correspond privately with their attorneys violates the confidentiality of the attorney-client privilege and the privilege against self-incrimination. The refusal

also offends the equal protection clause in two ways: (1) defendants may confer privately with counsel, though the plaintiff-inmates could not, and (2) adult prisoners are allowed to confer privately with counsel and have the First Amendment right to petition officials and the courts, and these juvenile inmates could not.

A recent federal class action suit brought on behalf of all present and future juvenile inmates in the Hawaii Youth Correctional Facility regarding access to counsel, *Ishii v. Chang*, Civil No. 75-0238 (D. Hawaii Sept. 22, 1975), resulted in a favorable consent judgment, which adopted the parties' settlement agreement. The agreement specifically provides that children shall be permitted access to counsel consistent with due process as guaranteed by the United States and Hawaii Constitutions. Other provisions designed to safeguard this right include: private visits with attorneys, unmonitored telephone communication with one's attorney, consultation with paralegals, and written notice of these rights.

The solitary confinement cases have given special emphasis to guaranteeing access to counsel and the courts. (For a discussion of these cases, see Section 26.6.)

It has also been held that adult prisoners must be permitted access to law books to permit them to assert their right to freedom. No cases have been decided concerning the right of children in training schools to have law books available to help them prepare petitions to the courts. To the extent that a child may intelligently use law books to aid in his recourse to the courts, however, the same principle would seem to be applicable to children in training schools.

An excellent list of adult prisoner cases on point is contained in *Prisoners' Legal Rights: A Bibliography of Cases and Articles*, PRISON L. REP. 14, 15 (spec. ed. 1974).

26.8 MAIL

Training schools commonly impose restrictions on children's correspondence. Both incoming and outgoing mail may be inspected, read, or censored. The frequency of correspondence may be limited to a given number of letters per week or by the child's inability to afford postage. Furthermore, limitations on the number of correspondents may be imposed or certain categories of persons may be eliminated from an approved list, for example, nonrelatives, children formerly in the institution, or relatives and others who are in penal or juvenile institutions.

A recent Supreme Court decision, *Procunier v. Martinez*, 416 U.S. 396 (1974), held that even in adult penal institutions censorship of

incoming and outgoing mail must be tested against two criteria: the practice must further an important governmental interest, such as security, order, or rehabilitation, and the limitation must be no greater than is necessary or essential to the protection of that interest. It can be argued that mail restrictions grounded on the need to preserve security and order are not justifiable in an institution maintained for the rehabilitation of children. The physical inspection of mail will usually be sufficient to assure that drugs or contraband are not being introduced.

Broad justification of censorship on rehabilitative grounds is clearly questionable. In *Procurier*, the Court indicated approval of a regulation that would allow censorship on rehabilitative grounds when limited to letters containing "material which would cause severe psychiatric or emotional disturbance to the inmate," but then, only on approval by the prison psychiatric staff after consultation with the inmate's caseworker. Perhaps such a narrow restriction might be upheld at the juvenile level. At present, however, the leading case, *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), dictates that the only allowable restriction in a juvenile institution is the opening of incoming mail in the presence of the inmate for the sole purpose of examining it for contraband. (But see the caveat at Section 26.2 concerning the *Morales* decision before citing this case.) An earlier decision in the *Morales* litigation, 326 F. Supp. 677 (E.D. Tex. 1971), held that as far as attorney-client mail was concerned, neither opening nor inspecting would be allowed. *Cf. Wolff v. McDonnell*, 418 U.S. 539 (1974), holding that mail from an attorney can be opened, but not read, in the case of adult prisoners.

In accord with the *Morales* cases is *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), in which the court enjoined the institution from imposing a "correspondence list," from limiting persons with whom the children might correspond, and from opening incoming mail, except for the examination for the presence of contraband. Reviewing its decision in light of *Procurier*, the court recently backtracked on its earlier position and pursuant to a memorandum opinion is allowing censorship of certain mail. The court's failure to define the manner of censorship or the impact of it on its prior decision, however, leaves the validity of this order in grave doubt. *Nelson v. Heyne*, Civil No. 72-S-98 (N.D. Ind. Feb. 1, 1976).

In another class action suit attacking conditions within an institution, the parties were able to agree to a consent decree providing, *inter alia*:

Incoming mail may be physically inspected for contraband in the presence of the juvenile addressee; other than such physical inspection, no tampering, delaying, opening, reading, copying, or

censoring of any mail shall be permitted. Attorney-client mail shall be neither opened nor inspected. There shall be no limitation as to how often or with whom a child may correspond unless a complaint is received from the person being corresponded with. *Harris v. Bell*, 402 F. Supp. 469, 474 (W.D. Mo. 1975).

Finally, a permanent injunction has been issued in *Manning v. Rose*, Civil Action No. N-C-75-34 (D. Utah, June 30, 1975), prohibiting the opening or censoring of outgoing mail. Incoming mail may be opened in the presence of the resident only to check for contraband, if the outward appearance of the mail indicates the probable presence of contraband. Clearinghouse No. 15,726 C.

26.9 EDUCATION

Since all states have compulsory school attendance laws, it is incumbent upon juvenile institutions to provide educational programs for their inmates. The failure to provide an adequate educational program for inmates is a denial of equal access to a public school education. As the United States Supreme Court stated in *Brown v. Board of Education*, 347 U.S. 483 (1954):

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. *Id.* at 493.

When a child is confined in a custodial institution, even temporarily, there is an interruption in his extra-institutional schooling. Institutionalization of a child, however, does not relieve the state of its duty to provide education. Rather, because the very purpose of institutionalization is to afford needed rehabilitative treatment, it would follow that the state has assumed an *added* obligation to provide a more particularized and intense educational experience to meet the individual needs of the confined child.

The need for education within custodial institutions is further intensified by the needs of the institutionalized child who almost invariably lacks education. He is likely to have experienced serious difficulties in school which, whether causal or symptomatic of the condition or act that led to confinement, must be dealt with and, if possible, ameliorated or cured. Consequently, it is not enough to simply duplicate within institutions the educational mechanisms whose failure coincided with the causes for the child's loss of liberty.

In theory, the training school should be a total educational experience aimed at imparting basic skills, vocational skills, and the

understanding necessary to live in modern society. Some of the difficulties of providing education within the training school were succinctly stated a quarter of a century ago by Paul W. Tappan:

In its formal academic training, these children's institutions operate under a dual disadvantage; the children themselves have been badly unadjusted and antagonistic in their ordinary school experience in a high proportion of cases and a majority (about three-fourths) are retarded in grade, some of them because of mental defect. In addition the educators in these institutions are themselves somewhat less capable and less well adjusted on the average than are teachers on the outside. There is the further difficulty that the children enter and leave the institutional classes at irregular intervals through the year. As a result of these handicaps, the training school rarely succeeds in overcoming the dislike for education that children have brought with them. *JUVENILE DELINQUENCY* 466-67 (1949).

Yet Tappan describes only a part of the difficulties that afflict training schools today. The fundamental problem may be the notion of the training school itself, that is, bringing together a large number of problem children and dealing with them in relative isolation, separate and apart from "normal" society and "normal" children. Even if all the children confined in a training school had identical educational needs, identical capacities to absorb education, and identical attitudes toward schooling, group education would be a formidable task. Given the fact that training school inmates have tremendously disparate problems and needs, the task of providing an adequate educational program for all or even for any one of them becomes almost insuperable. The public schools, dealing with only a portion of the child's life, experience far less than total success with the homogeneous approach to education that large numbers seem to dictate; such an approach in training schools would appear almost foreordained to disaster.

Tappan's statement concerning the general inferiority of training-school educators is borne out by present-day observations. Although training school teachers must meet the standards of other teachers, they often do so only minimally; to perform their function, they need qualifications transcending those of regular teachers. The position itself is not highly regarded by the teachers themselves; only those marginally qualified or abnormally dedicated remain in the training school, while others escape into community school systems as promptly as possible.

Academic education is not always taken seriously by the training schools themselves. Thus a number of children participate in the school program for only part of the day or are excused entirely on

the ground that they have the capacity to tolerate formal education only minimally or not at all. In states where compulsory school attendance extends only to age sixteen, it is not unknown for training schools to permit children over sixteen to choose not to continue in the academic education program. Some are actively encouraged not to participate. The theory seems to be that since a child of sixteen in the general population would not be compelled by law to continue in school, the training school should not impose any greater requirement. It is clear, however, that virtually all training school inmates suffer severe academic deficiencies and that almost invariably, further education will be necessary if they are to attain minimum proficiency in reading and other basic skills.

Most training schools place work programs, which they may also term "vocational education," high among institutional priorities. A strong argument can be made for encouraging training that will enable a child to earn a livelihood and to gain whatever satisfaction productive employment can give. Yet many training school work programs and vocational education are conceptually unsound and outdated and therefore largely foredoomed to failure. More emphasis has traditionally been placed upon making the training school self-sufficient, thereby saving public money, than upon the education or rehabilitative returns from such programs. Thus the work activities of children in training schools are largely related to institutional subsistence, and many children are employed for long hours in the kitchen or laundry. (See Section 26.14 on involuntary servitude.)

The three broad-based right to treatment cases, *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974), *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), and *Inmates of the Boys' Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972), have each now adopted treatment plans that include educational programs for institutionalized youth. Counsel in a broad right to treatment suit should not overlook this important issue in their preoccupation with more obvious abuses. These plans, particularly *Morales*, should be consulted as guidelines for possible inclusion in the litigation as appropriate for relief. (See Section 26.2 regarding *Morales* before citing this case.)

The third decision in *Morales* sets forth very detailed requirements for improving both academic and vocational programs. Concerning academic matters, the requirements are as follows:

On the basis of the evidence produced by experts with respect to academic education testing, it is concluded that a juvenile's right to treatment requires the maintenance of the following minimal professional standards:

- 1) The Wechsler IQ Test, rather than the Lorge-Thorndike IQ Test, must be used for testing generally.
- 2) Neither the Lorge-Thorndike IQ Test nor the Gray-Votow-Rogers Achievement Test, which is inappropriate for testing Mexican Americans and Blacks on many subjects, should be used for testing for dyslexia.

Using as a foundation the evidence of expert witnesses, it is concluded that, for the purpose of detaching mental retardation in juveniles and providing them with the proper special education, the juvenile's right to treatment requires the maintenance of the following minimal professional standards:

- 1) Normal IQ and achievement tests (both verbal and non-verbal) must be utilized, with special emphasis on tests which are appropriate for the student's background.
- 2) Examiners who are familiar with the background of the student and of his culture and language must be a part of the staff.
- 3) Information must be obtained about the student's family background and emotional status, as well as observations relating to the student's behavior.

Again postulated upon the testimony of expert witnesses, it is the conclusion of this court that, as to special education teachers, a juvenile's right to treatment requires the maintenance of the following minimal professional standards:

- 1) Special education teachers, certified by the state as qualified to teach either emotionally disturbed, mentally retarded, or minimally brain damaged children, must be utilized to treat children in these categories.
- 2) In-service training by an outside consultant must be provided for special education teachers at least once a week. (Such consultants are available from the Texas Education Agency.)
- 3) A minimal teacher-student ratio for TYC students in the categories above specified is one special education teacher for each eight of such students, plus supporting personnel (such as educational diagnosticians and the like.)

As to other supporting personnel, this court adopts the opinion of expert witnesses that a juvenile's right to treatment requires the maintenance of the following minimal professional standards:

- 1) One educational diagnostician is essential for each 150-200 TYC students.
- 2) Assessment by language pathologists, sometimes referred to as speech therapists, is an essential complement to any other professional assessments, and such an assessment is neces-

sary to diagnose the underlying learning difficulty that may be initially identified by a psychologist or teacher. 383 F. Supp. at 89 (footnotes omitted).

The court's most recent order, dated June 19, 1973, Clearinghouse No. 5121 F, approved the "Rhode Island Training School and Youth Correctional Center Comprehensive Academic and Vocational Plan," Clearinghouse No. 5121 H, as the relief for plaintiffs' claims concerning academic and vocational programs. As basic goals, the plan seeks "to assist residents in achieving academic and vocational skills which will assist them in becoming useful and productive citizens." Children are to receive training "as close as possible, consistent with programming, to the home or proposed future home of each resident." Within twenty-one days of arrival, each child is to be evaluated in regard to educational level and aptitude, vocational attitude, and psychological makeup. In addition, probation reports and school reports are used to develop an individual academic or vocational program, or both. Students and their parents are consulted on the plans, which include alternatives. In addition, the school must provide an on-grounds academic and vocational program to develop basic skills in both areas and prepare the student for off-grounds programs. Children in "confined status" receive the same training within the security unit and can become eligible for off-grounds and on-grounds regular programs.

The program includes a principal, an educational placement specialist, a director of vocational education, and a vocational placement specialist. A plan for placement of each resident is to be developed, based upon evaluation of the family and the planned educational or vocational program for the resident. Community volunteers are to be utilized in all phases of the plan. Group and foster homes development are a future part of the plan.

In *Nelson v. Heyne*, Civ. No. 72-S-98 (N.D. Ind. Feb. 1, 1976) (mem.), the court by memorandum opinion held "that IBS must provide its students with quality instruction and training that is responsive to the needs of the individual, whether it be in the academic or vocational sphere." *Id.* at 8. The court concluded that "great emphasis" must be placed on a program to improve the reading ability of students. Although declining to delineate the curriculum for the school, the court stated that the goal of the school should "be to provide each individual student a quality up-dated educational program which is not only responsive to his needs and interests, but which is responsible as well to the demands of society." *Id.* at 8-9.

As these cases demonstrate, federal courts are now at least willing to attempt to mandate the elements of an academic and vocational

program in institutional right to treatment cases. The results can range from vaguely stated goals as in *Nelson* to the very specific, strict mandates of *Morales*. Obviously, the judge will play a key role in the extent to which relief is rendered; however, counsel must be imaginative and aggressive, utilizing experts and other resources to insure that reasonable, meaningful programs are adopted by the court. For example, one judge has noted:

On the basis of the evidence of expert witnesses, this court concludes that since the state removes Mexican American children from their family, friends, ethnic background and culture, transporting them in most cases hundreds of miles to a predominantly Anglo rural setting, these juveniles' right to treatment requires that the state establish a program for bilingual education. The parties are directed to propose such a program in general accordance with the provisions set out in *United States v. Texas*, 342 F. Supp. 24 (E.D. Tex. 1971), *aff'd*, 466 F.2d 518 (5th Cir. 1972), discussed in *Project Report: DeJure Segregation of Chicanos in Texas Schools*, 7 HARV. CIV. RIGHTS—CIV. LIB. REV. 307, 376-91 (1972). *Morales v. Turman*, 383 F. Supp. 53, 90-91.

The court also made recommendations concerning vocational programs:

Giving weight to the evidence supplied by expert witnesses with respect to vocational education, it is concluded that a juvenile's right to treatment requires the maintenance of the following minimum professional standards:

1. Each student should be provided with an employability plan, based on extensive counseling regarding career options.
2. Adequate procedures to assure placement with prospective employers should be maintained by the TYC.
3. Adequate on-the-job training, obtained through work release programs, should be provided.
4. Adequate support services, such as remedial reading and mathematics, should be provided.
5. Appropriate limitations must be placed on the so-called "work experience" consisting of essentially institution-maintaining work, so as to prevent such work from dominating the daily activities of students. *Id.* at 91-92.

The rights of those in punitive confinement have also been protected. In *Inmates v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972), the court stated:

As to education, there is a bitterly cruel irony in removing a boy from his parents because he is truant from school and then confining him to a small room . . . where he gets no education. . . . Inmates confined to . . . [solitary] are entitled to the same education received by inmates at the Training School proper. . . . I

find that denying education . . . does not serve any permissible interest. Defendants are enjoined from confining any members of the plaintiff class . . . without providing them education which is the equivalent in duration, subject matter, materials, and otherwise, with that provided in the [Training School] proper. *Id.* at 1369-70.

26.10 RECREATION AND EXERCISE

Various arguments can be made against practices that withhold recreation, exercise, and leisure time from training school inmates. A cruel and unusual punishment argument can be made when inmates are strictly regimented and confined in solitary facilities, so that no recreational program exists. It might also be argued that no reasonable program of treatment and rehabilitation can exist in the absence of recreational facilities. The concept of least restrictive alternative is also a means of attacking a program that is defective in providing recreation, exercise, or leisure. (See Section 23.7.) Competent pediatric specialists can testify concerning the effects, both physical and mental, of lack of exercise on growing adolescents. In the case of *Inmates v. Affleck*, 346 F. Supp. 1354, 1369 (D.R.I. 1972), the court specifically held that there was

[N]o reason to deprive inmates of outdoor exercise. A well fenced exercise yard is available and is part of the institution. It should be used to provide a minimum of three hours of outdoor exercise daily, weather permitting. Defendants must provide daily outdoor exercise for all inmates. . . .

In a detention center case, *In re Savoy*, the court commented on the lack of adequate recreation, and noted:

In considering the issue of recreation, the court must be mindful that, as a study conducted in 1968 by the Children's Bureau of the Department of Health, Education and Welfare put it, a lack of opportunities for indoor physical activity is far more than a matter of frills. Such activities are deemed by experts to be a necessity for detained children: when youths who are confined cannot wear off their energy and anxiety through big muscle activity in an indoor gymnasium or play space, an unhealthy, potentially explosive situation is created. In this connection, it must be borne in mind that particularly in connection with the issue of recreation, that those here involved are children. . . . The statute, as well as common sense, demand that they should not be left to vegetate. 98 WASH. L. REP. at 1236.

The lack of adequate recreation has also been held to violate the Eighth Amendment rights of adult prisoners. The court in *Taylor v.*

Sterrett, 344 F. Supp. 411, 415 (N.D. Tex. 1972), found that an important deficiency in the Dallas jail was the lack of recreation and that this deficiency violated the Eighth Amendment. A similar case is *Sinclair v. Henderson*, 331 F. Supp. 1123 (E.D. La. 1971), in which the denial of an opportunity to exercise for prisoners on death row was held to violate the Eighth Amendment. In reaching that decision, the court noted the preliminary order to allow recreation in *Morris v. Travisono*, 310 F. Supp. 857 (D.R.I. 1970), and concluded:

Confinement for long periods of time without the opportunity for regular outdoor exercise, does, as a matter of law, constitute cruel and unusual punishment. 331 F. Supp. at 1131.

Children's physical need for exercise, when combined with the requirement that even death-row felons be allowed sufficient exercise, compel the conclusion that the withholding of sufficient recreational opportunities is insupportable. In accord with this view is *Baker v. Hamilton*, 345 F. Supp. 345 (W.D. Ky. 1972), in which it was held that the failure to provide detained juveniles any outdoor exercise or recreation was one of the specific elements of their confinement that constituted cruel and unusual punishment.

In *Nelson v. Heyne*, 355 F. Supp. 451, 456 (N.D. Ind. 1972), the court held that children held in isolation must have, *inter alia*, "opportunities for daily physical exercise throughout the duration of detainment." In a subsequent memorandum opinion, the court held that all students at the school "should be accorded those basic needs which are essential to a person's good health, personal care and hygiene," including "the opportunity for exercise and recreation," considered "as being of basic importance to and necessary for the physical and emotional development of the student." Civil No. 72-S-98 at 11 (N.D. Ind. Feb. 1, 1976).

The consent judgment in *Harris v. Bell*, 402 F. Supp. 469 (W.D. Mo. 1975), provides that "juveniles committed to the cells [solitary] shall be provided a minimum of one hour's recreation daily outside the cells, such recreation to include vigorous physical exercise." *Id.* at 474.

State regulations adopted in *Pena v. New York State Division for Youth*, 70 Civ. 4868 (S.D.N.Y. Feb. 11, 1976), reflect similar standards. In this unreported order, the court found recreation and daily exercise for children in room confinement to be constitutionally mandated, unless the superintendent determines such liberty poses a serious and evident danger to the child or others. *Id.* at n.2. In *Manning v. Rose*, No. NC-75-34 (D. Utah, May 29, 1975), the court's preliminary injunction guarantees that students in "isolated confinement" engage in one hour of big-muscle exercises per day.

LESSON SUMMARY

SUBJECT TITLE: OMBUDSMAN TRAINING

TOPIC TITLE: Legal Rights of Juveniles

TARGET POPULATION: Ombudsmen	TIME ALLOCATION: 1 hour
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CLASSROOM OR AREA REQUIREMENTS:
U-shaped conference table.

<p>PERFORMANCE OBJECTIVES:</p> <p>At the end of this session, you will be able to:</p> <ol style="list-style-type: none"> List sources of legal rights for juveniles. Discuss the history of legal rights. Define "Parens Patriae" and discuss the history of the term. List and discuss several cases that were milestones of legal rights for juveniles. 	<p>EVALUATION PROCEDURES:</p> <p>1 through 4: oral feedback</p>
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<p>METHODS:</p> <p>Participative Lecture</p>	<p>TRAINING AIDS, SUPPLIES, AND EQUIPMENT:</p> <p>Overhead Projector Flip Chart</p>
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INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>What are juveniles legal rights? Where do they come from? Let's list some of the areas that define what legal rights adults or juveniles have.</p> <p>Constitutions, both state and federal, are a source of legal rights. What are some of the legal rights given us in the federal constitution. Obviously, the courts arbitrate interpretations of constitutional rights. The history of juvenile rights, court proceedings and institutions is instructive when discussing legal rights of juveniles. Civil rights for juveniles has only evolved in the last century. At the turn of the century, the establishment of juvenile courts was a reform movement. It took place to remove misbehaving youth from the punitive atmosphere of criminal courts. Prior to the turn of the century, children over seven were treated as adults. The new juvenile court was introduced to produce a "fatherly" atmosphere using medical and social sciences to offer objective and dispassionate help to the young. The optimistic goal of the court was, and I quote from the Harvard Law Review in 1909, "not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make the juvenile a criminal, but a worthy citizen."</p> <p>Professor Stanford Fox in an article published in 1970, traces the development of the New York House of Refuge, the first juvenile institution, and other</p>	<p>After brainstorming, show the slide listing where legal rights emanate from.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>correctional facilities. He concludes that the establishment of juvenile courts was not simply a manifestation of humanitarian concern for children needing help, but the result of a retrenchment in correctional practice. Juvenile institutions signified a regression in poor law policy, a reaction to the phenomena of immigration, and a reflection of the repressive side of Quaker education. Regardless of the motives, juvenile court was to become the center of society's efforts to help young people in trouble. To justify this new reform, the doctrine of "parens patriae" was used.</p> <p>This doctrine justifies the departure from the fundamentals of due process of law. The term is a latin phrase. When translated literally, it means "the father of his country." The concept was apparently first used by English kings to justify their intervention in the lives of the children of their vassals. Because the king justified his intervention by claiming to protect the children, the term grew to mean the sovrein's general obligation to look after the welfare of the children in the kingdom, since they are helpless. It was first used in this country by Chief Judge Cardoza of the NY Court of Appeals who described the concept of "parens patriae" as the responsibility of the judge to do what is best for the interests of the child. The judge is put in the position of a wise, affectionate and careful parent and just makes decisions for the child accordingly. The concept today is used to</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>refer to the State's obligation and right to protect the young, the helpless and the incompetent. But as was noted in the Gault decision, its meaning is murky and its historic credentials are of dubious relevance to juvenile delinquency proceedings. This concept, however, was used to justify a departure from due process of law and made the difference between juvenile court and criminal court.</p> <p>As early as 1927, the NY Court of Appeals declared the concept of parens patriae as somewhat overdone. Five years later, although reaffirming the non-criminal nature of juvenile court jurisdiction, the Court of Appeals was careful to guarantee the alleged delinquent certain essentials of a fair trial. Despite the high hopes of the original reformers, juvenile courts were denied the necessary resources to translate the idea of individual justice and rehabilitation into practice. There was also a consideration that goes much deeper than the lack of services and funds. It stems from the weakness of the reformer's basic premise about delinquent behavior. We simply do not know enough to treat most forms of juvenile misbehavior, so the medical model was never truly successful. Some consider that court action may actually be more damaging to the child and more likely to cause subsequent delinquency than no action at all.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>The 1960's produced studies of abuses that challenged the omnipotence of the reform movement. Three of the court decisions you should know because they were milestones in this challenge. They are: The Kent Case in 1966. In this case, it was shown that there is evidence that the child is receiving the worst of both worlds, neither the protection accorded to adults, nor the solicitous care and regenerative treatment postulated for children. 2) In 1967, the Gault case. The Supreme Court raised the constitutional dimensions of the child's right to counsel in juvenile court where he could be deprived of his liberty. 3) In 1970, the Winship Case. The Supreme Court held that a finding of guilt in the trial of an alleged delinquent required proof beyond a reasonable doubt.</p> <p>These cases established that juveniles also had rights, rights that an adult citizen of the United States would take for granted. Juvenile proceedings are not criminal court proceedings, so a youth does not forfeit his civil rights in the manner of an adult felon when incarcerated. What are some of the rights that incarcerated young people have? They have the right to sue the institution or institutional personnel for monetary damages. They have a right to retain a lawyer to protect their rights and and there are many other rights that have been established through various cases and individual state legislation. The rules and regulations of the Agency and facility establish rights, as well as policies and accepted procedures and practices.</p>	

1. Constitution
Statutes
Case Law
Regulations
Policies
Procedures
2. Parens Patriae
The responsibility to do what is best for the interests of the child.
3. 1966 In re: Kent
There is evidence that the child receives the worst of both worlds... he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.
4. 1967 In re: Gault
The Supreme Court raised to constitutional dimensions the child's right to counsel in juvenile court where he could be deprived of his liberty.
5. 1970 In re: Winship
The Supreme Court held that a finding of guilt in the trial of an alleged delinquent requires proof beyond a reasonable doubt.

LESSON PLAN NO. 3

LESSON SUMMARY

SUBJECT TITLE: OMBUDSMAN TRAINING

TOPIC TITLE: FACTORS THAT HELP OR HINDER IMPLEMENTATION

TARGET POPULATION: Ombudsman	TIME ALLOCATION: 3 Hours
CLASSROOM OR AREA REQUIREMENTS: Room flexible for small group work.	
PERFORMANCE OBJECTIVES: OBJECTIVES: At the end of this session, each trainee will be able to... 1. Describe the actors in their own work environment and the power and authority relationships among them. 2. Identify and chart hindrances and potentially helpful alliances. 3. Identify potential techniques for making helpers out of hinderers.	EVALUATION PROCEDURES: 1. Individual power chart of work environment. 2. Individual power chart of work environment. 3. Classwork on techniques for overcoming obstacles.
METHODS: Lecture Discussion Small group/Individual exercises Individual Presentations	TRAINING AIDS, SUPPLIES, AND EQUIPMENT: Flipchart Stand Markers Tape Overhead Projector and Screen

FACTORS THAT HELP OR HINDER IMPLEMENTATION

LESSON PLAN NO. 3 TOPIC TITLE _____

PAGE 1 OF 8

INSTRUCTIONAL CONTENT

NOTES TO TRAINER

WARM UP EXERCISE

As a transition from our discussion this morning to the topics for the next day or so, I'd like us to go around the table and have each of you answer the one of these questions that applies to you:

For ombudsmen --

What is your one biggest operational problem?

For facilities that don't have ombudsmen --

Would you want one?

Why or why not?

For facilities that do have ombudsmen --

What is your one biggest operational problem as it relates to ombudsmen?

I. INTRODUCTION

The topics for our consideration this afternoon will be:

- Sample structural alignments for an ombudsman program.
- Understanding the ombudsman's role in terms of conflict theory.
- Power and boundaries in your own decision making space.
- Conflict resolution.

Chart or Transparency

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>II. CONTENT PRESENTATION</p> <p>A. SAMPLE STRUCTURAL ALIGNMENTS</p> <p>There are a number of different formats for handling complaints which are in use in juvenile correctional systems.</p> <ul style="list-style-type: none"> Multi-level grievance procedure <p>A multi-level grievance procedure was first pioneered by the California Youth Authority approximately ten years ago.</p> <p>It depends on an internal system (within each institution) of a grievance committee at a very low level organizationally which meets to attempt resolution, a number of appellate levels which roughly follow the chain of command, and usually an outside review available as the final level of appeal.</p> <p>When outside review exists, the opinion of the outside reviewer is often advisory only.</p> <ul style="list-style-type: none"> Ombudsman <p>The more classical ombudsman system has resident complaints being made to a person who is not inside the administrative structure of the institution. (In practice, in the United States, this person often is in-</p>	<p>Show T/F of table of organization.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>side the administrative structure at some level).</p> <p>In a few instances, there is an entirely "independent" ombudsman following the original Scandinavian model.</p> <p>What are the strengths and weaknesses of each of these models?</p> <ul style="list-style-type: none"> Piggyback systems <p>There are a number of systems in which a grievance procedure and an obudsman coexist. In some cases, the ombudsman serves as the appeal from the grievance procedure. In other cases, they deal with different categories of complaints.</p> <p>B. UNDERSTANDING THE OMBUDSMAN'S ROLE IN TERMS OF CONFLICT THEORY</p> <p>QUESTIONS:</p> <ol style="list-style-type: none"> Does the institution of an ombudsman program increase or decrease the overall level of confrontation and tension in the institution? Why or why not? Can you name some situations (in any area of life) in which there is <u>no conflict</u>? In a system that has never had an ombudsman or complaint procedure, who in the institution and environs would want to see 	<p>Ask class to list answers on flipchart.</p> <p>Show chart</p>

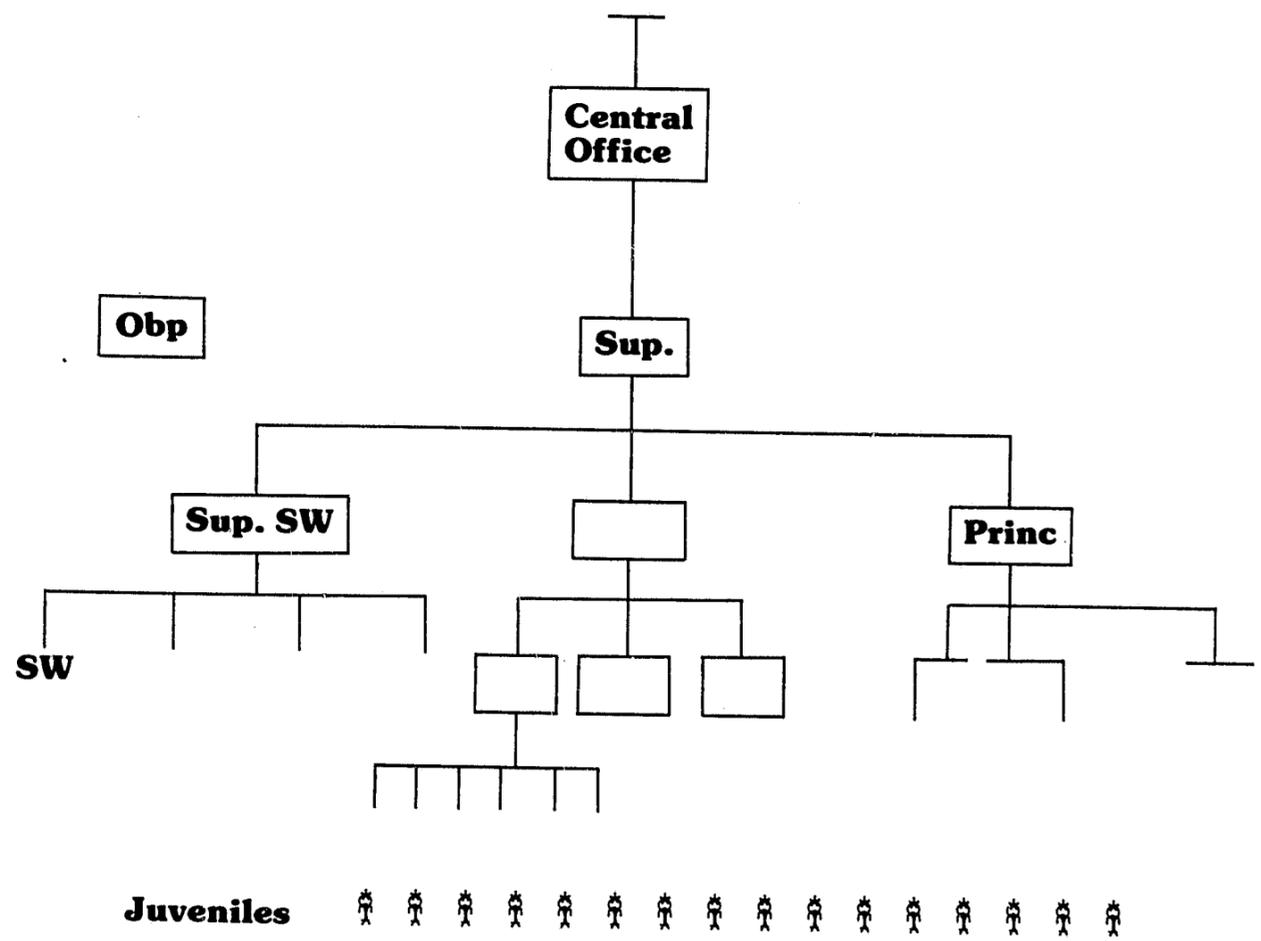
INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>C. POWER AND BOUDARIES IN YOUR OWN "DECISION-MAKING SPACE"</p> <p>Let's refer back to the table of organization which we considered earlier:</p> <p>If you place yourself in one of these boxes (pick a middle management box), whose work are you supposed to be directing?</p> <p>(answer: those that you supervise)</p> <p>Who is directing and setting the priorities for your work?</p> <p>(answer: your boss)</p> <p>Now close your eyes a minute and picture the people you need to interact with on a typical day to get your job done.</p> <p>Who is it? A lot of people who don't supervise you (personnel, maintenance, supply clerk, cook, lawyer)</p> <p>Also reflect a minute on the folks who are worried about interacting with you.</p> <p>Who are those people?</p> <p>In fact, in addition to the formal and functional space that you occupy in the organization, there are a great many people who affect how you do your job.</p>	<p>go back to T/O</p> <p>ask class</p> <p>ask class</p> <p>ask class to list on flipchart</p> <p>ask class to list on flipchart</p> <p>show chart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>The technical term for these folks is OPERATIONAL SPACE</p> <p>The non-technical term might be "connections you need"</p> <p>As these actors in your operational space are "tamed" and you develop connections with them, they become part of your RESOURCE SPACE</p> <p>which we might call "connections you have"</p> <p>The number of these resources that any of us develops affects to a large extent how effective we are in our jobs (<u>especially</u> in a job such as ombudsman, in which, as we shall see tomorrow, we depend so heavily on someone else to take actions).</p> <p>Let us look at a specific example:</p> <p>[D.C. - Project HANDS example]</p> <p>You can tell by looking at the chart where we had trouble, by observing which "operational" spaces were not also "resource" spaces.</p> <p>EXERCISE:</p> <p>If you would reform your groups and spend a few minutes discussing your individual "operational" and "resource" spaces. Then choose one of the group's situation and diagram, as I have here,</p>	<p>show chart</p> <p>class exercise in groups/ Reports by spokes-person.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>the</p> <p>"connections you need"</p> <p>and</p> <p>"connections you have"</p> <p>and any problems that you can pick up from the chart.</p> <p>D. CONFLICT RESOLUTION:</p> <p>If we diagram conflict in a different way, we can say a few words about conflict resolution</p> <p>A good example of a "win/win" situation can be devised with apologies to a famous example</p> <p>Use "open & close window" example from flip chart.</p>	<p>work chart - (put up piece at a time)</p> <p>work chart.</p>

**Does beginning
an ombudsman program
increase or
decrease
the overall level of
confrontation in the
institution?
Why or why not?**

Organization Chart



Outside

Tell The Boss

Inside

Duplicate

Refer

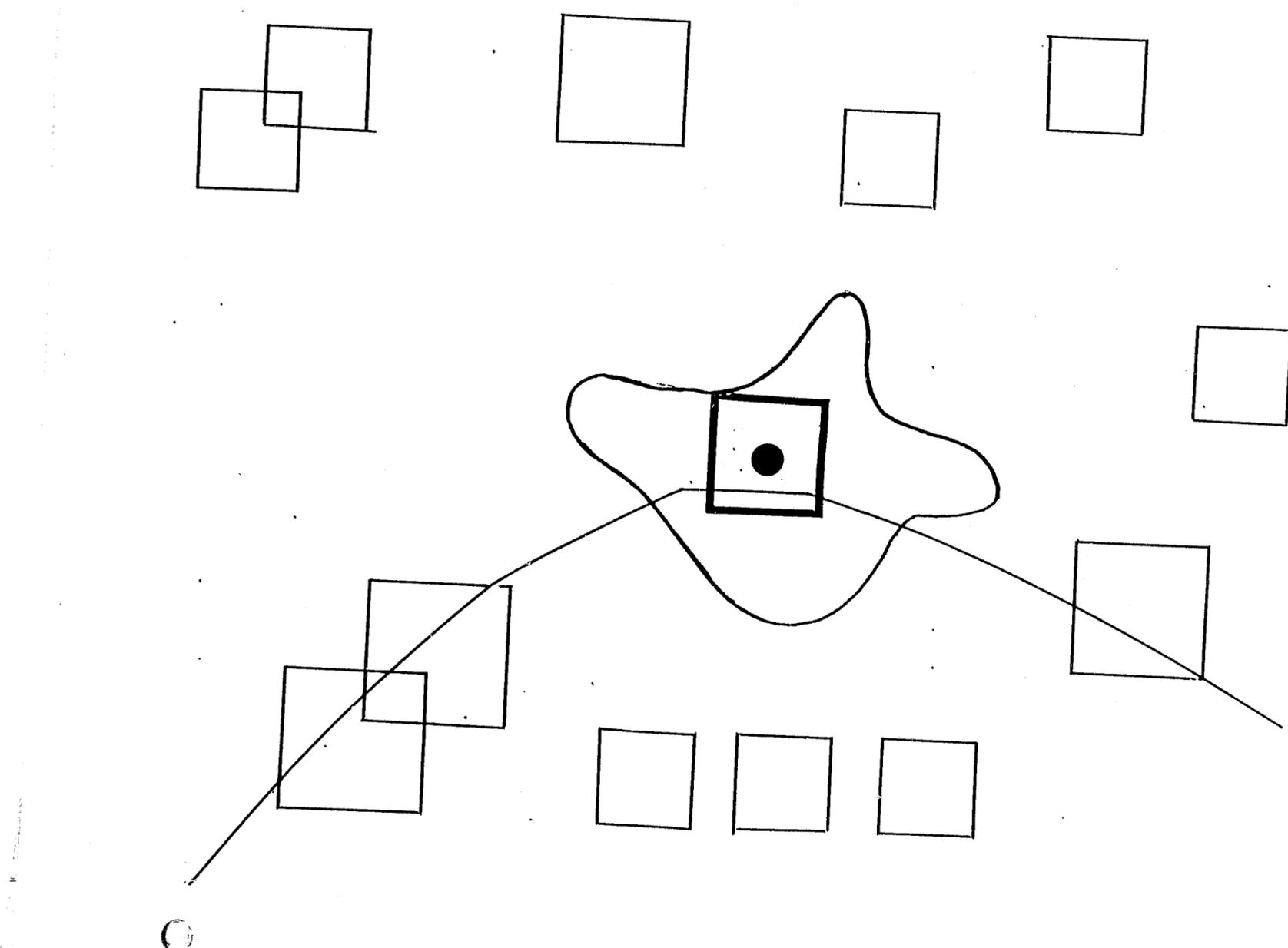
Refer/Monitor

**If something goes wrong,
it is more important to ask**

Who is going to fix it?

than

Who is to blame?



Formal Space
Functional Space
Operation Space
Resource Boundaries
(Causal Space)

**Understanding the
Ombudsman's Role in
Terms of Conflict Theory**

**Who wants the
ombudsman??**

**There is a
CONFLICT
Between Prisoners
and Their Keepers**

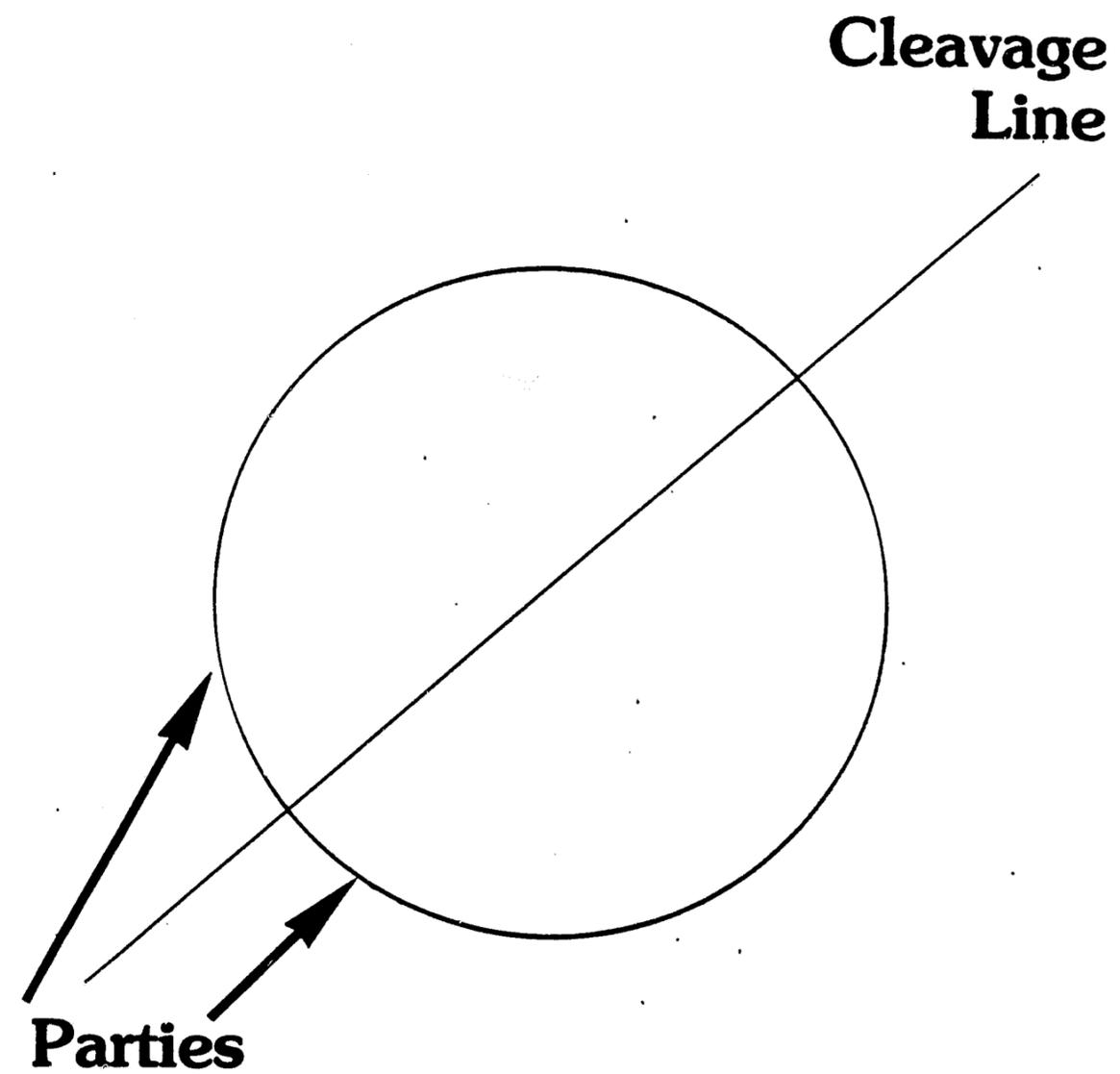
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1 OF 5

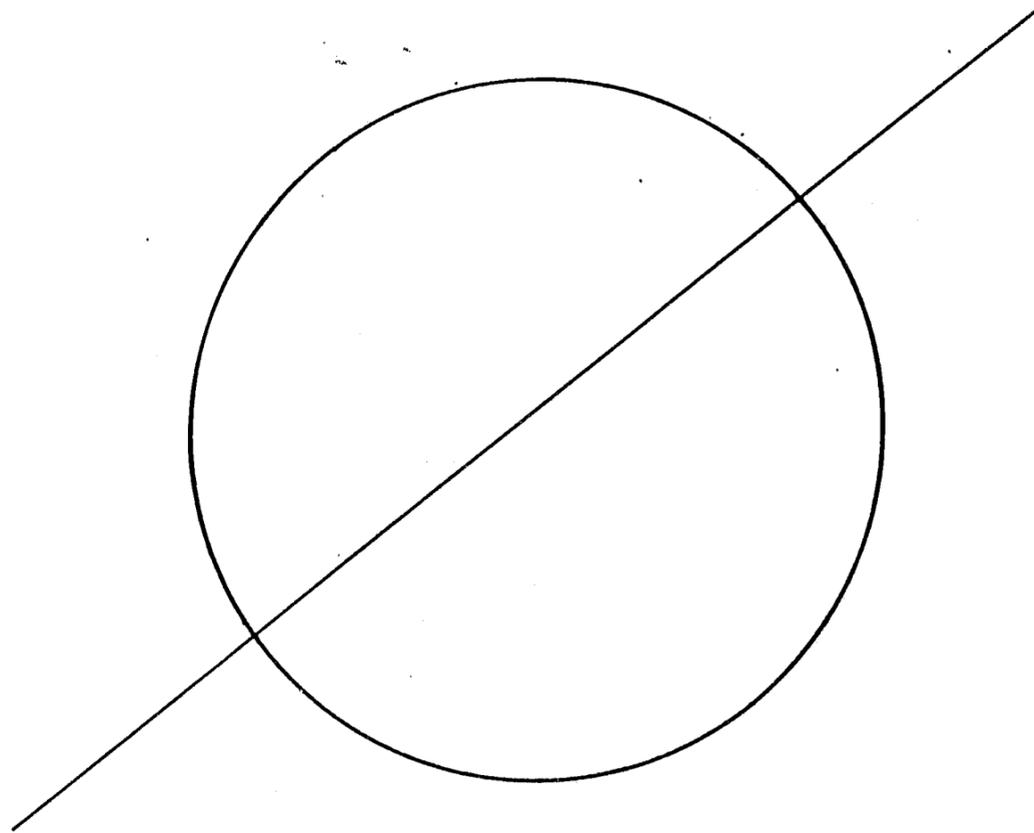
**Situation in which
there is a gross
imbalance of power**

**– in which love
cannot be assumed**

Schattschneider



Simple Conflict:

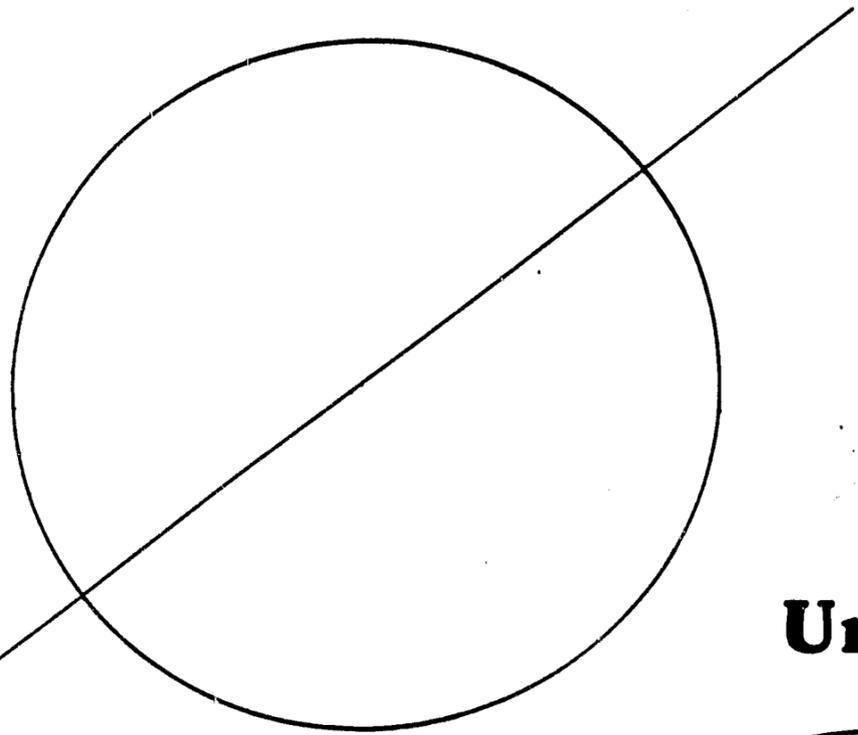


**No
Outside
Interference**

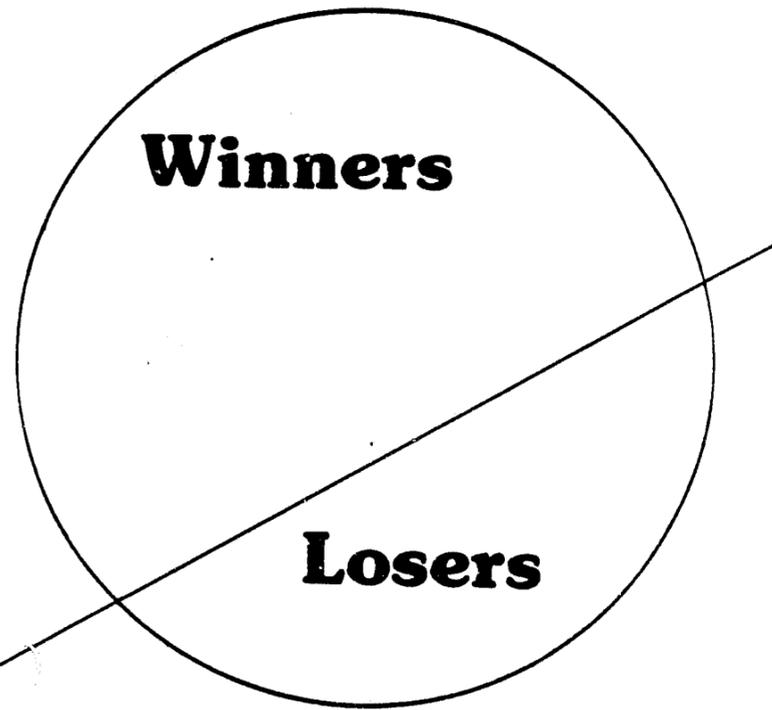
**Insufficient
Funds**

FIRST	_____	19__
326	_____	
NATS	_____	
PS	_____	
0000 00	00 0000 0000	

Equal



Unequal

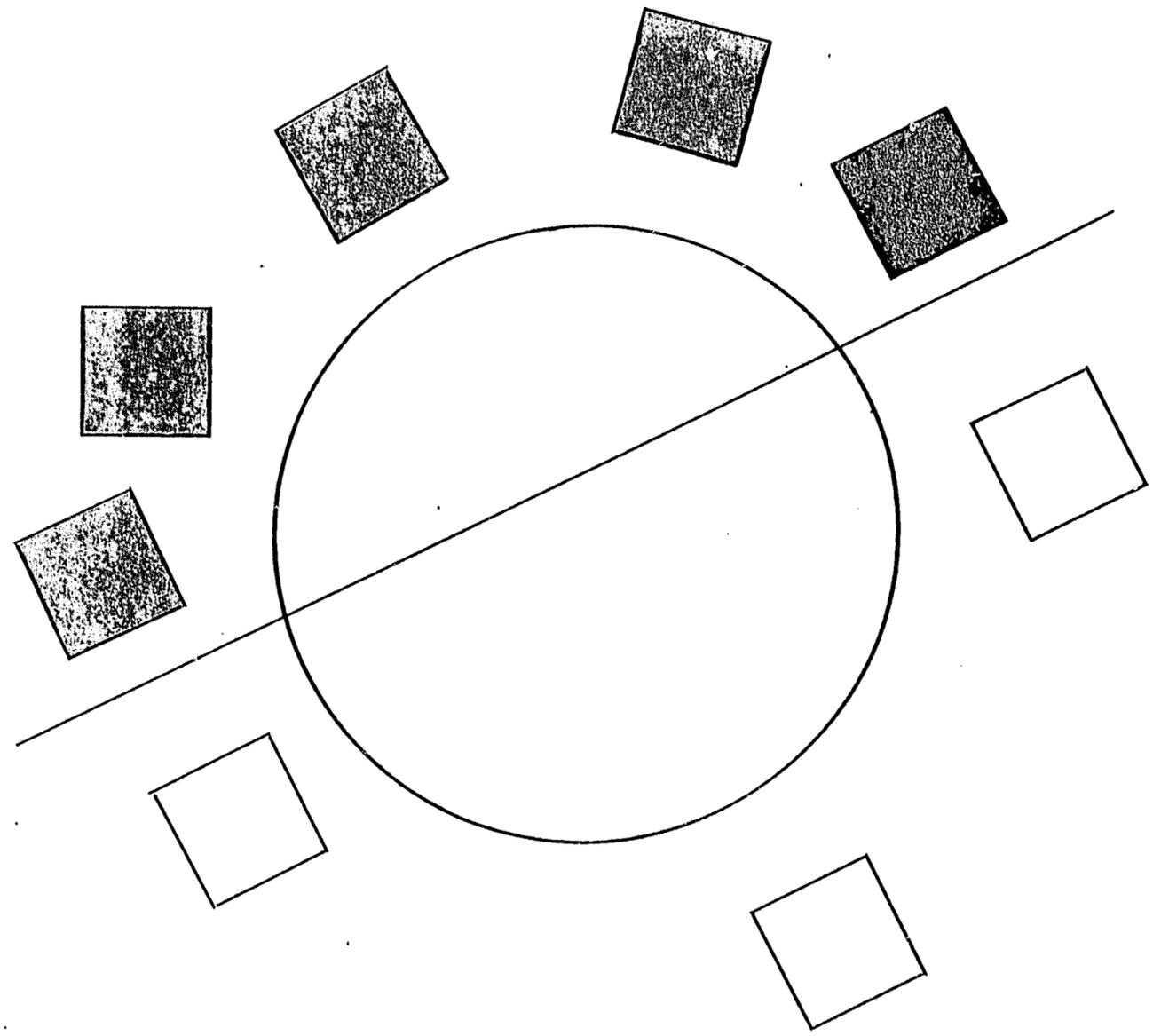


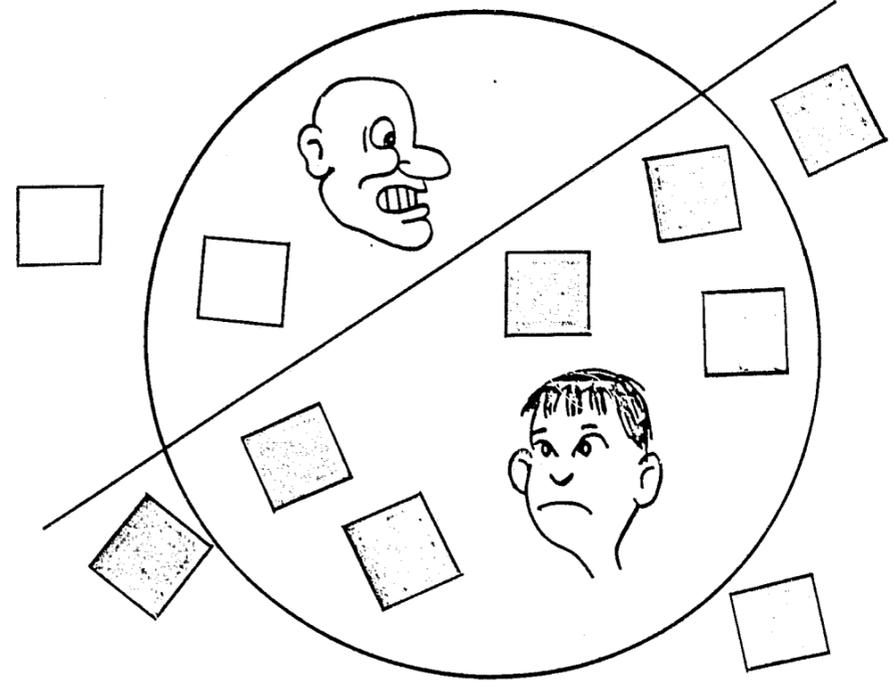
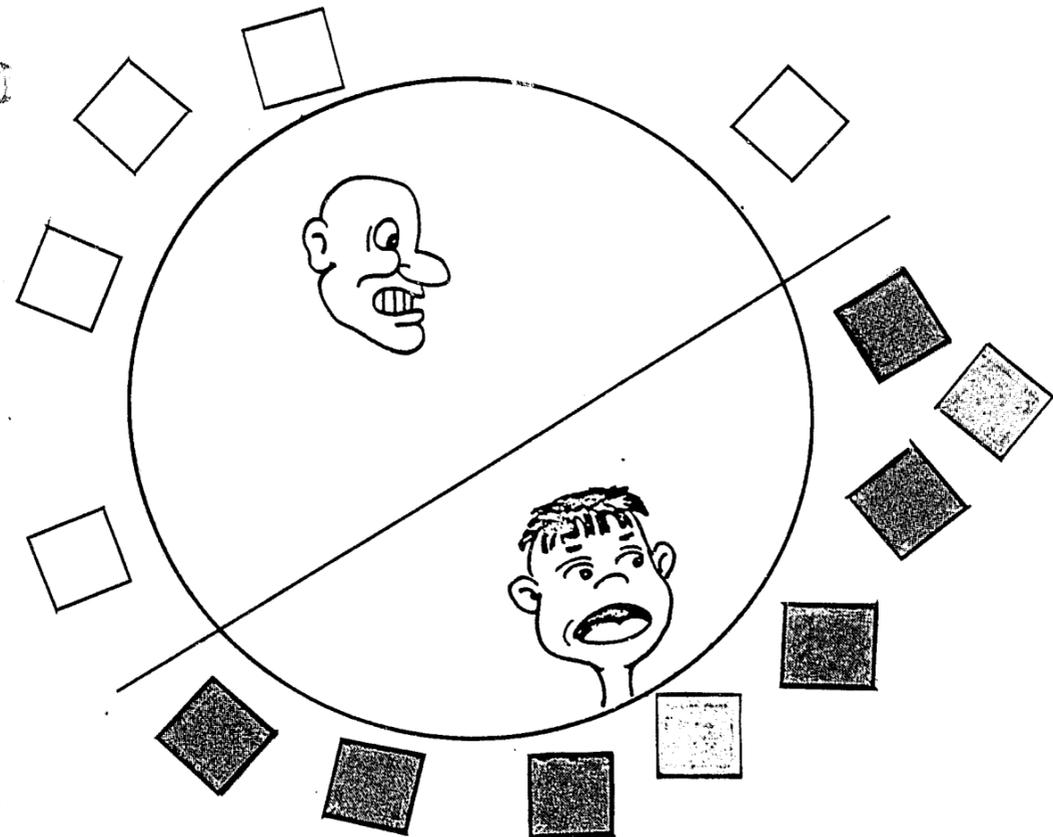
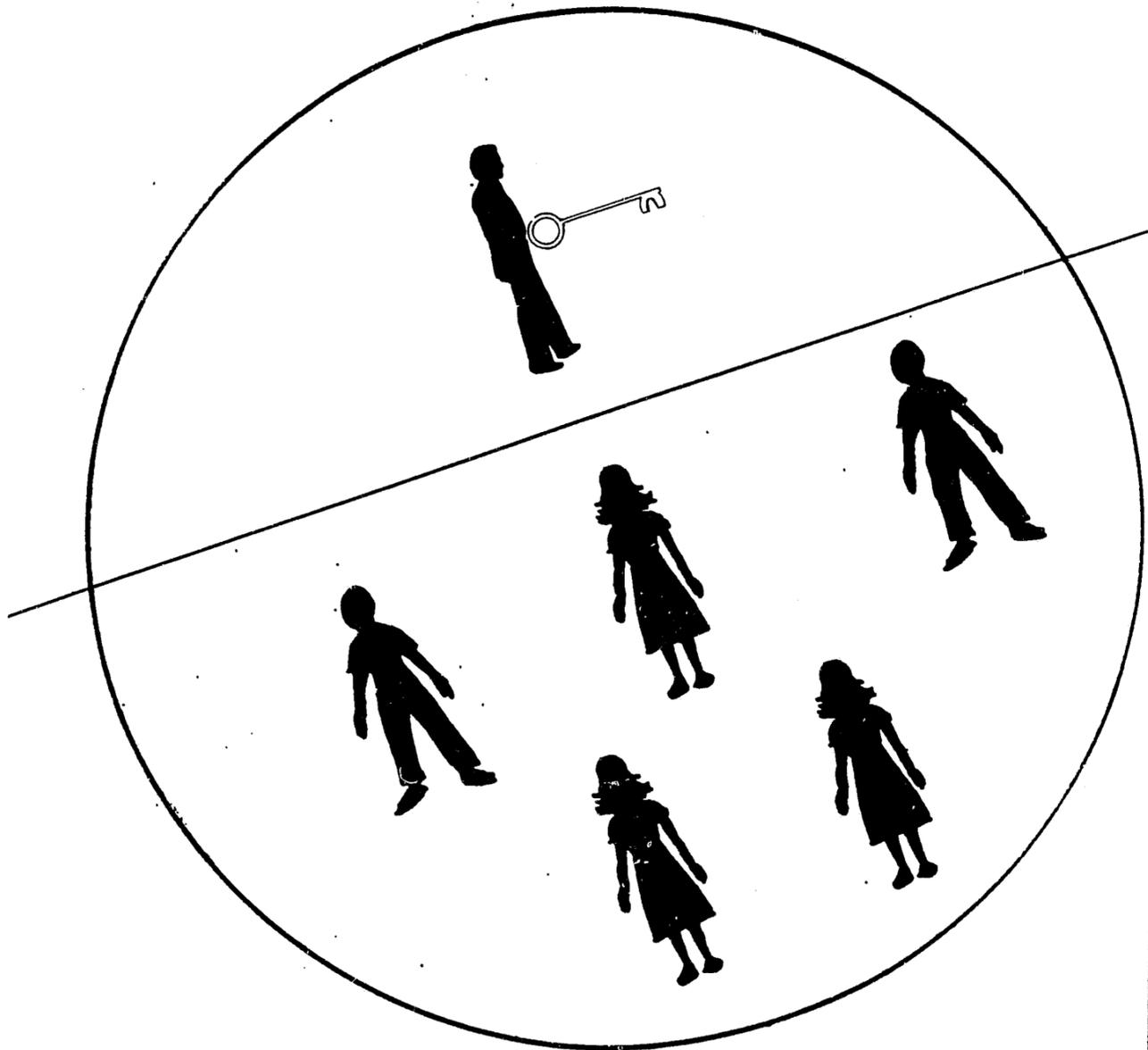
Winners

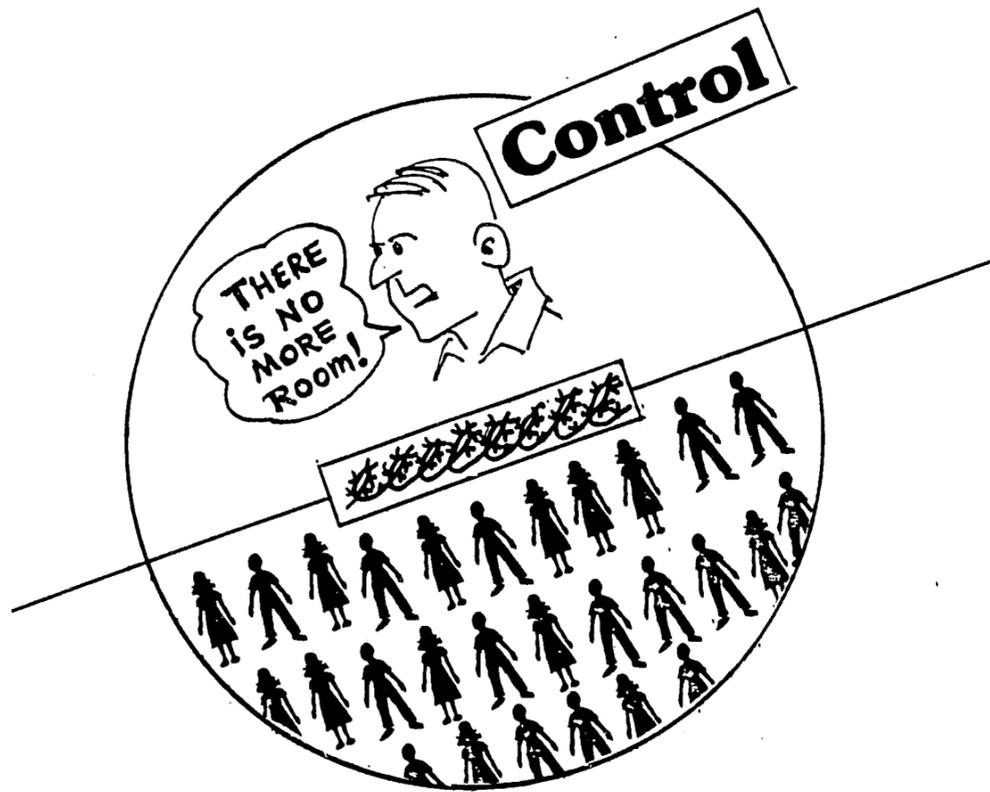
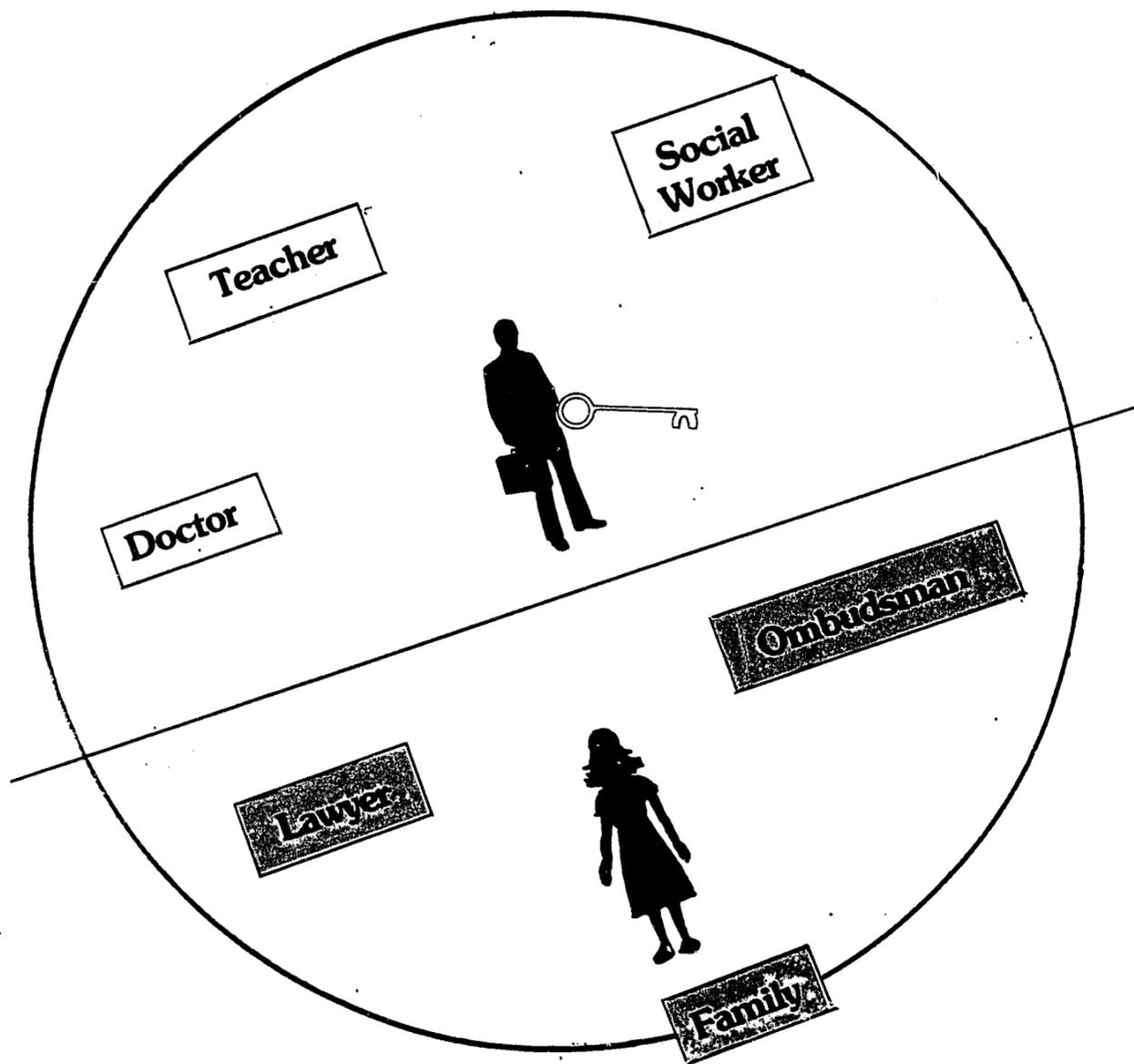
Losers

Expansion of Conflict

- 1. Issues can be added.**
- 2. Cleavages become symbolic.**
- 3. Participants can be added.**







Education

Discip. Due Pro.

Recreation

Cruel & U. P.

Expansion of Conflict

**I. Issues can be
added.**

- 1. Mediator must be a non-combatant**
- 2. Mediating structures equalize the parties**
- 3. Reduce conflict to original cleavage line**

**4. Function best which
function earliest**

**5. Allow combatants to
save face**

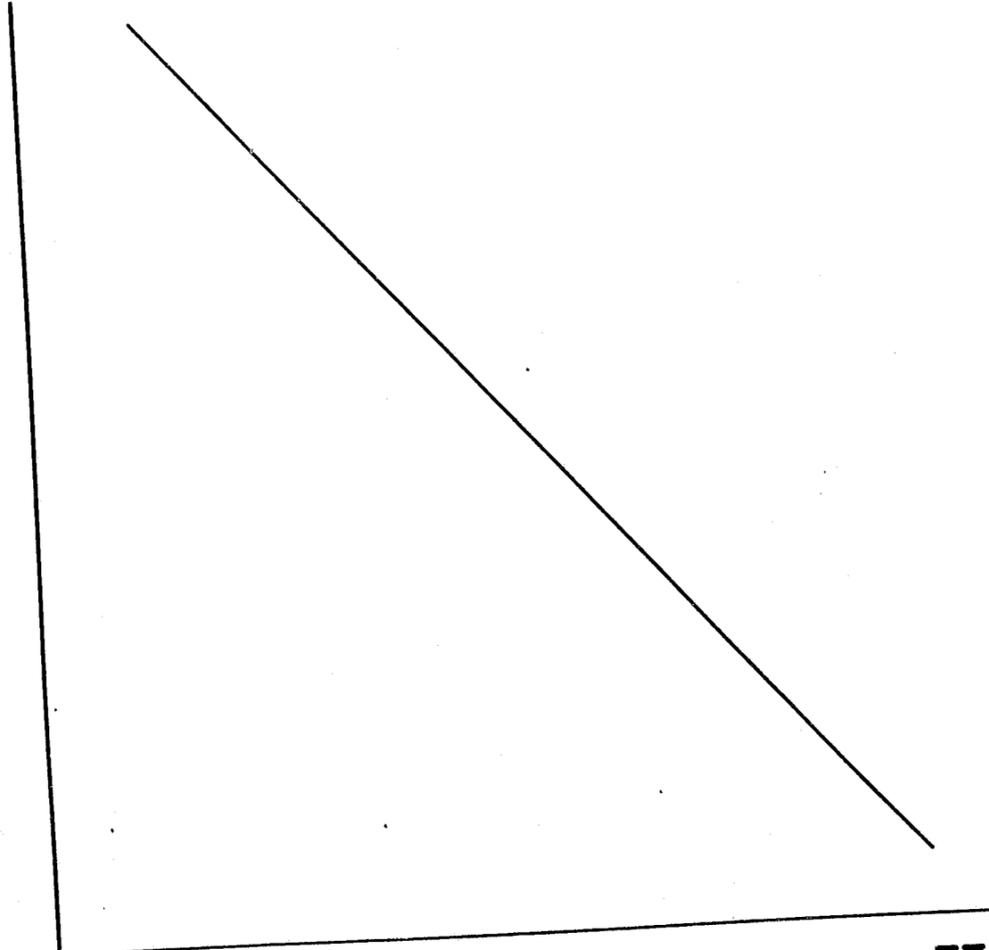
**6. Can be face to face
or shuttle**

**7. Sweet reason is
nice –
But clout don't hurt!**

Proposed Solution

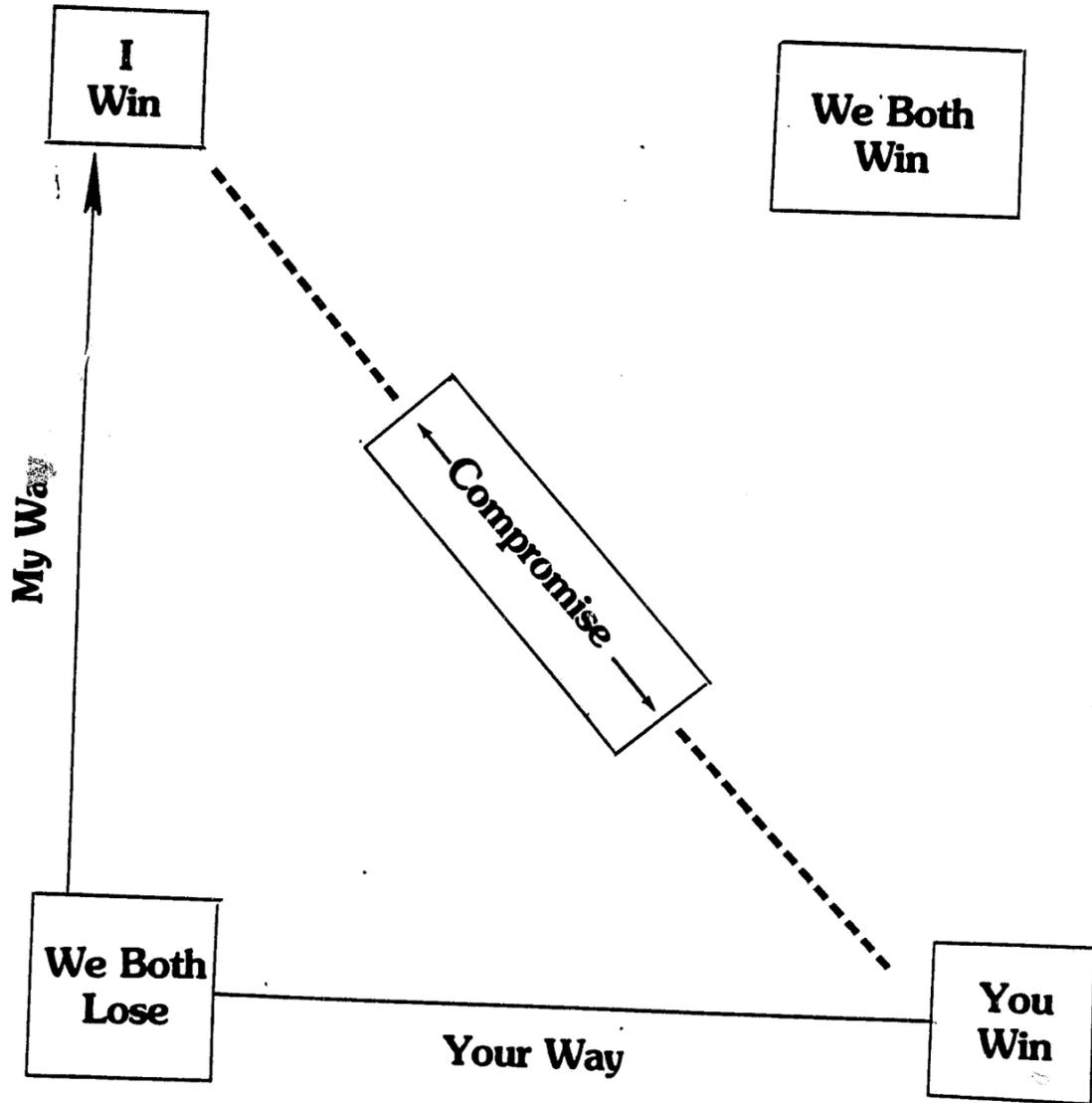
- 1. What are the consequences?**
- 2. What will be the condition of the competing parties?**
- 3. What will be the condition of their relationship?**

Able



Willing

Resolving Conflict



THE POLITICS OF INSTITUTIONAL ABUSE

There has been conflict between institutional staff and institutionalized children as long as there have been institutions designed to rehabilitate, punish, or "correct" young people who have offended against society's laws and standards. The conflict is always present, simmering beneath the surface. It is manifest in the behavior management techniques which are employed by institutional staff to make the point in unmistakable terms that they control the institution:

- seclusion locked in an individual room for several days immediately upon admission
- walking to meals in a double-line formation
- "early bed" (at 5:00 p.m.) for minor infractions of institutional rules
- being forced to "duck squat" against a wall for hours because of "boisterous," "unruly" conduct in the dormitory.

It becomes overt when residents are punished for being disobedient or "disrespectful." It erupts at times into physical violence perpetrated by either staff or residents against the other.

Both parties to the conflict develop "garrison" mentalities which encourage group cohesiveness and a reluctance to betray a member of the group unless there is some clear personal benefit to be gained. Institutional staff feel themselves to be the few

against the many and stick together for protection. Institutionalized children are certainly the weak and disenfranchised against the strong and powerful, and band together for support and defense and in an attempt to influence their environment.

The existence of conflict between institutional staff and institutionalized children is inarguable. What can be argued is what the conflict is about. We can search for the substantive issues by examining some of the causes and characteristics of the conflict.

Young people enter a juvenile correctional institution at a time of their lives when, like all other adolescents, they are inclined to rebel against every exercise of authority, especially that which they perceive as perverse, arbitrary, or unfair. Most of them are psychologically healthy youth reared in the great American tradition (tragically, more often a hope than an actuality for them and their families) that people should be in charge of their own lives. They come to the institution, however, as the direct result of losing a dramatic conflict with society over the retention of their personal freedom. They have been sent to jail, as they see it. They are chronologically and psychologically primed to attempt to regain some degree of control over their lives and to rebel against any authority to which they are subject.

These young people enter a situation which could not be more inimical to the normal development of healthy adolescents if it was designed for that express purpose. They enter a large, highly-regimented institution in which, even under the best of circumstances,

there is very little opportunity for doing "one's own thing." With direct care staff ratios between 1:10 and 1:20, the whole group pretty much has to get up at the same time, go to bed at the same time, and in between eat, study, and play together with minimum disruption of an "orderly schedule." The structure of the institution itself seems to dictate that the children cannot be given the opportunity for normal rebellion or to exercise independence of their elders.

They enter a situation in which staff, reflecting the garrison mentality of the institution, are constantly on the offensive to head off or thwart any actual or potential threats to their control. In many cases the mechanisms employed to assert control, to imprint indelibly on the young peoples' mind WHO IS BOSS, are precisely the arbitrary and unfair exercises of authority which adolescents cannot abide. When to these dynamics is added the testing of men none too secure in their masculinity by adolescent males determined to prove their own, and all of the factors are placed in a cultural milieu shared by the majority of staff and residents which values machismo and physical control above almost everything else, is there any wonder that there is conflict, or that it so frequently erupts into violence?

We know that there is conflict between institutional staff and residents. We know many of its manifestations. We know some of its causes. We can diagram the conflict, since we know that basically administrative and direct care staff in the institution

are on one side of a cleavage line and that institutionalized children are on the other. We know, in fact, almost everything we feel we should know at the beginning of an analysis of the conflict between staff and children in the institution except what the conflict is about. Illogical as it may seem, we may study the dynamics of the conflict, including the strategies employed by the participants in an attempt to control its boundaries, without knowing what the substantive issues are. Indeed, as we shall see, the struggle to control the definition of what the issues are, of what the fight is about, is one of the strategic junctures in the struggle to win the conflict.

CONTROLLING THE SCOPE OF CONFLICT:
PRIVATIZATION, SOCIALIZATION AND CHAMPIONS

The environment of every conflict includes participants, who are fighting with each other about something, and are thus separated from each other by a cleavage line. It also includes potential participants or spectators on the fringe of the conflict.¹

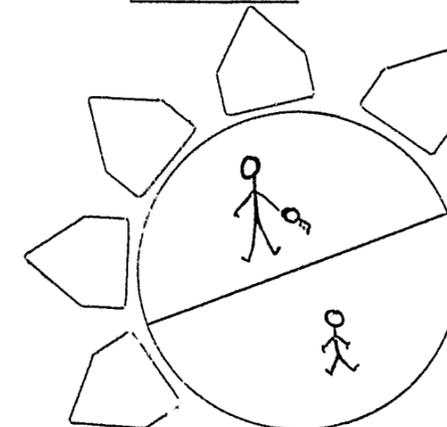


Figure 1

In the institutional milieu, the participants are the institutional staff on the one hand and the institutionalized children on the other. The cleavage line is based more or less on status --one is either a staff member or a child. It would seem that non-participant spectators to the conflict might include members of the community, both those irate about "crime in the streets," and those concerned about the rights of children; the press, the courts, the council, etc.

It is possible for either of the participants to expand the scope of the conflict by inviting some of the spectators to become involved. However, in general only the loser would have anything to gain by increasing the number of participants (the winner of the fight is quite satisfied with the current number of combatants). In general the winners of a conflict want to privatize it (restrict its scope to its current size), while the losers have everything to gain by socializing it (by increasing the number of participants), hoping that those drawn from spectator to participant status will sympathize with them and thus tip the balance of the conflict in their favor.²

The staff (and administration) of Cedar Knoll School and Oak Hill Youth Center, the two large training schools for delinquent and allegedly delinquent youth administered by the Department of Human Resources of the Government of the District of Columbia, have been the traditional winners in the conflict with institutional residents. Their primacy has only occasionally (and

generally unsuccessfully) been challenged, and the power imbalance between them and the residents has been so great, that they have usually been able to impose their conditions of institutional life and standards for treatment on the institutionalized children with few overt tests of strength.³

Following closely what we would expect from Schattschneider's theory of conflicts, the institutional staff, as the unquestioned winners of the conflict with the children, have had both the motive and the wherewithal to privatize the conflict. Their refrain has frequently been reminiscent of "The institution is the castle of those who run it," and as long as no one outside the institution can actually prove that children are being harmed there, staff and administrators should be left alone to run it as they deem appropriate. The closed nature of the institutions, the difficulty of access by anyone not in the system, the confidentiality of resident records make it difficult if not impossible to prove from the outside that children are being harmed on the inside.

It is instructive in the discussion of the mechanics of privatization of the conflict between institutional staff and residents--the privatization of institutional abuse--to draw an important distinction between the situation of a potentially abused child living in the community with its own family and a potentially abused child in an institution such as Cedar Knoll or Oak Hill.

A child living in the community who is being or may be abused by its parents is surrounded by a number of potential intervenors

in the situation. They include neighbors, family members, teachers, medical personnel, social service agency personnel, and the police.

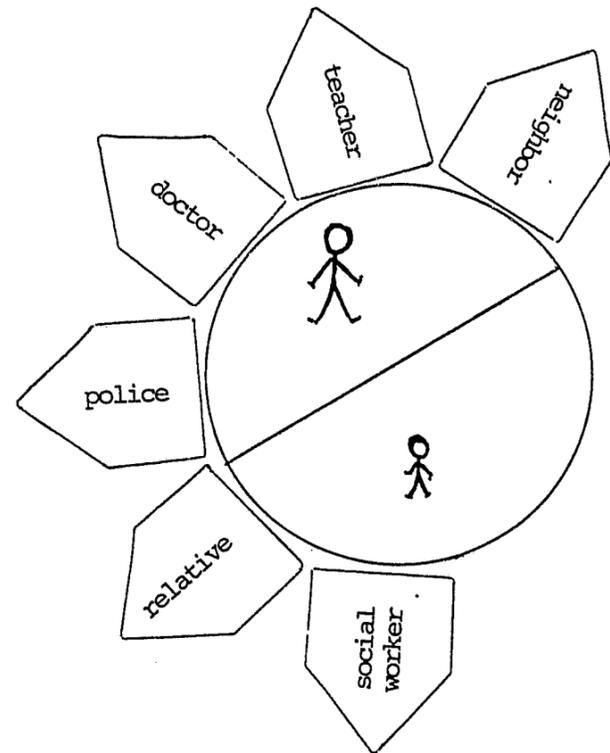


Figure 2

These spectators to the interaction between the child and its parents, to use Schattschneider's terminology, have ready and daily access to the child. In most cases, they are legally mandated to report suspected instances of abuse. They may be assumed to be no more on the side of the parent than they are of the child. If anything, their sympathies are probably with the child if abuse is suspected. So the interaction between parent and child, in

those tragic cases in which it does not reflect love and concern, is at least affected by the presence of such a large number of spectators to the interaction, who can become involved as participants if abuse becomes apparent. They are the "secret weapon" of the child at risk for abuse.

In dramatic contrast, when a child is placed in an institution such as Cedar Knoll or Oak Hill, most of the forces who were spectators to the conflict between parent and child in the community are either inside of the institutional system or co-opted or controlled by it. They may be assumed to be included among the combatants arrayed against the child in the conflict.

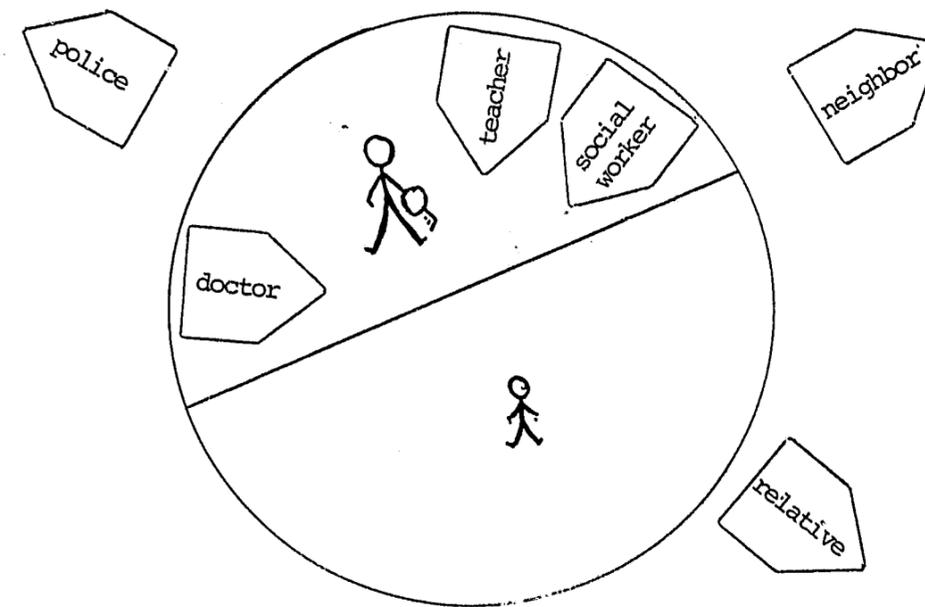


Figure 3

The social workers, doctors, nurses, and teachers who were the child's potential allies in the community now work for the institutions, and while still legally mandated to report abuse, more often than not take the "side" of the other institutional staff against the child. The access of the police is controlled by the institution (someone has to call them), and the neighbors, family, friends and busybodies who afford such valuable protection to children in the community are effectively excluded by the closed nature of the institution. While there are still potential spectators, as we saw in Figure 1 above, they lack the immediate access of the spectators to the conflict between parent and child.

If the staff at Cedar Knoll and Oak Hill, as winners in the conflict with the young people who are resident there, have a strong motivation to privatize the conflict and are able to do so chiefly by use of their ability to limit access to the institutions, the children would logically be expected to want to socialize the conflict to include some of the spectators not controlled by the institution.

The children, of course, hardly think in those terms. They have all they can do to make their way through the day-to-day conflicts with staff, and their access to the community is as rigidly limited as is the community's access to them. The primary agents of the socialization of the conflict have been attorneys for children resident at Cedar Knoll and Oak Hill, especially the attorneys of the Public Defender Service of the District of Columbia. The

conditions at Cedar Knoll, Oak Hill, and the Receiving Home for Children (a facility for the temporary detention of alleged delinquents) and the treatment to which the children were subject were argued in a series of class action suits brought on behalf of institutional residents in the Superior Court of the District of Columbia beginning in 1970.

In line with the general trend in correctional law in the 1970's,⁴ a series of court orders emerged from these cases which gradually expanded the legal rights of institutionalized children and gradually limited the unquestioned authority over institutional conditions and treatment of residents which institutional staff and administration had previously enjoyed.

In July, 1978, an order was issued by Judge Gladys Kessler of the Superior Court of the District of Columbia.⁵ One of the several provisions of the order was that children detained and committed at Cedar Knoll School and the Oak Hill Youth Center were to be provided an opportunity to register complaints of abuse or unfair treatment and to have those complaints impartially investigated. The order provided that locked box depositories be provided for receipt of complaints, and that only the investigating authorities were to have access to them.

Again using Schattschneider's categories, the Superior Court of the District of Columbia, which became involved in the conflict between children and staff in the juvenile institutions through the socialization of the unequal conflict by the agents of the

losers (the attorneys from the Public Defender Society), artificially created spectators to the interaction between staff and children who have the same immediacy of access and concern for the children which spectators of child abuse have in the community!

The independent investigating authority was established some months after the issuance of the Court Order, using funds provided by the National Center of Child Abuse and Neglect, DHFW, for a Demonstration Project in the area of Institutional Abuse.⁶ It was established in the Office of the Administrator of the Social Rehabilitation Administration as a reasonable compromise between creating a body with desire to correct institutional abuse but no ability to do so, and creating one with ability but no motive.⁷ The organizational placement of the investigating authority, named project HANDS, is shown in Figure 4. This essay is written from the perspective of (and by) the director of Project HANDS.

Up to this point, the analysis of the politics of institutional abuse in the District of Columbia's juvenile correctional institutions follows fairly predictably from Schattschneider's model:

- initial conflict between institutional staff and residents, with a cleavage around role in the institution
- institutional staff, as the winners of the conflict, attempt to privatize it
- attorneys for the losers in the conflict, the institutional residents, seek to socialize it through the court, with some degree of success.

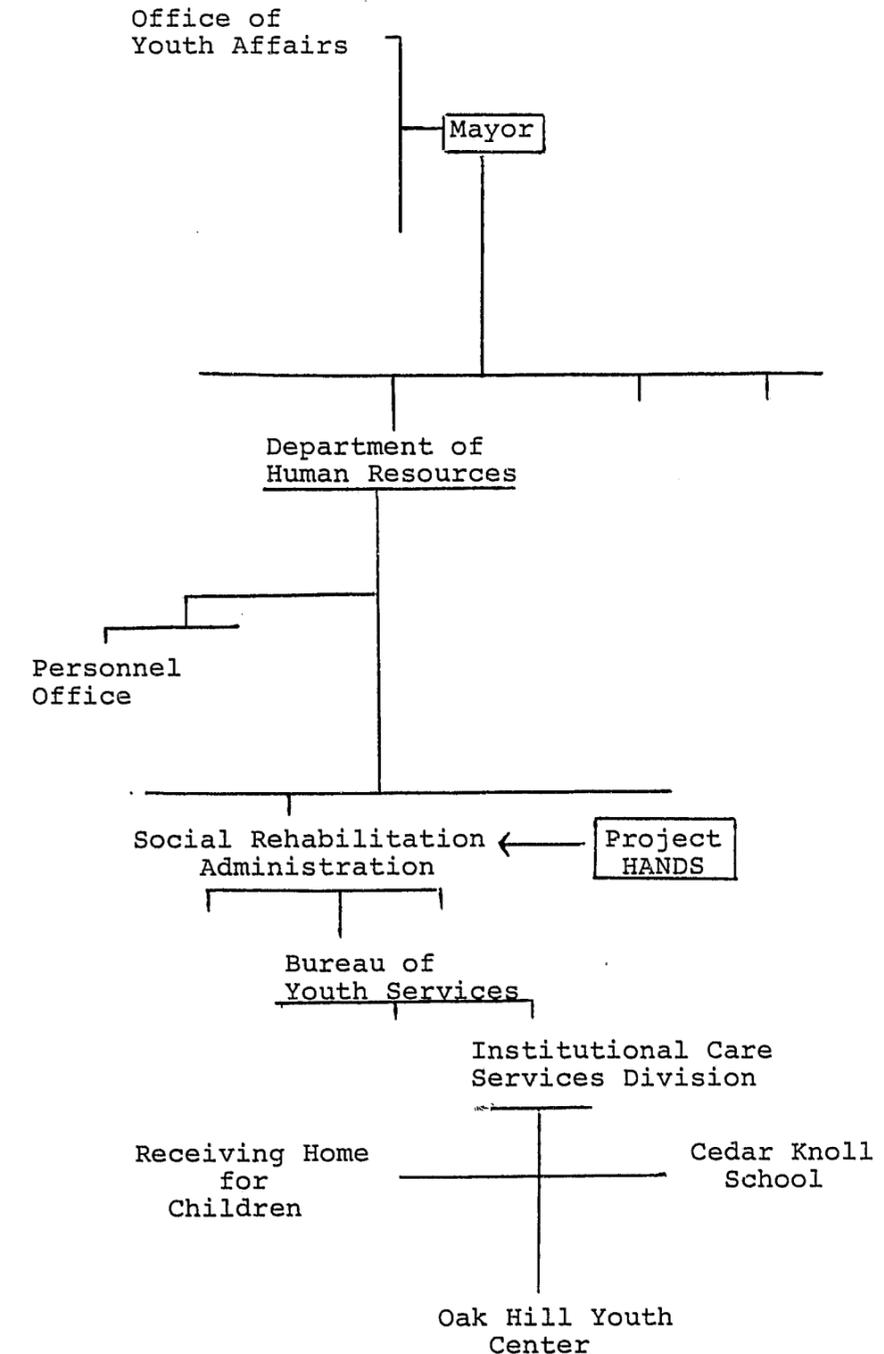


Figure 4

- the court establishes spectators to the conflict who have the mandate to become participants at any point at which there is either overt abuse or unfair treatment of children by staff.

During the early period of the implementation of Project HANDS, when the boxes began to be opened and investigations of allegations of abuse began to be conducted, an interesting phenomenon occurred. The staff of Project HANDS, whose positions were created to allow the addition of spectators to the conflict between institutional staff and residents, came to be viewed, especially by institutional staff, as full-time participants on the side of the children. The Project HANDS staff themselves, while not viewing themselves as consistent participants, left no question as to whose side they favored or whose side they were on when occasions arose for them to join the fray. These effectively widened the scope of the conflict.

What happened next can best be understood by overlaying Schattschneider's model of conflict with Gordon Tullock's medieval imagery⁸ (although not Tullock's category). Each side of the newly widened conflict obtained⁹ a champion to represent it and to do battle single-handedly with each other. The issues and the strengths and weaknesses of each side became focused on and symbolized by a new conflict between Local 383 of the American Federation of Government Employees, acting as champion for the institutional staff, and Project HANDS, acting as champion for the

institutionalized residents. The basic conflict between the original combatants never really abated, and it was waged simultaneously with the battle of the champions, but it was obvious to all participants that the outcome of the conflict between Local 383 and Project HANDS would have a significant impact on the future conditions and terms of the conflict between staff and children in the institutions and upon the relative strengths and weaknesses of the participants.

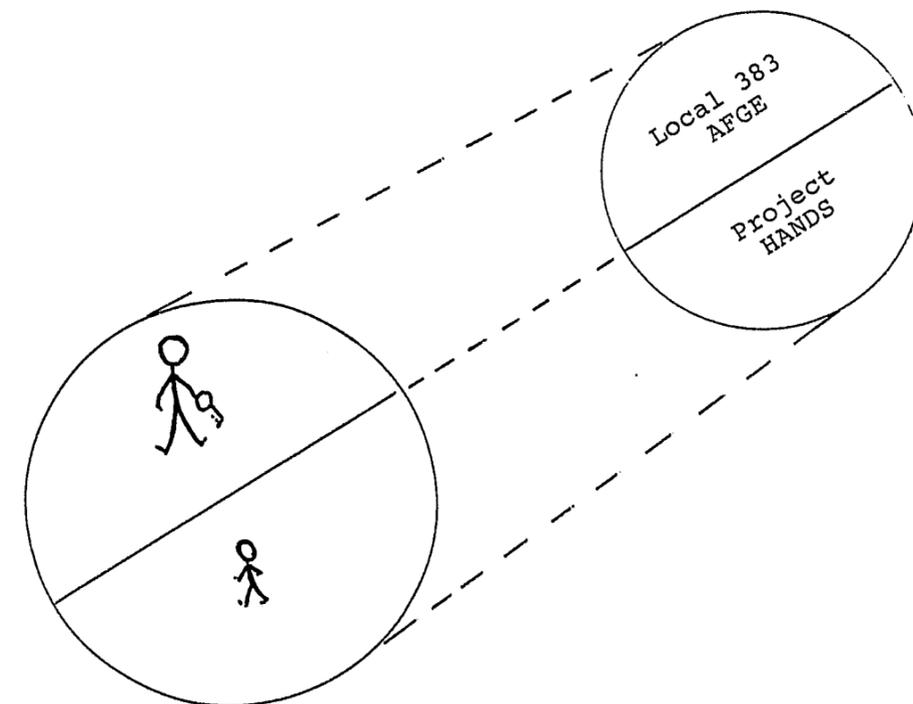


Figure 5

In the discussion which follows, we shall examine the strategies employed by the champions as they sought to determine the outcome of their conflict by controlling its boundaries.

A serious difficulty will arise, however, because we will find that there were not two but three battles being waged simultaneously in that era. To extend the medieval metaphor, it was as if two great lords, having grown tired of losing their knights in prolonged and wasteful battles, each chose a champion who would do battle to determine which people would be subject to the other. This battle of champions was complicated by the fact that the chosen knights were not only battling as representatives of their lords and to determine the outcome of the main substantive conflict between their peoples, but also were engaged in conflict more personal to themselves (such as for the love of a beautiful damsel) which, presuming that the battle was not necessarily to the death, could be settled independently of their conflict as champions of their peoples. (For instance, if there was a reasonable chance that the lady were turned on by losers!) There are two battles with the same participants but with different cleavage lines.

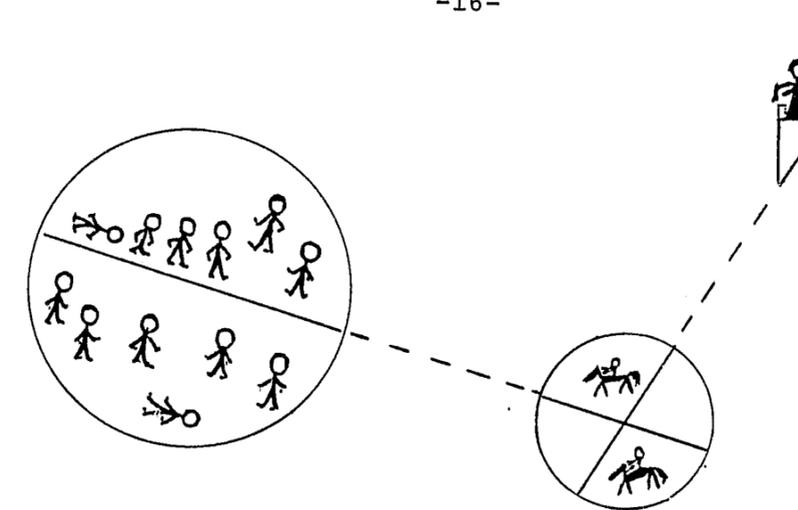


Figure 6

Similarly, Local 383 and Project HANDS were involved in two related but different conflicts. They were involved as representatives respectively of the institutionalized staff and the institutionalized children in a conflict which was about what was happening in the institution. They were also involved in another conflict more particular just to the union local and the Project HANDS staff which was non-representative of the wider conflict. It was much more direct, much more succinct, single-issue, and much dirtier.¹⁰

CONTROLLING THE BOUNDARIES OF CONFLICT

As we have seen, one of the primary determinants of the outcome of a conflict is the extent to which its scope is controlled either by the originally stronger participant's succeeding in privatizing the conflict or the originally weaker participant's

succeeding in socializing or expanding the conflict to include those who were originally only sympathetic spectators but who can tip the balance in their favor. Another strategic determinant of the outcome of conflict is the control of a number of its boundaries. The party to the conflict which is successful in having the battle waged on its terms has gone a long way towards being the ultimate victor. We will analyze briefly the strategies of Local 383 of the American Federation of Government Employees and Project HANDS as they struggled to control the following terms of each of their battles of champions:

- Definition of issues, language and symbols
- Participants
- Style of exchange
- Agenda

DEFINITION OF ISSUES, LANGUAGE, AND SYMBOLS

After some discussion above of the causes and characteristics of the conflict between children and staff in the institution, we deferred until a later time the question of what the conflict was about. Our uncertainty about the substantive issue led us to make a preliminary definition of the cleavage around status (role in the institution) rather than around a more typical statement of value or belief.

It became obvious early on in the battle of champions that institutional staff (and Local 383) really thought that the conflict was about control of the institution, and knew that they would be more successful if it was defined in those terms. Institutionalized children (and Project HANDS), on the other hand, were convinced that the conflict was about the way that children were to be treated in the institution, and felt that they would have more wide-spread support if that definition prevailed. The struggle to control the definition of what the conflict was about dominated the early phases of the representative battle of the champions. Eventually it became evident that other than with spectators and potential participants who were already in the institutional system (and law and order factions in the community, who were never really a factor), the plea of Local 383 for processes which would control the dangerous juvenile delinquents and contribute to the smooth and efficient functioning of the institution was generally less persuasive than a definition of the issue in terms of humane treatment of children, protection of the weak, and rehabilitation of misguided youth.

Direct outgrowths from the way in which the issue was defined were the language and symbols employed in discussing it. It mattered whether we called the persons resident in institutions "children" or "youthful offenders." We are conditioned to love and help children and to control and punish youthful offenders.

It mattered whether we dwelt on the fear and loneliness of a child in a large impersonal institution, or on a hard-working counselor struggling to control a gang of vicious hoodlums, Within a two week period, a very mild-mannered and caring staff member suffered a concussion when he was hit over the head with a steel mop wringer handle in an escape attempt, and a confused and suicidal sixteen year old who attempted to hang himself in his room with blanket strips was charged with destruction of government property (the blanket) and handcuffed to his bare bed springs as punishment. Both events were equally factual, but one was chosen by Local 383 and one by Project HANDS to symbolize to spectators and potential participants what was happening in the institution that month, (which may be variously called the dishonesty or the strategy of politics).

In the important area of the definition of the issue for the representative conflict project HANDS was successful. The battle waged by the champions as representatives of the larger conflict came to be about how children were to be treated in the institutions and how allegations of abuse of residents were to be dealt with, rather than about what would make for the most efficient control of the populations.

There was never any question and therefore no controversy or strategy surrounding the issue of what the non-representative conflict was about. The single issue was the survival of Project HANDS. Local 383's goal was either the total elimination of these

threatening spectators, or a complete change in leadership, personnel, and method of operation to those more amenable to the union membership.

PARTICIPANTS

In the Representative Conflict:

Having lost the battle for definition of the issue, Local 383 attempted to ensure that in each specific case of an allegation of mistreatment that the decision would be made at the lowest possible level of authority within the institution as to whether the child had actually been abused or unfairly treated or whether the complaint was frivolous or made in a malicious attempt to bring trouble to the staff member. The first proposal of Local 383 was for the first line supervisor (Senior Counselor) in the living unit in which the alleged incident occurred to decide, on the basis of knowledge of both staff member and resident, whether or not there was substance to the allegation. Back-up proposals were, in turn, that this determination be made at the level of the Chief Counselor, or at the very highest level that of the Institutional Administrator. The strongest argument which could be advanced in support of this position was that no one who is not on the scene or at least experienced in the institution could possibly understand the situation.

Project HANDS wanted, insofar as possible, to make it impossible for anyone within the institution to be in a position to make the determination as to whether or not the allegation of abuse was founded, feeling that anyone inside the system could be expected to have an investment in institutional abuse not being exposed--that institutional people were the worst possible people to make the determination of probable cause in any given allegation. It was the preference of Project HANDS for the determination to be made at the level of the Administrator of the Social Rehabilitation Administration, with possible back-up positions of the Chief, Bureau of Youth Services, or, at the lowest acceptable level, the Chief of the Institutional Care Services Division. The primary clout which Project HANDS could bring to the conflict on this issue was that unless the investigative and decision-making functions were far enough removed from the site of the alleged abuse to satisfy the National Center on Child Abuse and Neglect that funding could be withdrawn, with subsequent embarrassment to the Department of Human Resources and inability to comply with the Kessler order.

Whether the issue of who the participants would be in the decision-making process following allegations of abuse was finally decided because of the specter of the Federal Big Stick, or, as Project HANDS staff preferred to think, because the argument was so pre-eminently fair and reasonable, the decision-making capability was never placed any lower than the Chief of the Institutional Care Services Division.

In the Non-Representational Conflict:

Local 383 received early (perhaps unsolicited and possibly even initially unknown) support from the Personnel Division of the Department of Human Resources in their attempt to eliminate Project HANDS. The classification officer assigned to classify the project positions became convinced that these investigative functions belonged in the department's Office of Inspection, and refused to classify them within the Social Rehabilitation Administration. To counter this threat even to the formal establishment of the project (although three of the project positions had been filled on a detail basis), Project HANDS appealed to the Mayor's Office of Youth Affairs, who were to have a decided impact on everything that happened in the non-representative conflict from that point on.

As a staff office of the newly-inaugurated mayor of the District of Columbia, the Office of Youth Affairs clearly had no line authority over DHR programs, but the staff in that office were equally clearly in a position to be highly influential in the future of this or any other program. Each side to the non-representative conflict tried from time to time, with varying degrees of apparent success, to capture this very influential group of actors. For several months, whoever thought that they were losing the non-representative conflict would appeal to Youth Affairs, naturally defining what the issue was in terms from the representative conflict likely to bring the most favorable response. Thus, Project HANDS would couch their argument as "They can't keep doing this

to kids," and Local 383 would grieve that "Staff's due process rights are being violated," and, of course, "We are losing control of the institutions."

In retrospect, it must be admitted that neither side could ever truthfully claim to have bagged the Office of Youth Affairs. Despite the pressure, they remained committed to advocacy for institutionalized youth, insistent that staff be treated fairly, and by and large unentangled with the actors in the conflict. They nonetheless were always important as potential participants, since they had the power to stop the project (and did once for a brief period), authorize it to resume (which they did), and influence its operation in a number of important ways.

STYLES OF EXCHANGE

In the representative conflict about what should be done about allegations of abuse or unfair treatment of children, the struggle to win the battle of champions by controlling the style of exchange took an unusual turn.

In the "normal" course of events in the institution, direct care workers, even acting through their union representatives, have very little formal authority to affect the outcome of events. As a result, their normal modus operandi consists of a very flexible manipulation of the system, depending heavily on personal appeals to whichever officials in the hierarchy are most likely to lend a sympathetic ear, all overlaid on the formal grievance procedure.

It was therefore curious to observe that when the issue was allegations of abuse of institutional residents, Local 383 became staunch adherents of "chain of command" decision-making and classical delegation of authority, insisting that the authority to settle complaints be vested at the lowest possible level, and that action to correct mistreatment of children proceed only along rigidly formal lines. This preference for a formal style of exchange in the representational conflict over disposition of allegations of abuse almost certainly reflected a realization on the part of Local 383 that on this issue, unlike their normal agenda of shift changes, AWOL charges, and maximum number of children on a unit, they were synchronized with the rest of the bureaucratic structure. They could use the inertia and conservatism of the system, against which they so regularly railed, to their advantage in this case.

On the other hand, the staff of Project HANDS were well aware, despite their fairly impressive position in the formal structure, that they actually hadn't captured anybody in the system who made day to day decisions which affected the lives of children. From time to time linkages were possible around specific cases and issues with any of a number of actors, but these linkages were just as likely to dissolve when the issue was different. This awareness of their relative impotence in the structure caused Project HANDS to favor and adopt a much more flexible style of exchange about allegations of abuse which would allow them to

negotiate and form temporary linkages as necessary with direct care staff, supervisors, institutional administrators, division chief, children's attorneys, etc. They felt that they needed to be free to propose disciplinary action for staff if warranted and supportable, separation of a staff member from a particular child, change in a procedure which invited abuse, training at times for staff who had difficulty in relating to children constructively, or education of the children to their rights in certain cases.

In the non-representative conflict about the survival of Project HANDS, Local 383 reverted to their more normal flexible style of exchange, making appeals at all points in the power structure where their position might be received sympathetically. Similarly, Project HANDS attempted to form linkages with many of the same persons, defining the issues in terms favorable to their needs.

AGENDA

There were seven agenda items which emerged as needing to be addressed in the representative conflict between Local 383 and Project HANDS:¹¹

- physical protection of children
- physical protection of staff
- protection of personal and legal rights of children
- protection of personal and legal rights of staff

- training of staff to do a better job with children
- education of children to their rights
- education of children to their responsibilities

Since these goals were all so demonstrably valuable, and since in an unprioritized listing neither party to the conflict would say that any of them were unimportant, the battle for marginal control focused on which protections and rights should take priority. It was recognized that to some (debatable) extent or another, increasing rights and protections for children increased risks and discomforts for staff.¹² Local 383's arguments tended in the direction that nothing was worth any risk or personal discomfort for staff members. Project HANDS argued that the institutions existed for the children and that their rights and protection should be what the institutions were about.

Paradoxically, the one agenda item about which both Project HANDS and Local 383 felt approximately equally, training for direct care workers, was the one item which funding and contract problems delayed for the entire period under consideration.

WHO WON?

Whenever there is conflict, whether what is at stake is the survival of a people or the love of a beautiful woman, it is legitimate to ask "who won?." The same question may be asked of the representative and non-representative conflicts in which

Project HANDS and Local 383 of the American Federation of Government Employees were engaged during the spring and summer of 1979.

In the non-representative conflict over the issue of the survival of Project HANDS, Project HANDS emerged as the clear victors and thus survivors. While there may continue to be skirmishes about the adoption or discontinuation of certain investigative processes, the existence of the project has been firmly established as a functional and operational reality in the institutions, and it is accepted as such by all but its most die-hard detractors.

When it eventually appeared that Project HANDS was controlling the issues, the participants¹³ in the decision-making process, and the style of exchange of the representative conflict, and that the parties were at least evenly matched for control of the language, symbols, and agenda, the overt conflict between Project HANDS and Local 383 seemed to expire. Possibly it was the unwillingness of Local 383 to continue a battle they felt that they were losing, or the fact that other issues arose which diverted them from the conflict, but there is no question but that after about October 1, 1979, very little was said by the union about Project HANDS.

NOTES

¹These definitions and the discussion below follow the argument of E.E. Schattschneider, The Semi-Sovereign People, p. 2 ff.

²"We may imagine what might happen if Able and Bart were having a conflict, and Bart was currently winning, but there were a hundred times as many spectators on the fringes of the conflict who sympathized with Able rather than Bart. Able would have a strong motive for trying to spread the conflict, while Bart would have an overwhelming interest in keeping it private." Ibid, p. 4.

³There is, of course, no argument with the fact that staff and administrators, rather than children, should run institutions for children. It is only when the way in which they are run is abusive, dehumanizing, unfair or dangerous to the children that the practically limitless authority of the administrators becomes a cause for public concern.

⁴Especially Wolff v. McDonnell, Baxter v. Palmigiano, and Meachum v. Fano.

⁵In the Matter of An Inquiry into Allegations of Misconduct Against Juveniles Detained at and Committed at Cedar Knoll Institution, Special Proceeding M-3.

⁶In one of the unpredictable turns which such things take, the Department of Human Resources, although consenting to the Complaint procedure, appealed the order to the Court of Appeals on other grounds. At the time of the grant award from DHEW, the order which occasioned the application for funds was stayed pending appeal.

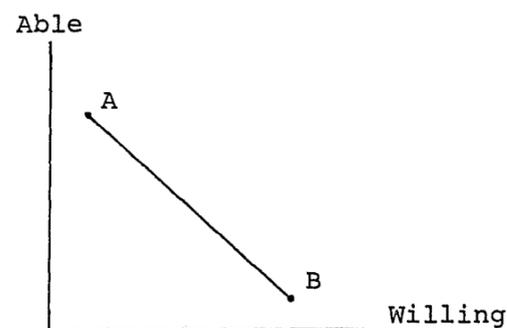
⁷There is a good deal of loose talk in institutional abuse circles about the necessity to provide for independent investigation of institutional abuse, and especially that no "agency" be allowed to investigate itself. This is written into federal law as one of the requirements for states to receive child abuse formula grants.

There can be little argument with the logic of this requirement; however, its implementation must take into account what seems to be an inevitable tension between the two necessary characteristics of the independent investigatory body:

- that it not only be independent of the agency which it is investigating, but that it have a determination to expose and eliminate institutional abuse
- that it be in a position to take some prompt corrective action in cases where institutional abuse is substantiated.

7 (continued) These components may be thought of as lying along two perpendicular axes as represented below. The horizontal axis represents the willingness of an outside body to take action against institutional abuse. This is also, generally, a measure of how closely the investigatory body is allied with the institution or the system which supports the institution; that is, the further the investigatory body is from the institutional system, the more willing it will be to expose institutional abuse.

The vertical axis represents the ability of the investigatory body to effect prompt corrective action in substantiated cases of institutional abuse. In general, the more closely aligned to the institution the investigatory body is, the more able it will be to take prompt action.



Thus, any suggestion for an investigatory body will lie somewhere along the line AB, with its ability to take action in cases of abuse inversely proportional to its willingness to do so. For example, an administrator of an institution at which abuse of children occurs might be placed at A on the diagram because he or she would be in a very good position to expose and correct the abuse, but would more than likely have very little incentive for doing so. Conversely, a community group which advocates for children's rights, placed at B on the diagram, would have a high degree of willingness to expose institutional abuse but have only time-consuming and indirect ways to correct it.

⁸As contained in The Politics of Bureaucracy.

⁹The actual mechanism of the appointments of the champions is open to question. Local 383 obviously appointed themselves. It seemed at times as if they also had thrust Project HANDS, willy nilly, into the position of being champion for the children. In truth, there was probably an element of self-appointment in that role as well.

¹⁰Because of the extremely vicious turns which the non-representative conflict took at times, I am sorely tempted by the "business" and "personal" dichotomy of the Godfather. However since the issues weren't really personal (although the attacks often were), I have restrained myself and stuck with the more descriptive representative and non-representative.

¹¹The non-representative conflict had a single-item agenda: the elimination of Project HANDS.

¹²For a fuller explanation of the inverse relationship between production costs and consumption costs in providing human services, see Robert Warren and Louis F. Weschler, "The Costs of Citizenship," from Governing Urban Space.

¹³An important distinction must be made between controlling the participants in the sense of the determination of who the participants are, and having captured the participants, in terms of being able to determine the outcome of individual cases.

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LESSON PLAN NO. 4

LESSON SUMMARY

SUBJECT TITLE: OMBUDSMAN TRAINING

TOPIC TITLE: KINDS OF COMPLAINTS/PROCESSING COMPLAINTS

TARGET POPULATION:
Ombudsman

TIME ALLOCATION:
4 Hours

CLASSROOM OR AREA REQUIREMENTS:
U shaped room with space for small group work.

PERFORMANCE OBJECTIVES:
OBJECTIVES:
At the end of this session, you will be able to ...

1. List and explain at least two methods of setting up a complaint receipt system.
2. Categorize complaints.
3. Explain how to begin processing and recordkeeping.

EVALUATION PROCEDURES:

1. Oral Feedback
2. Small Group
3. None

METHODS:
Participative Lecture
Small Group Discussion

TRAINING AIDS, SUPPLIES, AND EQUIPMENT:
Overhead Projector
Transparencies
Handouts
Flipcharts

LESSON PLAN NO. 4 TOPIC TITLE KINDS OF COMPLAINTS/PROCESSING COMPLAINTS

PAGE 1 OF 14

INSTRUCTIONAL CONTENT

NOTES TO TRAINER

I. INTRODUCTION

Yesterday's introductory sessions on the role of the ombudsman and the institutional setting in which ombudsmen operate laid the groundwork for what will be our focus for the rest of the week - namely what we do once we're officially ombudsmen, the shingle is hung, and we're ready for the complaints to start rolling in.

In this morning's session we will deal with

- receiving complaints - both laying the groundwork for complaints and methods of receiving them
- categories of complaints
- initial processing and recordkeeping

II. CONTENT PRESENTATION

A. RECEIVING COMPLAINTS

1. Laying the groundwork

You remember, I expect, the old Vietnam war protest poster that said "What if they gave a war and nobody came?"

What if there was an ombudsman and nobody complained? Complaints are the bread and butter of the ombudsman's job. It's why we exist. No complaints - no reason for us. Part of the initial

Show transparency
"The ombudsman is in"

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>implementation task for a new ombudsman is to lay the groundwork in the institution so that residents who have legitimate concerns or complaints will in fact make them known.</p> <p>What are some of the reasons that a resident with a legitimate complaint might not express it?</p> <p>You have given some of the answers:</p> <ul style="list-style-type: none"> • <u>fear</u> - especially if the introduction of the ombudsman program has been accompanied by a great deal of line staff resistance. • <u>lack of knowledge about the ombudsman</u> - Institutions usually have a very transient population. A resident may not know the service is available. • <u>lack of belief in the ombudsman</u> - Any of us who feel that we've been wronged want justice, preferably immediate and dramatic. Unfortunately it's in the nature of the ombudsman's work that redress or solution or "justice" is often time 	<p>Ask class</p> <p>Show transparency "Reasons Why"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>consuming. It is frustrating for the resident (who admittedly might be satisfied by nothing short of public flogging of a staff member within 48 hours) to be told "I've written a report," "Someone's making a decision," etc. This reaction on the part of residents is sometimes inelegantly but succinctly expressed "The ombudsman ain't nothin," and the number of complaints drops radically.</p> <ul style="list-style-type: none"> • <u>has a legitimate complaint and doesn't know it</u> - An example will illustrate this problem. Several months after one ombudsman program began, it was discovered in the course of an unrelated investigation that a group of residents had been forced to "duck squat" for a period of more than an hour by a group leader. (For those of you, like me, whose education in methods of torture is limited, let me illustrate.) You may practice this 	<p>Demonstrate "Duck Squat"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>in the privacy of your own room, but let me assure you that the pain after approximately 1 minute is excruciating. Further inquiry revealed that it was far from an isolated instance - residents were being forced to duck squat for long periods several evenings a week. The amazing fact is that <u>no one had complained!</u> This practice which was painful, humiliating, counter to institutional regulation and illegal in that system was not subject of complaint because the residents thought it was just part of being locked up, like bad food, cold showers, and solitary confinement!</p> <p>Can you think of some things that you as an ombudsman can do to overcome these obstacles and lay the groundwork for effective receipt of complaints?</p> <ul style="list-style-type: none"> • good initial orientation for both staff and residents and continuing orientation for groups of new residents. 	<p>Ask class</p> <p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<ul style="list-style-type: none"> • good follow up with residents who do make complaints to make certain that there has been no retaliation. • experience within the system to know what questions to ask and what lies unsaid behind some of the answers. • a reputation for fairness, quick work, and results. <p>2. Complaint receipt systems</p> <p>Assuming we've laid the ground work so that residents who have legitimate complaints know about us and want to try to utilize the ombudsman, how do we get the complaint from them to us?</p> <p>How many different ways can we think of to bridge the gap?</p> <p>All of these methods fall into one of two categories of complaint receiving systems.</p> <p>a. <u>Direct</u> - In any of the direct methods of complaint receipt, the complaint comes from the resident to the ombudsman directly, with no intermediary.</p>	<p>Ask class - record on flip chart</p> <p>Designate/add on flip chart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Direct Methods include:</p> <ul style="list-style-type: none"> • complaint box • letter to ombudsman • telephone call • verbal approach to ombudsman. <p>b. <u>Intermediary</u> - A person other than the complainant may forward the complaint to the ombudsman. This may be done by someone at the complainant's request, or occasionally by an interested party without a resident's knowledge. This can be done by a</p> <ul style="list-style-type: none"> • parent • attorney • staff member or administrator <p>How many of these have you had experience with?</p> <p>The essential factor is that there <u>must</u> be some direct and convenient way for residents to complain.</p> <p>It's all right to have</p> <ul style="list-style-type: none"> • direct only • direct plus intermediary <p><u>Intermediary only</u> systems put too much filter between the residents and the ombudsman.</p>	<p>Designate/add. on flip chart</p> <p>Ask class</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>What you will probably find is that you will begin with one direct complaint receipt system and quickly find that valid complaints are coming to you from a variety of different sources.</p> <p>B. CATEGORIES OF COMPLAINTS</p> <p>What comes in the ombudsman's mailbox?</p> <p>Those who have been in the business for a while know that the answer is <u>almost anything!</u></p> <p>Before the ombudsman can begin to tackle the "inbox" in any meaningful way, some sorting and categorizing needs to be done. We'll begin thinking about categories as well as begin practicing some sorting using a mixed bag of real life examples.</p> <p>I will be distributing what is actually about one third of one month's complaints in a 150 bed secure juvenile facility. Names have been whited out to protect the innocent and guilty.</p> <p>For the next 30 minutes or so, I want each group to work on identifying 6-8 categories of complaints and sorting these into categories. List the category and the numbers of the complaints that fall in that category. When we come back, I'll ask a spokesperson from each group to describe the group's decisions.</p>	<p>Small group exercise</p> <p>Divide into groups of 4-6 each.</p> <p>Distribute</p> <ul style="list-style-type: none"> (1) complaints (1/person) (2) large paper & marker (1/group) <p>30 min. small groups. 15 minutes, presentation.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>As you can see, different categories or names are possible for the same complaints. The point of the exercise was to get us thinking about how complaints can be grouped or categorized.</p> <p>You will find that in practice it is very important to have consistent categories. They serve to focus your own thinking about complaints, help in the decision-making process which we will discuss this afternoon, and are essential for recordkeeping. Beware, however, of being too inflexible. Some complaints can be more than one category. Some defy categorization.</p> <p>I will describe in some detail the system of categories which is used in the District of Columbia. It is not sacred, but it has proved useful and adequate over several years.</p> <p>REMEMBER! Categories of complaints are <u>as viewed by the complainant</u>. If the complainant feels that a staff member was unfair, that's the category it goes in. The ombudsman is not making that assessment in the categorization process.</p> <ul style="list-style-type: none"> ● EXISTENCE OF POLICY <p>Sometimes the complaint is about the existence of policy. No Malfeasance/No staff violation of policy or procedure.</p> 	<p>Show transparency "Categories"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p style="text-align: center;">"WE WANT OUR DRESSERS BACK"</p> <ul style="list-style-type: none"> ● APPLICATION/VIOLATION OF POLICY <p>This category is very close to "unfair treatment," but distinguishable. It became clear in the home visit cancellation and in the matter of the chest pains and bed rest. It is the possibly unfair treatment which is justified to the resident on policy grounds.</p> ● UNFAIR TREATMENT <p>In this category are "individual" acts of unfairness (such as eating a resident's canteen) as well as complaints about medical care.</p> ● PHYSICAL ABUSE <p>This is self explanatory. Remember, however, that it is the <u>resident's</u> definition at this point.</p> <p>NOTE: Some states will specifically exclude the ombudsman from consideration of matters involving staff misconduct (child abuse, etc.). In other states, that is the primary focus.</p> 	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<ul style="list-style-type: none"> ● BEHAVIOR AND ACTIONS OF RESIDENTS "Pressing," harassment, violence, threats, and thefts by other residents. ● LIVING ENVIRONMENT AND CONDITIONS Toilet paper, shower shoes, malodorous staff, etc. ● OTHER Ass-patting, a quarrel between a social worker and his supervisor with the resident as the victim, etc. <p>If you are interested, this chart shows how I categorized the twenty five examples.</p> <p>C. INITIAL PROCESSING AND RECORDKEEPING</p> <p>There are two initial steps which form the basis for any other action by the ombudsman. They are:</p> <ul style="list-style-type: none"> ● interviewing the complainant ● starting a record <p>We will be talking in much more detail tomorrow about interviews and interviewing techniques. We only need mention here that almost by definition the ombudsman begins the inquiry by listening to the resident. That in fact is often what distinguishes the ombudsman from other institutional systems - we listen to the resident's side <u>first</u>.</p>	<p>Show Chart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>The other initial step which must be taken is <u>starting a case record</u>.</p> <p>One useful way of doing this is by means of a single page face sheet on which key information about the complaint and subsequent action by the ombudsman is recorded. You will find that in the majority of cases, the face sheet will comprise all of the record that is ever needed in the case.</p> <p>I am distributing a sample of a face sheet that has proved most workable. We'll go over the elements together.</p> <p>In the REPORT section, the origin and data of the initial complaint is recorded.</p> <p>In the INCIDENT section, key information about the incident or condition which precipitated the complaint is recorded. This is especially valuable for getting straight WHEN, WHERE, and WHO at the beginnings of the inquiry while things are still fresh in the complainant's mind (i.e., WHEN (yesterday after dinner) did you give the watch to WHICH guard (short, dark skinned, always wears a Redskin's cap)).</p> <p>The INTERVIEW section identifies the interviewer and date and records in the resident's own terms what the complaint is.</p>	<p>Handout Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>The ASSESSMENT section cannot always be filled out at the initial interview. It calls for a decision about category and a decision about <u>substantiation</u>.</p> <p>Sometime early in your career as an ombudsman, someone will say or ask "But most of the complaints are frivolous, aren't they?" This section will give you the raw data for your reply.</p> <p>(We have found, in the District of Columbia, that only a very small percentage of complaints are <u>frivolous</u> or just plain not true. It has been our experience that, in general, if a resident says that something happened, that <u>something</u> did happen. The resident's account is skewed by perspective, as is anyone else's, and of course omits the "What I did first" part, but complaints made up out of the whole cloth are very rare.)</p> <p>The middle box in the substantiation section will be used for all of those "Yes, I believe it; No, I can't prove it" cases.</p> <p>If either the ombudsman serves as Mediator in disputes (as you probably will) or there is a Mediation Component to the institution to which disputes can be referred, the persons who should participate for successful resolution are listed here.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>The RESOLUTION section records the initial action by the ombudsman, as well as the resolution and implications of the incident. These are the subjects of this afternoon's session, so we will delay consideration of them until then.</p> <p>III. APPLICATION</p> <p>Accomplished throughout lesson.</p> <p>IV. SUMMARY</p> <p>In this morning's session, we dealt with two methods for receiving complaints. Will someone please list the methods and explain what each entails. Correct, the Direct Method, which includes use of a complaint box, letter writing, telephone calls or simply talking to the ombudsman, and the Intermediary Method, or having a third party contact the ombudsman. This can be a parent, the juvenile's attorney or a staff member or administrator.</p> <p>You also spent a lot of time categorizing complaints - and you recognize that the categories are not clear-cut but depend largely on all the information you receive and that you should view the complaints as they are viewed by the complainant.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>And lastly, we began to look at the two initial steps you as an ombudsman will take in any case - interviewing the complainant and starting the case record.</p> <p>V. EVALUATION</p> <p>Accomplished in Summary.</p>	

R E P O R T	S O U R C E	Resident		Attorney	Parent	Staff	Other	Institution
		Box	Verbal					Date Received Box location:
I N C I D E N T	Date	Time	Place		UIR (Attach)			
	Complainant:							
	Others involved:							
	What happened?							
I N T E R V I E W	Conducted by:			Date:				
	Summary of Resident's Statement:							
A S S E S S M E N T	TYPE OF COMPLAINT				SUBSTANTIATION			
	Existence of Policy				Frivolous	Believable, but no extrinsic evidence	Probable cause	
	Application of Policy							
	Behavior and Actions of Employees							
	Unfair treatment							
	Physical Abuse							
	Behavior and Actions of Residents				Would mediation be practical? Who should participate?			
	Living environment or conditions							
	Request for Assistance							
Other								
R E S O L U T I O N	Action taken by Project staff:							
	Was resolution successful?							
	Implications of Incident:							

Resident Complaints

They say that because I'm detained and greenlined that I will have to program out of Unit 10A and only go to work in the dining hall in the evening. Ms. J wanted me to be in culinary arts class during the day they said that was only for committed residents.

The man (Mr. A) stinks. He comes to work dirty, wears the same clothes. Mr. A smells. We have told him that we're not trying to disrespect him but his hygiene is terrible.

D. B. has been f----- with me and I will do whatever is necessary to defend myself.

I had a carton of cigarettes in the canteen closet last night along with six sodas and a box of cookies. When the man opened the canteen closet today it was all gone.

We need about 20 pairs of shower shoes for myself and the rest of the unit.

Resident Complaints
Page 2.

I seen Mrs. B up here at night with Mr. N (the strong one). I don't want to get Mr. N in no trouble but Mrs. B be up here around 1:00 a.m. and Mr. N be patting her on the ass and she be running down the hall giggling.

I hurt my leg and they ain't trying to do nothing for me. I need a x-ray or something.

I need to contact my lawyer to get a court order for my girl friend to come and see me.

Mr. H (the O.D.) told the counselors to lock me up for throwing light bulbs. I was throwing light bulbs but I shouldn't be locked up.

We got a new counselor from the Shelter House named Mr. D. He comes in with new rules like no cursing and everybody curse so he be hacking everybody. He is trying to get a reputation and make everybody scared of him.

Resident Complaints
Page 3.

When I went for Treatment Team I got Home Visit. I went for Treatment Team on March 3. I got papers on the 8th saying I start Home Visits on the 12th. I got a paper yesterday saying all my home visits are canceled.

The doctor put me on bed rest for two days for chest pains. That was Saturday and Sunday. Now they won't let me out until I see the nurse (Monday). My chest is not hurting.

Friday I was in court and didn't get to make my phone call. I would like to call my mother.

I need to contact my lawyer Mrs. S P. My abscondence was two years ago and the custody order is two years old.

I have \$12 in control and Mr. B won't put it in my canteen fund. I went to the R.H. to see my lawyer and my mother was with him and she gave me \$12. I turned it in to Mr. B. He didn't give me a receipt.

Resident Complaints
Page 4.

They took our dressers out of our rooms. We don't have anywhere to put our clothes and stuff.

I'm suppose to go for x-rays and its on the plan of the day and they say it ain't no transportation.

I need to call home because my girl is pregnant and having a hard time. I just want to call and see if everything is alright.

We need soap and toilet paper in the unit. We don't have any.

I'm going to help F by representing him in the disciplinary committee and I need help in preparing his case. He was caught with marijuana in his coat.

Resident Complaints
Page 5.

I was at Bible study and I returned to the cottage. Mr. F said I was never in Bible study. He told me to go to my room. I said that I have to go to the bathroom. He said I can't go to the bathroom and not to knock on the door. He came in the room and hit me with a chair and a board.

J H and L B stink and they shouldn't be allowed to work in the kitchen.

My disciplinary hearing was dropped and I want the write up pulled out of my folder.

My lawyer is trying to get my court restriction lifted and social services told my lawyer that they would support it. Now Mr. S (social work supervisor) says he ain't sending no report. My worker Mr. B wants to support it because I'm programming and doing good. I'm trying to get school release.

A G is pressing me and I don't want to get hurt. I am not a violent person.

Simultaneously

**Encourage residents to use
system for legitimate complaints**

and

**Explain that we don't
actually have direct power
to change things.**

REASONS WHY A COMPLAINT MIGHT NOT BE EXPRESSED

- **FEAR**
- **LACK OF KNOWLEDGE ABOUT
THE OMBUDSMAN**
- **LACK OF BELIEF IN
OMBUDSMAN**
- **DOESN'T KNOW COMPLAINT
IS LEGITIMATE**

Complaint Receipt Systems:

Direct

Indirect

EFFECTIVE RECEIPT OF COMPLAINTS

- **GOOD INITIAL ORIENTATION FOR STAFF AND RESIDENTS**
- **GOOD FOLLOW-UP - NO RETALIATION**
- **EXPERIENCE**
- **REPUTATION FOR FAIRNESS, QUICK WORK AND RESULTS**

CATEGORIES (USED IN D.C.)

- **EXISTENCE OF POLICY**
- **APPLICATION/VIOLATION OF POLICY**
- **UNFAIR TREATMENT**
- **PHYSICAL ABUSE**
- **BEHAVIOR AND ACTIONS OF RESIDENTS**
- **LIVING ENVIRONMENT AND CONDITIONS**
- **OTHER**

LESSON PLAN NO. 5

LESSON SUMMARY

SUBJECT TITLE: OMBUDSMAN TRAINING

TOPIC TITLE: DECISION MAKING

TARGET POPULATION: Ombudsman	TIME ALLOCATION: 4 Hours
CLASSROOM OR AREA REQUIREMENTS: U shaped room with ample space for small group work.	
PERFORMANCE OBJECTIVES: At the end of this session, you will be able to: <ol style="list-style-type: none">1. Decide whether an investigation into complaints is needed.2. Explain which dispositional alternative is appropriate.3. Explain the steps in processing complaints.	EVALUATION PROCEDURES: 1 to 3: Oral Feedback
METHODS: Participative Lecture Small Group Discussion	TRAINING AIDS, SUPPLIES, AND EQUIPMENT: Overhead Projector Transparencies Flipchart Handouts (2)

LESSON PLAN NO. 5 TOPIC TITLE Decision Making

PAGE 1 OF 10

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>I. INTRODUCTION</p> <p>In this morning's session we looked at the beginning of the task of processing complaints received by the ombudsman - the receipt and initial classification of complaints and initiation of a record on each complaint.</p> <p>The next step in processing complaints is what we may call TRIAGE. TRIAGE was originally a battle-field term referring to sorting victims to determine priority or appropriate place of medical treatment.</p> <p>There are three different kinds of decisions which must be made for each complaint which an ombudsman receives. In practice these are often made quite rapidly so the process needn't be cumbersome, but for training purposes we will break them out and consider them in some detail.</p> <p>II. CONTENT PRESENTATION</p> <ul style="list-style-type: none">• What is the truth of the matter? Virtually every complaint is based on an allegation of some kind. "I didn't get to make my phone call." "He hit me." "Mr. T locked me up." "The food is cold at breakfast." "The court released me last week but I'm still here." <p>One of the decisions or conclusions which must be reached for each complaint is whether or not the resident's allegation is <u>true</u>.</p>	<p>Show: Beginning of Flow Chart</p> <p>Show: Definition of Triage</p>

CONTINUED

2 OF 5

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Did he make the phone call? Was he hit? Was she locked up? Is the food cold? Was an order signed releasing him?</p> <p>Often the answers to these questions are obvious or not disputed by anyone. At times the answer is only arrived at after a long and complex investigation.</p> <p>Because our entire session tomorrow morning on the "Art of Investigation" will basically be devoted to answering the question "Is it true?", we will not consider it in any further detail here, but it is the first decision which must be made.</p> <ul style="list-style-type: none"> • What can or should be done about the complaint? <p>The answer to this question comes about as a result of answering two subsidiary questions:</p> <ul style="list-style-type: none"> - What does the resident want with this complaint? - What dispositions are <u>potentially</u> available? <p>Let's set the stage for our thinking about this phase of decision making by going back and taking a second look at our twenty five typical complaints.</p> <p>Reform your same groups and ask two additional questions about each complaint:</p> <ul style="list-style-type: none"> • What is the youth <u>asking</u> for with this complaint? • What underlying problem in the institution might this complaint be indicative of? (Go ahead and be a little speculative in answering this one!) <p>Take about 10 minutes to consider these questions.</p>	<p>Show transparency with 2 questions</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>What do the residents <u>want</u>?</p> <p>In some combination or another, residents who complain to the ombudsman almost always want:</p> <ul style="list-style-type: none"> • <u>Help</u> - to get something or do something which the resident cannot arrange in the institution by his or her own resources. <p>and/or</p> <ul style="list-style-type: none"> • <u>Relief</u> - to stop something bad from happening. <p>and/or</p> <ul style="list-style-type: none"> • <u>Revenge</u> - Institutional residents are of course not free from the very human desire for revenge when they feel they have been hurt or unfairly treated. They are not above attempting to use the ombudsman to extract their revenge. (It is often the perception of direct care staff that revenge for residents is the primary usage of the ombudsman system.) <p>and frequently</p> <ul style="list-style-type: none"> • <u>Someone to talk to</u> - Possibly more in a juvenile institution than in an adult facility, residents are looking for someone sympathetic to talk to. Every ombudsman will have their handful of "regulars" who complain almost every day just to have a chance to talk. How motherly or fatherly the ombudsman feels will determine to a large extent how these regulars are handled. 	<p>List group's answers on a flip chart</p> <p>Show transparency "What Residents Want"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>and their supervisor, etc. At the institutional level, all of these staff report indirectly to a superintendent or administrator, who has some sort of central office structure over him or her.</p> <p>The point is that, at least in the larger institutions, this organizational structure is fairly rigid. A group leader of the unit who hears a juvenile complain about an unclear or violated court order has very limited organizational access to the systems (social service & central files) that deal with court orders. A cook who listens to a resident complain that there is no toilet paper or soap has even less access to the systems (cottage life and supply) which arrange for those amenities. Typically, no one has very much access to the superintendent.</p> <p>The ombudsman has the great advantage of not being within the institutional reporting structure. His or her chain of command is outside the institution, so there is no impediment to very free communication around and among all the various elements in the institution.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Once an ombudsman program is fully established and has gained a measure of credibility with staff, you will find that staff begin to use it informally as a way to get things done, especially for juveniles outside their formal chain of command.</p> <p>Let's go back to a rudimentary flow chart, which by now is getting messy (but realistic).</p> <p>We did this much this morning:</p> <p>So far this afternoon:</p> <p>You remember that when we were putting everyone else in tightly constricted organizational boxes, we left the ombudsman, free spirit that he is, floating out there with no chain of command, reporting to no one. Despite how you may occasionally feel operationally, we know that this is not the case. Ombudsmen do report to someone, and that someone (Court, Central Office, Attorney General, Governor) is almost always outside the institution. We'll call that person "the Boss." <u>You</u> know who I mean!</p> <p>"The Boss" almost always provides one of the alternatives in the third phase of the triage.</p> <p>What kinds of complaints would you usually refer outside the institution immediately?</p>	<p>Show Chart (a)</p> <p>Show Chart (b)</p> <p>Show Chart (c)</p> <p>Ask class - List on flip chart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>● very sensitive (or politically touchy) issues (ones that would embarrass "the Boss" if they hit the papers before she knew about them).</p> <p>Can you think of some examples?</p> <p>● where the ombudsman feels the institutional administration is more part of the problem (by omission, commission, or inaction) than part of the solution. Examples?</p> <p>Reporting to "the Boss" usually involves investigation and report writing (sometimes after an initial telephone contact). We will be dealing with each of these in much more detail tomorrow.</p> <p>The other alternative involves seeking a solution to the complaint <u>inside</u> the institution. In one sense or another, "inside" remedies are always negotiated settlements. They are made by people over whom the ombudsman has no authority (remember the organization chart!). It is realistic to admit that they are often made because of an "or else I'll tell the Boss" threat implicit in the exchange. (Of course the ombudsman is much too good a diplomat to make the threat explicit.)</p>	<p>Ask class</p> <p>Ask class</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>There is one final step to the decision about course of action. I admit that if I had never served the ombudsperson's role, I wouldn't be so aware of this step. It can be very thorny.</p> <p>The temptation to duplicate the work of the social worker, supply clerk, Officer of the Day, file manager, etc. is very strong. We are there, after all, to cut through red tape, to expedite, to help with the complaints of individual residents. People tend to be drawn to the ombudsman's role because they like <u>to help people</u>.</p> <p>Sometimes a duplication of an institutional system makes sense. But there is a lot of truth to the accusation that if the ombudsman drops by the warehouse and picks up the toothpaste to take to the security unit (since they don't have any), it is contributing both to the further breakdown of the supply system <u>and</u> to running the ombudsman ragged.</p> <p>A better alternative is probably a middle ground - that of referring to the institutional systems with monitoring to see if they solve the problem (possibly with a little "or I'll tell the Boss" implicit).</p>	<p>Show Chart (d)</p> <p>Show chart (e)</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>III. APPLICATION and IV. SUMMARY</p> <p>This afternoon, we looked at a variety of ways to process a list of typical complaints. Let's wrap up our discussion this afternoon by redividing into groups and going back to our list of complaints. Each group take 1 page. For each complaint on that page, decide</p> <ol style="list-style-type: none"> 1. Whether an investigation is probably needed to determine the facts. 2. Which dispositional alternative is appropriate. 3. What path would you start down? <p>V. EVALUATION</p> <p>Accomplished in Summary.</p>	<p>Distribute handouts (assign pages)</p> <p>Get feedback</p> <p>Summarize</p>

Decision Making
Class Handout

Substance of Policy, Rule, or Procedure

Written change communicated effectively, promptly, and as extensively as necessary, with instructions for effecting the change if necessary.

Interpretation of Policy, Rule, or Procedure

Written explanation of revised interpretation communicated effectively, promptly, and as extensively as necessary, with instructions for effecting the change if necessary.

Application of Policy, Rule, or Procedure

Written direction to the relevant employee or employees to apply the policy, rule, or procedure correctly, with instructions for accomplishing the change, if necessary.

Individual Employee Action or Reprisal

Indication to youth that grievance was founded; disciplinary actions against employees, if necessary, shall not be communicated to youth, but shall be documented.

Individual Youth Actions

Protection of the grievant, if necessary, through re-assignment of one or both parties or through other means; care that action taken does not have the effect of reprisal against the grievant; redress to the grievant as appropriate (e.g., return of stolen property).

Classification Grievances

Appropriate and prompt classification action (e.g., transfer, reduction of custody).

Loss of Youth Property within the Custody and Control of the Unit

Return of property, replacement of property of equal value at time of loss, or monetary payment equal to value of property at time of loss.

Living Conditions and Facilities

Prompt improvement.

TRIAGE

- 1. THE PROCESS OF SORTING VICTIMS, AS OF A BATTLE OR DISASTER, TO DETERMINE PRIORITY OR APPROPRIATE PLACE OF MEDICAL TREATMENT.**
- 2. THE DETERMINATION OF PRIORITIES FOR ACTION IN AN EMERGENCY.**

Triage Questions:

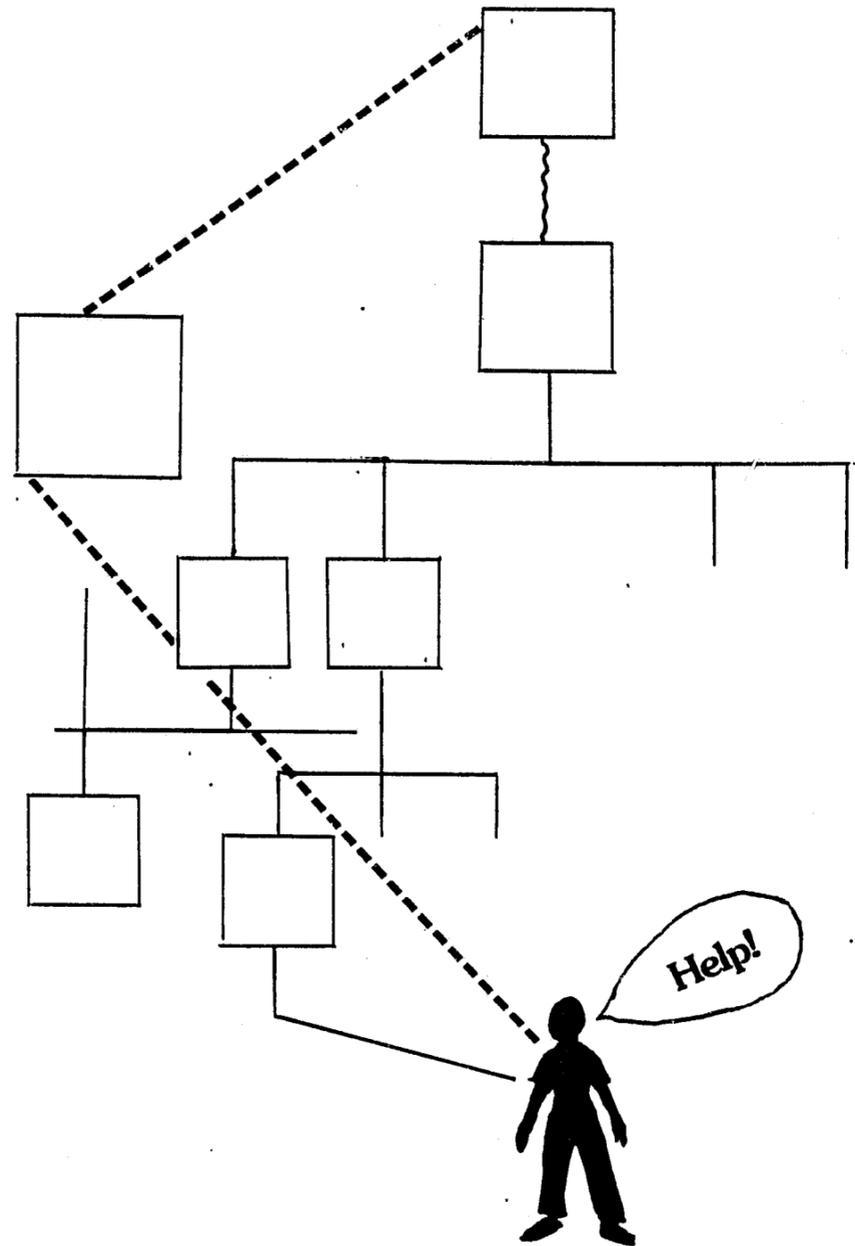
- 1. Is it true?**
- 2. What can or should be done?**
 - What is **resident asking** for?
 - What **alternatives** are available?
- 3. What path should be followed?**
 - Issue new policy
 - Change the way policies are interpreted or applied
 - Take disciplinary action against staff
 - Reclassify an inmate
 - Improve living conditions

What Residents Want

- **Help**
- **Relief**
- **Revenge**
- **Someone to talk to**

Decision Making

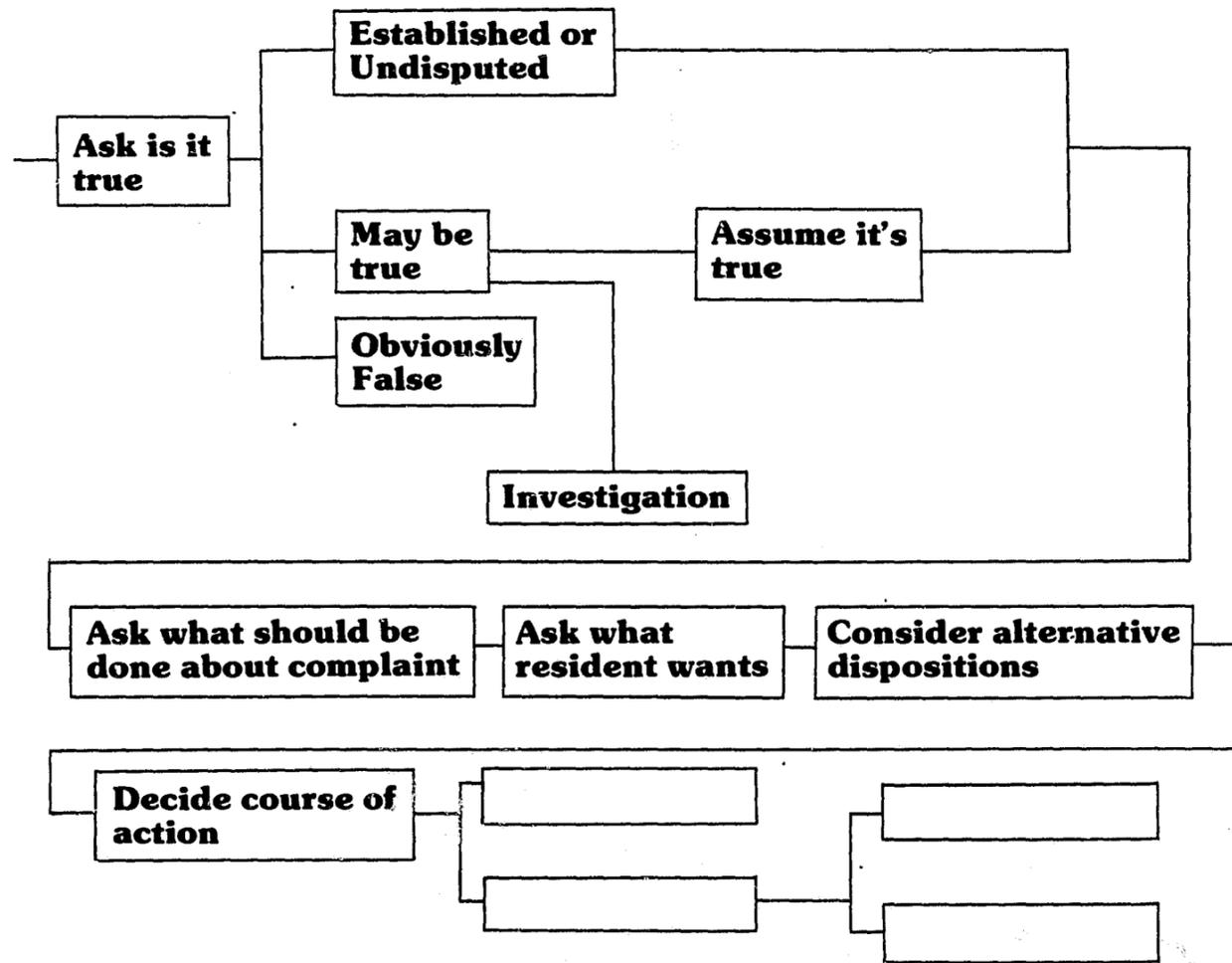
- **What is the youth asking for with this complaint?**
- **What underlying problems in the institution might this complaint be indicative of?**



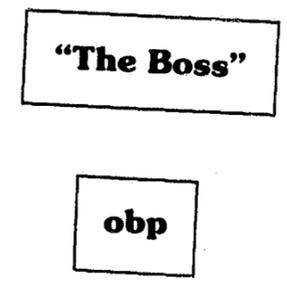
Flow Chart (A)



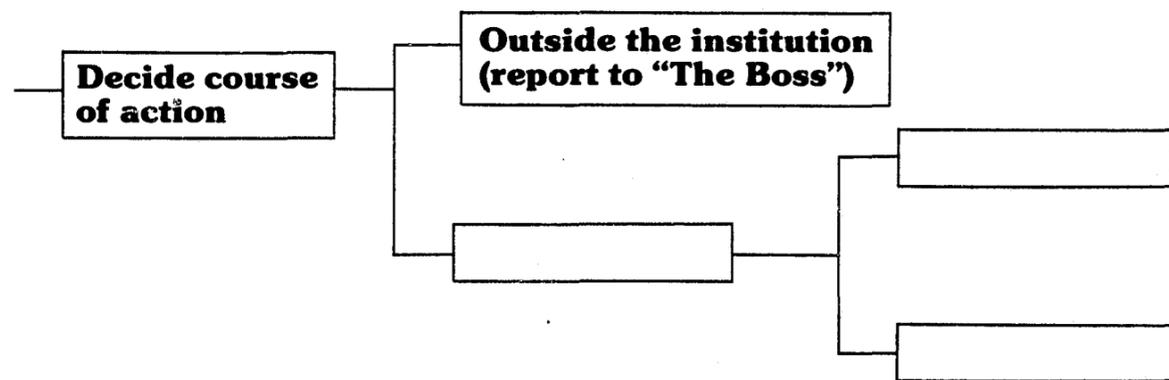
Flow Chart (B)



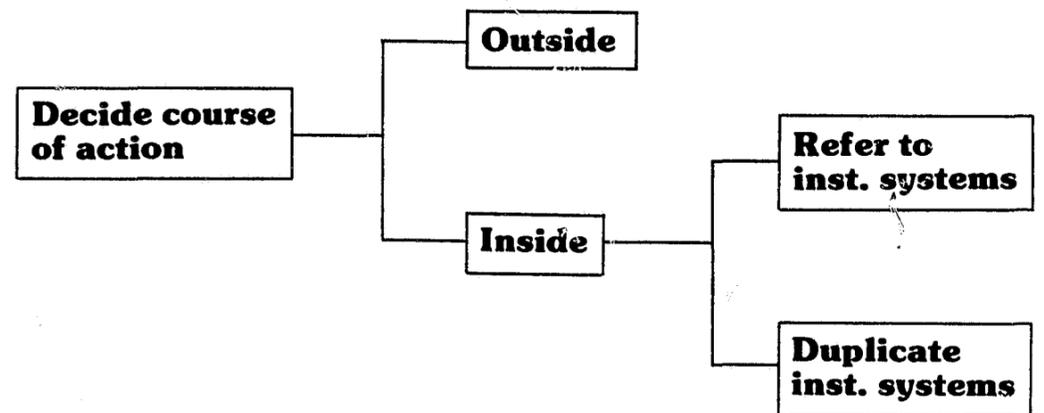
Flow Chart (C)



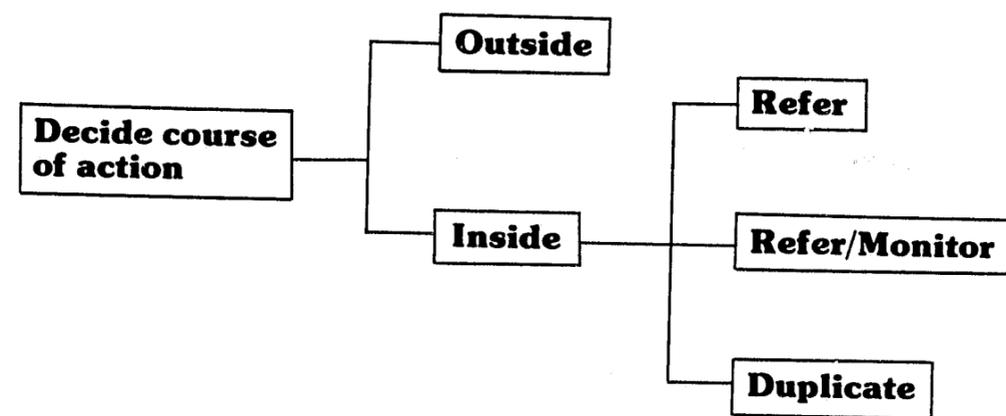
Flow Chart (D)



Flow Chart (E)



Flow Chart (F)



Necessities for Use of Any "System"

- **Field**
- **Knowledge**
- **Resources (slack)**
- **Able to pay transaction costs**
- **Outcome at least 0 sum**

LESSON SUMMARY

SUBJECT TITLE: OMBUDSMAN TRAINING
 TOPIC TITLE: INVESTIGATION

TARGET POPULATION: Ombudsman	TIME ALLOCATION: 4 Hours
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CLASSROOM OR AREA REQUIREMENTS:
 U shaped seating with adequate space for small groups.

<p>PERFORMANCE OBJECTIVES:</p> <p>At the end of this session, you will be able to...</p> <ol style="list-style-type: none"> List the questions necessary for planning an investigation. List the steps for conducting an investigation. Write a record of the complaint as it is given by the complainant. 	<p>EVALUATION PROCEDURES:</p> <ol style="list-style-type: none"> 1 - 2. Oral Feedback 3. Written Exercise
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<p>METHODS:</p> <p>Participative Lecture Small Group Discussion</p>	<p>TRAINING AIDS, SUPPLIES, AND EQUIPMENT:</p> <p>Overhead Projector Transparencies Flipchart Handouts</p>
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INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>I. INTRODUCTION</p> <p>Today's session will deal with investigation and report writing. By the end of the day today you should be able both to conduct an investigation and organize and write a report of your findings.</p> <p>This morning we will focus on the following aspects of investigation:</p> <ul style="list-style-type: none"> • Purpose of an investigation • Need for an investigation • Planning the investigation • Sources for evidence • Keeping a record <p>We will finish the morning by going step by step through a couple of real-life investigations, and this afternoon put it all together in the discussion of report writing.</p> <p>II. CONTENT PRESENTATION</p> <p>A. PURPOSE OF AN INVESTIGATION</p> <p>As we saw yesterday, virtually every complaint to the ombudsman is based on an allegation. The examples we used yesterday were:</p> <p>"I didn't get to make my phone call." "He hit me." "Mr. T. locked me up." "The food is cold at breakfast."</p>	<p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>The purpose of the investigation is to answer the question IS IT TRUE?</p> <p>--Did he make the telephone call?</p> <p>--Was he hit?</p> <p>--Was the food cold? and so forth</p> <p>Investigations go on to discover some of the background and circumstances surrounding a true allegation.</p> <p>--Was he hit?</p> <p>--By whom?</p> <p>--Under what circumstances?</p> <p>It's important to note that the investigation only answers the question IS IT TRUE? It does <u>not</u> answer the question WHAT SHOULD BE DONE ABOUT IT? or even whether anything should be done about it.</p> <p>For instance, if the investigation reveals that the food is indeed cold in the security unit in the morning, a number of actions are possible:</p> <p>--Cook it/send it out later</p> <p>--Eat it earlier</p> <p>--Install a warming oven</p> <p>--Switch to a menu that's palatable cold or even</p> <p>--Tell the juveniles to tough it out</p>	<p>Ask class</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>The leap from proving something <u>wrong</u> to having someone do something about it will probably remain your greatest frustration as an ombudsman.</p> <p>B. NEED FOR AN INVESTIGATION</p> <p>Every complaint may be based on an allegation, but not every allegation requires an investigation. Probably in the majority of cases, the facts of the matter--the answer to the question IS IT TRUE? are undisputed by anyone. In those cases, your attention can be focused immediately on what should be done.</p> <p>C. PLANNING THE INVESTIGATION</p> <p>1. Establishing a premise</p> <p>Investigations are by and large a matter of testing premises and theories.</p> <p>The first step in conducting an investigation is to form a theory about what happened. At least in the first instance, your investigation will be to prove or disprove your theory.</p> <p>IN MOST INSTANCES, THE PREMISE WILL BE THE SAME AS THE ALLEGATION.</p> <p>If Kendrick comes to you bleeding from the mouth and says that Mr. R. punched him in</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Remember: the first step of an investigation is formulating a theory. By and large, it will closely follow the allegation.</p> <p>2. Outlining the steps you're going to take</p> <p>It probably goes without saying, but the best hour you'll ever spend in an investigation is the hour you spend planning the steps you're going to take. It's worthwhile to write them down and make them a part of your investigative file on the case.</p> <p>--Think logically through the allegation.</p> <p>--Picture the place, the time, the characters.</p> <p>--If you're not completely familiar with it, go to the scene and look it over.</p> <p>--Decide what witnesses are relevant, if any.</p> <p>--Decide in what order they should be interviewed and questions or areas of discussion for each.</p> <p>--Consider what documents are pertinent.</p>	<p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>This reflection becomes the first state in testing your premise. Maybe after an hour of logic, you already need to modify your theory. Remember: It's your theory.</p> <p>D. SOURCES FOR EVIDENCE</p> <p>There are two relevant categories of evidence for your investigation. They are assembled by your logic, thought, and observation to reach a conclusion:</p> <ul style="list-style-type: none"> • Documents and records • Witnesses <p>1. Documents and Records</p> <p>a. Kinds of documents and records available</p> <p>Let's take a few minutes to brainstorm in your groups for all of the kinds of documents and records that you have ever used or could imagine ever using in an investigation.</p> <p>That's quite an impressive list, isn't it?</p> <p>b. Access to records</p> <p>Are there any of these categories of</p>	<p>(Add disclaimer about not being a lawyer-- and that some things are evidence to an ombudsman that wouldn't be in Court.)</p> <p>Exercise in groups-- 10 minutes. Feedback: one group naming one documentary source, then next group until all possibilities are exhausted. Feedback listed on flipchart pages and posted.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>talkative they are so you can use the best approach.</p> <p>Explain to reluctant witnesses that you are a factfinder. <u>You</u> as the ombudsman will not be making a decision about any action to be taken. Your job is merely to uncover the truth about what happened and to talk to everyone who has any knowledge about the case. Explain that all we have is a complaint consisting of a couple of brief sentences which tell you very little about what really happened. Although they may have told their story to administration or to other people, we want to talk with everyone ourselves so we can draw our own conclusion.</p> <p>Interview only one witness at a time. No one else should be present. Try to separate friends and coworkers from the witness so they do not influence that witness' statement; except in some cases a staff member is entitled to a Union representative.</p> <p>Try to conduct the interview in a well-lighted, comfortable setting, sitting down if possible so you can write.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p><u>First</u> allow the witness to tell the whole story in his or her own words, without interrupting. Then go over the story again, clarifying events with questions until you personally understand everything the witness is telling you. (You may find it necessary to go through this process several times.) During this portion of the interview, you should <u>not</u> be taking notes or opening your notebook. Allow time for the witness to feel comfortable and not intimidated by your presence or your questions. When you think you understand the entire story, paraphrase it back to the witness to be sure your understanding is correct.</p> <p>Above all else, be sympathetic. Remember many of the people you will interview have been traumatized and victimized. Others are afraid, angry, or on the defensive.</p> <p>Attention to minute detail is important. Witnesses' statements that are sketched in broad generalities are useless for investigation. In fact, many cases turn on relatively insignificant-looking details. What <u>exactly</u> was said? Who moved first? Where</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>were the two people standing in relation to one another? It is virtually impossible to put too much detail in a statement.</p> <p>In many cases, it is helpful and often important to have the witness sketch a diagram of the scene of the action, positions of all parties involved, distances, directions, etc. Date the diagram and have the witness initial it. Likewise, it is often useful to have the witness re-enact the incident with you. You can play the role of the assailant while she or he plays the victim, for instance: then reverse roles to make sure you completely understand what happened.</p> <p>Get the complete names, addresses, and phone numbers of all potential witnesses.</p> <p>b. Recording a statement</p> <p>Once you <u>thoroughly</u> understand the witness' story, record his or her statement:</p> <p>Begin with the formal heading: This is the statement of Mary Lewis, a resident of Grant Cottage; DOB 5-5-67; given to Betsy Anderson, an investigator for the Ombudsman service, in the living room of Grant Cottage on February 19, 1983, about 4:30 p.m.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Write out his or her story in first person singular using his or her own grammar, slang, or unique expressions. In other words, try to make the statement as close to verbatim as possible so it is like the person speaking. Number each page.</p> <p>When you have finished writing the entire statement, read the statement aloud to and with the witness. Sit next to the witness and allow him or her to follow what you are reading line by line. Allow the witness to add, delete, or correct anything you have written. At the end of each page, have the witness initial any additions, deletions or corrections made in addition to putting his or her initials at the bottom of each page. Encourage the witness to make additions or corrections in his or her own handwriting.</p> <p>When you have finished reading the statement together, ask the witness if there is anything else that he or she would like to add or change. If so, do so. Then add a concluding paragraph which states:</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>"I have read this 4 page statement and have had it read to me. I have also had the opportunity to make all of the additions, deletions and corrections I desired. To the best of my knowledge, it is accurate, correct and complete."</p> <p>Have the witness sign his or her signature beneath the concluding paragraph.</p> <p>E. KEEPING A RECORD</p> <p>We spoke yesterday of the importance of beginning a record for every complaint received and discussed a convenient face sheet format for these "mini records." In most cases, the face sheet, with sometimes one supporting document attached, will comprise all the record necessary.</p> <p>However, when a major investigation is conducted, a more detailed record is necessary.</p> <p>An easy format to follow is the use of a manila folder for each investigation. Each folder can be titled using whatever convention is workable for you. (In the District of Columbia, we never had much luck with number of cases and always ended up with the names of the principle characters.) Your notes about the investigation</p>	<p>Show sample</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>can be written on the left hand side of the folder, and all supporting documents can be clipped to the right hand side.</p> <p>It's nearly impossible to overestimate the importance of keeping careful notes concerning each phase of the investigation. If you are called on to testify about the results of an investigation, the testimony may be given months or years from now. Events that seem vivid at the time they happen will fade with time. Therefore, keep a complete, detailed record of <u>everything</u> you attempt to do in connection with the case and the results in each case jacket. Your notes should include your unsuccessful attempts to locate witnesses, etc. In every case, all of your original notes, scribbles, and sketches should be preserved in your files. You should be able to go back to these notes and completely reconstruct the investigation no matter how much time has elapsed since you finished.</p>	

**In most instances, the
initial premise will be
the same as the allegation.**

INVESTIGATION

- **PURPOSE OF AN INVESTIGATION**
- **NEED FOR AN INVESTIGATION**
- **PLANNING THE INVESTIGATION**
- **SOURCES FOR EVIDENCE**
- **KEEPING A RECORD**

**“Resident accidentally fell
against the wall, injuring
his head. Resident received
medical attention.
(12 stitches)**

Planning the Investigation

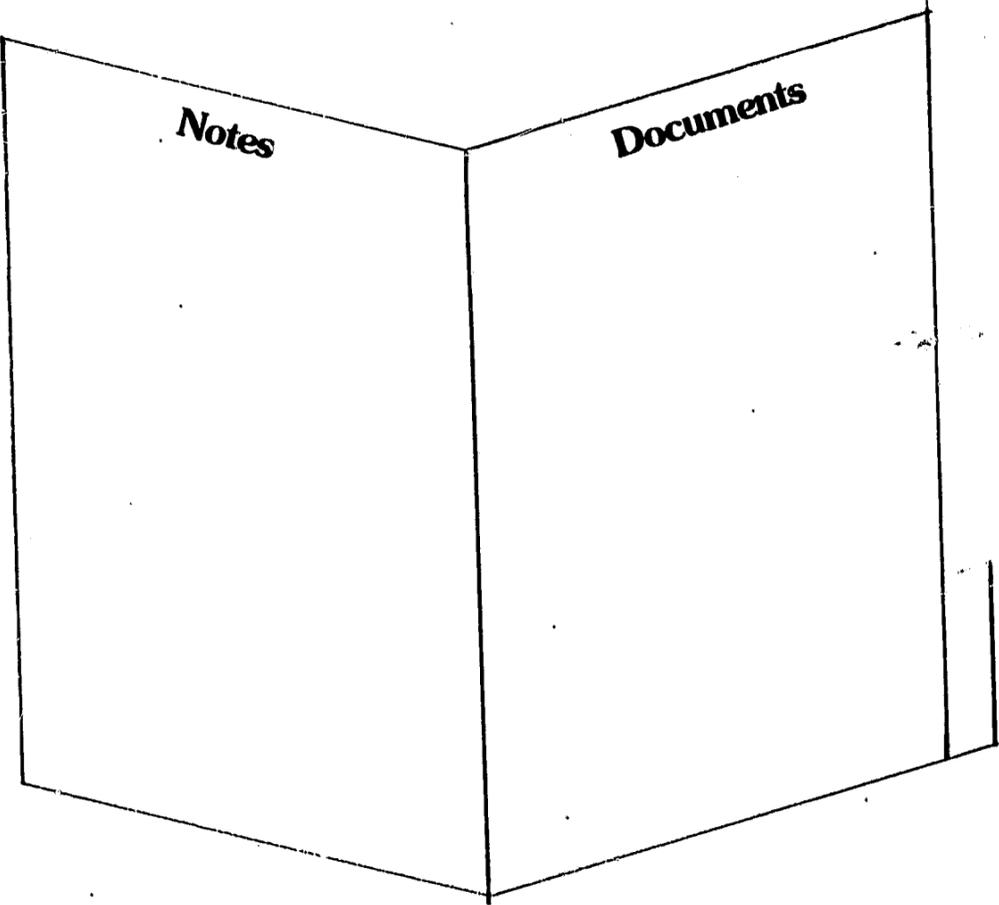
- **Establish a premise**
- **Outline steps to take**

PRE-PLANNING THE INVESTIGATION

- **THINK LOGICALLY THROUGH THE ALLEGATION**
- **PICTURE THE PLACE, THE TIME, THE CHARACTERS**
- **IF YOU'RE NOT COMPLETELY FAMILIAR WITH IT, GO TO THE SCENE**
- **DECIDE WHICH WITNESSES ARE RELEVANT, IF ANY**
- **DECIDE IN WHAT ORDER THEY SHOULD BE INTERVIEWED**
- **DECIDE QUESTIONS OR AREAS OF DISCUSSION FOR EACH**
- **DECIDE WHICH DOCUMENTS ARE PERTINENT**

Sources of Evidence

- **Documents and records**
- **Witnesses**



Exercise:

**50 bed county detention
facility**

**System for receiving/responding
to resident complaints**

- **Formalized**
- **No new staff**
- **As "independent" as possible**

LESSON PLAN NO. 7

LESSON SUMMARY

SUBJECT TITLE: OMBUDSMAN TRAINING

TOPIC TITLE: GRIEVANCE REPORT WRITING

TARGET POPULATION: Ombudsman	TIME ALLOCATION: 4 to 6 Hours
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CLASSROOM OR AREA REQUIREMENTS:
U shaped room with ample space for small group work.

PERFORMANCE OBJECTIVES: At the end of this session, you will be able to: <ol style="list-style-type: none">Determine the difference between fact and opinion (or value judgment).When given oral and written statements of eyewitness accounts, write objective reports that are logical and complete.Demonstrate the difference between "wordy" reports and those that are worded efficiently, clearly and concisely.	EVALUATION PROCEDURES: <ol style="list-style-type: none">Oral FeedbackWritten FeedbackOral and Written Feedback
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METHODS: Lecture Small Group Discussion Role Play Individual Work	TRAINING AIDS, SUPPLIES, AND EQUIPMENT: Overhead Projector Transparencies Handouts
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LESSON PLAN NO. 7

TOPIC TITLE Grievance Report Writing PAGE 1 OF 20

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>I. <u>INTRODUCTION</u></p> <p>BONNIE AND CLYDE -- FICTITIOUS GARBAGE</p> <p>BABY FACE NELSON -- FICTITIOUS GARBAGE</p> <p>JACK THE RIPPER -- FICTITIOUS GARBAGE</p> <p>CHARLES MANSON -- FICTITIOUS GARBAGE</p> <p>MAMA'S LASAGNA -- LOST FOREVER</p> <p>Why? Because no one bothered to write down what happened. No one took pen in hand to <u>record</u> the actual events, how they happened, all the people involved, their versions of the events, exactly when the events took place or why.</p> <p>So what we are left with are some very interesting stories of doubtful authenticity since the events were passed on in the oral tradition.</p> <p>During this session, we will be dealing with the extremely important and sensitive issue of Report Writing.</p> <p>Let's look at the word itself "RE-PORT." "RE" means <u>again</u> and "PORT" means <u>to carry</u>. To carry back again. It means then, an exact retelling of an event. More precisely, it means a statement which gives an orderly account of, relates, repeats or tells something about an incident or event that has been investigated, studied, observed or heard.</p>	<p>On Flipchart</p> <p>Separate page of of flipchart</p> <p>Show transparency "Report"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>At the end of this session, you will be able to</p> <ol style="list-style-type: none"> (1) determine the difference between fact and opinion (or value judgment); (2) when given oral and written statements of eyewitness accounts, write objective reports that are logical and complete and (3) demonstrate the difference between "wordy" reports and those that are worded efficiently, clearly and concisely. 	<p>Flipchart</p>
<p>To accomplish these objectives, we will:</p> <ol style="list-style-type: none"> (1) do individual and group exercises on fact and opinion (2) have some participants role-play actual incidents so that you can take notes and write complete reports in small groups (3) do individual and group exercises in analyzing and rewriting "wordy" or "inconcise" reports. 	<p>Flipchart</p>
<p>II. <u>CONTENT PRESENTATION</u></p> <p>A. <u>Facts, Opinions, Value Judgments</u></p> <p>To begin with, let's get a feeling for interpreting words. I want you to read the paragraph on the sheet I'm handing out and answer the questions. The questions are either true, false or question mark, if you don't</p>	<p>Handout: "A Story"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>think you have enough information to answer true or false. Please work on this alone without consulting your neighbor.</p> <p>Let's see how you did. Question #1. How many said: true? How many said: false? Question mark?</p> <p>(The following is a discussion of each question to assist you during the class discussion. All questions, except possibly #3, 6 and 8 can <u>not</u> be answered either true or false. The rationale follows.</p> <ol style="list-style-type: none"> 1. ? - A "business man" turned off the lights. He may or may not be the owner. There may be two or more people working in the store. The story does not tell us. 2. ? - A demand for money does not imply robbery. He might have been demanding back wages, a refund or something else. 3. T - This is probably true although some students of semantics argue over differences between <u>a</u> man and <u>the</u> man. Some lawyers will jump on such semantic problems to aid their clients on a technicality. 4. ? - The owner may be a woman. 5. ? - Somebody did. We don't know who. 6. F - Not someone. That's an unknown. The owner opened it. Again, it may be argued that the owner is someone. 	<p>Allow 3 min.</p> <p>Go through each question; compare responses.</p> <p>Discuss with group why they answered as they did.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>7. ? - We don't know who he demanded money from, especially if there is a possibility of several persons working in the store.</p> <p>8. T - Again, this is generally true although there may be some semantic arguments over words such as someone vs. a man, and the man vs. a man, etc.</p> <p>Now here we have a simple story of 48 words in 4 sentences, written at an elementary grade school level. And yet we disagree with what it says. Do you see the kinds of problems to expect in written communication of any kind? If you were expected to take some action as a result of this report, what would you do? What would you do if you couldn't get more information?</p> <p>In any report, three areas of information are conveyed: facts, opinions and value judgments. Let's look at them separately.</p> <p>Facts are just that: FACTS. They are happenings that anyone who comes into contact with them should be able to agree on. Not everyone may detect all the facts, but if they are pointed out, we should be able to agree that they exist. Right now, look around the room and list as many facts as you can.</p> <p>Facts lead us to opinions. The fact that this counselor (touch someone in the room) asks "good" questions, that he seems to relate to residents well,</p>	<p>Write on flipchart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>that he understands and carries out instructions may lead us to the opinion that he has a real feel for the job. But your opinion and mine may differ. You might think he's a phony while I think he's genuine. So when we state an opinion in a report, we should state "It is my opinion, based on these facts, that..."</p> <p>Now, why might your opinion and mine have differed? Why might you think he was a phony while I think he's genuine? Let's go back to something I stated as a "fact" under opinions. I said, "he asks good questions." As soon as you make a statement that can be measured somehow, like good or bad, smart or dumb, right or wrong--any comparative, you are making a value judgment. And our value judgments are based on our past experiences in life. Whether he is a good man or not depends on how we measure good and bad. This is called subjectiveness. You've heard it said that a person lost his or her objectivity. All that means is that his/her thinking is clouded by using measures or standards that are not acceptable by others in the group.</p> <p>You have a right to your value judgments. You have a right to express them. You also have a responsibility to recognize them for what they are when expressed by another and to list them as <u>your</u> assessment when writing reports. I should not have said, "He asks good questions." I should have said, "In my opinion, he asks good questions." The fact was that he asked questions. My opinion that they were good or bad was influenced by my value judgments.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Now I'm going to show you a picture. Look at it; study it but don't make any comments. Now, please take a piece of paper and list all the <u>facts</u> you see. Then write your opinion of what is happening in the picture based on your facts.</p> <p>How we think and how we express ourselves, especially in reports, may have a profound influence on what happens to the resident, the organization or the staff. For this reason, we believe it is important to <u>practice</u> distinguishing fact from opinion. For the next 20 minutes, I would like you to work in groups and to follow the directions given in this programmed text in logic. It doesn't matter how far you get in this time; it matters only that you give it careful thought. Your group answers should be unanimous.</p>	<p>Show transparency "Alcoholic"</p> <p>Discuss their analyses.</p> <p>Handout: "Logic"</p> <p>Get feedback.</p>
<p><u>B. Essential Factors of Grievance Reports</u></p> <p>No one can doubt the need for documentation not only of the complaints of residents or staff members but also the investigator's findings. These documents:</p> <ol style="list-style-type: none"> (1) help maintain fair and rational institutional operations; (2) provide information for legal purposes (should the cases be taken that far), and (3) provide a basis for effective decision making. 	<p>Flipchart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>In writing the Grievance Report (or "OPEN" Report), the writer has the full responsibility for including all pertinent information. No neat little blocks with spaces for check marks will do. His/her ability to include the essential elements of a given situation are crucial to a fair outcome for both the complaining party and the alleged wrong-doer.</p> <p>1. The Grievance Report:</p> <ul style="list-style-type: none"> ● must be of observable behavior or of evidence obtained through investigation. (Be wary of hearsay; if you must include it, state that it is hearsay.) ● must include only facts and details of the facts. (We have completely covered this issue.) ● does not contain examples of biases, prejudices and personal judgments. (Opinions, of course, if based on the facts should be stated - as opinions.) <p>Biases and prejudices are quite evident when the investigator/writer begins to use adjectives instead of nouns. For example, words like:</p> <p>-- sloppy -- slovenly -- insane -- obnoxious -- irritating -- lewd -- irresponsible -- -- spiteful -- bizarre behavior -- devious --</p> <p>These words may be used, however, within</p>	<p>Show transparency</p> <p>Show transparency</p> <p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>quote marks if they represent the actual words of an eyewitness.</p> <ul style="list-style-type: none"> identifies witnesses - both staff and residents. Complete description of who they are, where they were, what they were doing at the time of the incident should be stated. Because of the importance of these factors, we will go into each one thoroughly. <p>To summarize the Grievance Report, therefore: (read from transparency)</p>	<p>Show transparency</p> <p>Show transparency</p>
<p>2. The Seven Essentials of Report Writing</p> <p>All of us who have ever written a report have probably had these seven essentials drilled into us. Sometimes, however, we hear something so often, we begin to take it for granted and when that happens, in our rush to complete our "overload," we might forget. Even one crucial piece of information - forgotten - could lead to an unfair (or worse, inhumane) decision. So let's review each of these carefully.</p>	<p>Show transparency</p>
<p>The Seven Essentials of Report Writing must include: who, what, where, when, how, why, action. (Facts only.)</p> <p>WHO - is requesting the investigation? Be sure to get exact spelling of name, number if applicable and cottage.</p> <ul style="list-style-type: none"> - is (are) the alleged victim(s)? 	<p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<ul style="list-style-type: none"> - is (are) the alleged offenders? Again, get exact spelling of names, their ranks and their positions. - is (are) the witness(es)? - is the nurse, the physician or the hospital contacted. Also state if no medical help was made available and reasons why. - can be contacted later for further information. <p>WHAT - is the charge? Be sure the charge reflects the exact words of the alleged victim.</p> <ul style="list-style-type: none"> - damage was done? Support this fact with examples. - evidence supports charge? Things? Eye-witness accounts? Alleged wrong-doer's account? - actual crime (violation) was committed? - kind of weapon(s) or tool(s) were used? 	<p>Show transparency</p>
<p>WHERE - was the crime (violation) committed? Be specific about place in room, room in building, etc.</p> <ul style="list-style-type: none"> - was/were the witness(es) when the observations were made? Again, be specific. 	<p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<ul style="list-style-type: none"> - were the tools obtained? - can additional helpful information be obtained? 	
<p>WHEN - was the crime (violation) committed?</p> <ul style="list-style-type: none"> - was the crime (violation) reported? - did the investigation begin? - can the alleged victim/witness be interviewed further? 	<p>Show transparency</p>
<p>HOW - did it happen? (Be specific; use facts only.)</p> <ul style="list-style-type: none"> - was the crime (violation) committed? - was/were the tool/weapon(s) used? (This section should include a word description of the incident in chronological order.) 	<p>Show transparency</p>
<p>WHY - was the crime (violation) committed? Do not infer; answer only with the words of the alleged wrong-doer.</p> <ul style="list-style-type: none"> - was this particular resident selected? (Previously demonstrated prejudices?) - was the time of commission selected? 	<p>Show transparency</p>
<ul style="list-style-type: none"> - were certain tools used? 	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>ACTION - analyze all evidence. Compare and contrast all of the evidence given.</p> <ul style="list-style-type: none"> - evaluate evidence. Based on facts, is there more evidence <u>for</u> or <u>against</u> the alleged violation? - list any further actions on your part. - list final disposition of case. 	<p>Show transparency</p>
<p>3. The Four C's - Evaluating Your Report</p> <p>Before we begin our hand at writing an actual case, let's further review the four C's in evaluating your report.</p>	<p>Show transparency</p>
<p>COMPLETE - All information required by the 7 essentials is included.</p>	
<p>CONCISE - Keep it as short as possible.</p> <ul style="list-style-type: none"> (a) Don't use unnecessary words. (b) Use simple sentences. (c) Don't repeat. 	
<p>CLEAR -</p> <ul style="list-style-type: none"> (a) Use simple nouns, pronouns, verbs. (b) Don't slant it. 	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>(c) Read the report and have others read it.</p> <p>1) Re-read everything you write to make sure you have actually said what you intended to say. If the situation you are communicating does not stand out clearly on the report as it did in your mind, you haven't done what you set out to do.</p> <p>2) If at all possible, have someone else read the report to see if it makes sense to him. You know your intentions so well you may have <u>read them into</u> the report instead of writing them into it. Carefully consider any recommendations made or questions asked by the trial reader, and if they are valid, change your report accordingly.</p> <p>CORRECT - (a) All persons properly identified and names spelled right.</p> <p>(b) Actual facts are used; not hearsay evidence.</p> <p>(c) Write the report as soon as possible after the incident and/or request for investigation.</p> <p>C. <u>Block Style Reporting</u></p>	
<p>The complete report contains three overall sections, one of which can be divided into chronological blocks</p>	<p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>or paragraphs. The three sections are the <u>Introduction</u>, one complete paragraph, the <u>Findings</u>, many paragraphs and the <u>Conclusion</u>, one complete paragraph.</p> <p>Let's look at each section in order:</p> <p>In the Introduction, you must briefly state who, what, when and where:</p> <p>Who: is making the statement of violation? Who: is present while the statement is being made?</p> <p>What: was the violation (in general terms)?</p> <p>When: did the violation occur? When: is the report being made?</p> <p>Where: did the violation occur? Where: is the report being made?</p>	<p>Show transparency</p>
<p>In the second section, or the meat of the incident, you must write all the detailed facts you have gathered in your investigation. These should be presented in an orderly sequence and paraphrased by you to reflect the actual words of the eyewitnesses, the alleged victim and the alleged wrong-doer. If, however, the words of the eyewitnesses are well stated, precise and bear a crucial weight in the case (something you could not say better yourself), then you should include them as quotations.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Under Findings, the first paragraph is short and usually describes the alleged victim, his age, weight, height and present location.</p> <p>The second paragraph contains the alleged victim's statement of complaint. Who, what, when, where, why and how, therefore, must be stated in detail (either paraphrased or using some of the alleged victim's own words). It is usually concluded with the names of the witnesses.</p> <p>Who: is speaking? Who: was present during the incident? Who: allegedly violated the speaker?</p> <p>What/ How: happened? (Step by step in chronological order.)</p> <p>When: exact time incident happened: day and date.</p> <p>Where: exact building, room, place in room.</p> <p>Why: (Give reason only if alleged victim states it and regard same as opinion.)</p>	<p>Show transparency</p>
<p>The third paragraph should state any medical action that was taken. Again, give who, what, when, and where.</p> <p>The 4th, 5th, 6th, etc. paragraphs should include your paraphrased versions of the detailed statements of each eyewitness. One eyewitness to a paragraph. The</p>	<p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>concluding paragraph should contain the alleged wrongdoer's version of the incident.</p> <p>The Conclusion or 3rd and final section of your report should state the action taken and the reasons for it. First, state briefly whether the allegations of the alleged victim are corroborated by the medical evidence (if any) and/or by the eyewitness accounts.</p> <p>You may arrive at a conclusion by analyzing and weighing the evidence on both sides and determining 1) which evidence is more valid and 2) which side has the preponderance of evidence.</p> <p>When you have completed writing your report, you must then include all the "exhibits" or personal statements made during your investigation so that your own version of the incident and your conclusion are strengthened.</p> <p>I will now distribute to you a completed report to be used as a sample or model. This method is by no means the only procedure to use in writing a grievance report but it has a proven record for being clear, precise and complete.</p> <p>D. <u>Style of Writing</u></p> <p>The art of writing is very much like the art of speaking. When you communicate a message to another person, you are saying much more than the message. You are very definitely making a statement about yourself.</p>	<p>Handout: "Complete Report"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>The way you communicate reveals your personality -- the words you choose, the way you put them together into sentences, the <u>tone</u> of your voice. All of these reflect who you are.</p> <p>And that is just what happens in writing. You can reveal many things about yourself:</p> <ol style="list-style-type: none"> (1) that you speak with authority (2) that you're logical (3) that you're thorough (4) that you have empathy or concern for the reader's understanding. <p>Basically, we are all good writers, but something happens when we set out to write a formal report - something comes over us - perhaps sometime, a long time ago, someone told us that to sound "educated," we had to use a particular style. Very simple statements can no longer be said simply. For example: "Ro kicks Bill." In writing this action up, however, we must change the sentence to "Bill was kicked by Ro" or better yet, "In this particular incident, Ro was the kicker and Bill was the kickee." We often turn our sentences around - use the <u>passive</u> voice instead of the <u>active</u> voice - all because someone told us that looks better in writing.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>We also use JARGON -a French word meaning "babble" or "chatter." For instance, I might say: "I regret to inform you that due to the fact that you have canceled yet another appointment, I must conclude our relationship." Instead of simply saying: "Because you broke another date, we're through."</p> <p>This is also called the official style because it is used in legal, medical and governmental fields.</p> <p>Basically, the art of writing contains three elements: the Writer, the Reader and the Message. In each element, some particular facet of your personality is revealed. The writer, who, in this case, is you, conveys an image of yourself. The reader, who, in this case, is me, is in need of being able to read and understand your words. So you convey a sense of empathy for the reader. And finally, in the message, in this case, the report, you convey a sense of logical thinking. In the entire scheme of writing anything, however, remember that the most important person to consider is the reader.</p> <p>Let's look at each more closely; then, we will do some independent exercises to test our own skills.</p> <p>The writer in conveying his image should show dynamism, directness and authority. He or she, therefore, should use specific or concrete words. Avoid words that are vague, words that are catch-alls - like "area," "manner," words ending in "ion" and "ment." Any word ending in "ion" or "ment" has been changed from an active verb to an "educated" sounding noun. For example, "education", "pronunciation", etc.</p>	<p>Show transparency</p> <p>Show transparency</p> <p>Handout: "Official Style"</p> <p>Show transparency</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>You should omit "deadwood" - a term I use for empty fillers such as trite phrases. For example: "It is needless to say..." or "For your information..."</p> <p>Emotional words definitely should not be part of <u>your</u> writing in the report. Anything that is emotional should be quoted from one of the interviewees and then separated by quotation marks.</p> <p>Expletives such as "there are," "there is," "it is," etc. again are empty fillers. They take up space and detract from a dynamic report.</p> <p>Among the overused verbs are the verbs <u>to be</u> in its various forms: am, is, was, were, be, being - <u>but</u> others exist and we will look at them.</p> <p>Although a report may not always lend itself to using the active voice, the opposite way - the passive voice - has become commonplace. Just be careful not to use it always. Say "Danny Boy investigated the incident," rather than "The incident was investigated by Danny Boy." Not earth-shattering, but much more dynamic reading.</p> <p>Logic is a simple review of the basics of writing. Do use simple statements especially when they make an impact. Subordinate less important ideas but always put the most important idea at the end of the sentence. For example: Because James shouted at Mr. Cook, Mr. Cook hit him. And not the other way around: Mr. Cook hit James because James shouted at him.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>You have already seen the Official Style and to say the least, it's confusing. Let's look now at a "Systematic Buzz Phrase Projector" and "The Elements of the Official Style." We could all become proficient at it with very little effort.</p> <p>Another handy sheet to remind you of what <u>not</u> to do is one I call "Empty Fillers."</p> <p>I would now like you to do the following exercises individually.</p> <p>The next handout will hopefully help you to avoid the Official Style and to simplify your language.</p> <p>As a last exercise, I would like you to work on your own to rewrite these actual reports. Perhaps not many changes need to be made but I will now leave that up to your judgment. I will collect your rewrites and make comments on them.</p>	<p>Handouts: "Systematic Buzz Phrase" (Go over together)</p> <p>Handout: "Empty Fillers" (go over together)</p> <p>Handout: Worksheet #1 (go over together)</p> <p>Handout: Worksheet #2 (go over together)</p> <p>Handout: Worksheet #3 (go over together)</p> <p>Handout: Worksheet #4 (go over together)</p> <p>Handout: Avoid O.S.</p> <p>Handout: Guidelines</p> <p>Handout: Check Shee</p>

INSTRUCTIONAL CONTENT

NOTES TO TRAINER

III. APPLICATION:

Accomplished throughout lesson.

IV. SUMMARY

During this session on Report Writing we've both reviewed some old stand-bys and discussed some new methods of putting ideas together. We looked at facts, opinions and value judgments - hopefully to rid our reports of faulty assertions and one-sided prejudices. We've reviewed the 7 Essentials of Report Writing and the 4 C's - ideas taught to us when we first began to write reports. (Elicit these from participants.) We then looked at the open or Block Style of Report Writing - which for some of us was a new concept. The one idea to remember here is that every "block" contains the 7 essentials.

And finally, we reviewed, exercised individually and rewrote "wordiness" from report writing - all in an effort to achieve clear, concise, factual and therefore just reports. I thank you for your patience and cooperation.

V. EVALUATION

Accomplished during individual writing.

A STORY (W. V. HANEY)

Read the following story. React to the statements about the story as indicated. Be able to defend your reactions:

"A business man had just turned off the lights in the store when a man appeared and demanded money. The owner opened a cash register. The contents of the cash register were scooped up, and the man sped away. A member of the police force was notified promptly."

	?	T	F	
1				A man appeared after the owner had turned off his store lights.
2				The robber was a man.
3				The man did not demand money.
4				The man who opened the cash register was the owner.
5				The store-owner scooped up the contents of the cash register and ran away.
6				Someone opened a cash register.
7				The robber demanded money of the owner.
8				The following events were included in the story: someone demanded money, a cash register was opened, its contents were scooped up, and a man dashed out of the store.

EVALUATING EVIDENCE

Your first exercise in evaluating evidence begins on the next page. Throughout this text, you will be evaluating evidence in order to check on the validity of your conclusion. In this exercise, you will not be called upon to derive a conclusion. Your task is to evaluate the evidence in order to determine if it is a fact or opinion. Do not be concerned if either the facts are distorted or the opinion is obviously biased. We only want you to demonstrate to us that you can recognize that which is fact and that which is opinion. Your evidence will always consist of these two types of inputs, and you must be able to recognize one from the other.

Throughout the following situation, you will find certain portions of the evidence identified by a number. For example:

Mr. Huey: Well, Sir, before I begin (1) I would like to say that the damage repairs were a little overpriced. Opinion

You will note that we have identified the above numbered statement by writing "opinion" in the blank provided. This is what you are to do with all of the other numbered bits of evidence. Identify each bit of evidence by writing "fact" or "opinion" in the space provided.

Before you begin, we will give you a little assistance in the form of broad definitions of fact and opinion.

A FACT is an observed event, past or present, that has been personally observed or has been observed and reported to you.

An OPINION is a personal judgment that you have made or that some other individual has made.

FACT AND OPINION

Logical thinking requires that you evaluate the validity of the evidence as well as the reasoning process itself. This evaluation of the evidence is so critical to the reasoning process that the entire first part of this text is devoted to the evaluation of evidence.

To prepare yourself for the evaluation of evidence, you must ask yourself the following questions:

1. Is the evidence fact?
2. Is the evidence opinion?
3. Can the source of the evidence be relied upon?

In the reasoning process, you will be using the five broad types of evidence listed below. We want you to rank these types of evidence as to their acceptability. In the spaces provided, write the number (1) for the most acceptable type of evidence, (2) for the next most acceptable type, and so on through (5) for the least acceptable type of evidence.

- _____ Fact as reported by an unreliable source.
- _____ Opinion as reported by a reliable source.
- _____ Fact as personally observed.
- _____ Opinion as reported by an unreliable source.
- _____ Fact as reported by a reliable source.

EXERCISE IN EVALUATING EVIDENCE

You are a member of the Board of Governors of the local country club. You are attending a special session of the board which was convened by the President of the Board at the direction of the club manager. It is the task of this special session to investigate damage to the Gold Room which occurred on the night of 17 March, this year. On the same night, a formal dining-in was being held at the club with the Rotary Club as the host organization. It was during, or after, this dining-in that the damages to the Gold Room occurred. It is the responsibility of this special session of the Board of Governors to assign the responsibility for the damages, if possible, and to fix the pecuniary liability for them. The evidence that you will require to reach the required conclusion is in the form of testimony from witnesses to the event.

Information as to the extent of the damages was requested and furnished in the following form:

1. Severe and permanent damage to a folding room divider. Cost of a replacement item, \$700.00.
2. Moderate damage to a portion of the Gold Room floor. Refinishing costs, \$500.00.
3. Broken crystal. Cost of replacement items, \$150.00
4. Stains on walls and draperies. Cleaning costs, \$78.50.
5. Scars and breaks on furniture items. Repair and refinishing costs, \$225.00.

Information requested by this special session of the Board of Governors reveals the following concerning those in attendance at the dining-in:

The host organization was the Rotary Club.

Guests included:

Guests of the Rotary Club
Members of the local Lions Club
Members of the local Civitan Club
Distinguished guests in local government

The Board of Governors is in formal session and various individuals, previously identified as having information pertinent to the board's investigation, are called to testify. Certain of these individuals are members of this board. As each witness is called, the president of the board has directed that he will be identified by name and organization of assignment.

The board proceedings are as follows:

PRESIDENT: Please call the first witness.

RECORDER: Mr. Douglas White of the country club maintenance staff.

PRESIDENT: Mr. White, did you furnish the bill for the damages?

MR. WHITE: Yes, Sir, I did. It is a consolidated bill and totals in excess of \$1,600.00. (1) If you ask me, that was an expensive bit of malicious mischief. _____

PRESIDENT: 'Malicious mischief', Mr. White?

MR. WHITE: Yes, Sir. (2) Considering the extent of the damages, I can't see how it can be considered anything else. _____

PRESIDENT: Thank you, Mr. White. One last thing, did you personally examine the damages?

MR. WHITE: Yes, Sir, I did. (3) I find the consolidated bill that I have submitted to be an accurate estimate of the damages that occurred. _____

PRESIDENT: Please call the next witness.

RECORDER: Mr. Huey, Club Steward.

PRESIDENT: Mr. Huey, please tell us what you know of the events concerning the damage to the Gold Room.

MR. HUEY: Well, Sir, before I begin, (4) I would like to say that the damage estimate is a little high. _____ I was here when the club was built six years ago, and that room divider didn't cost anywhere near \$700.00. As for the events leading to the damage, I did not personally observe the damages being done, but I was in attendance at the entire dining-in, and I can assure you that the Gold Room was locked during this entire time. (5) The damage could only have occurred after the guests had retired to the bar, and, by this time, the bar was full of a lot of individuals who were not at the dining-in. _____ (6) If for no other reason, this fact alone is going to make it difficult to determine who was responsible for the damages. _____ As a matter of fact, it was not until the formal portion of the dining-in was over that they asked me to unlock the Gold Room.

PRESIDENT: Who asked you to unlock the Gold Room?

MR. HUEY: (7) A couple of people. _____ (8) I think they were from the Lions Club and just wanted to relax and let off a little steam after the enforced decorum of the dining-in. _____

PRESIDENT: I see. Thank you Mr. Huey. Call the next witness.

RECORDER: Mr. John Jones of the Civitan Club.

PRESIDENT: Mr. Jones, I believe you told me that you had seen a part of the damage being done, and that you had other eyewitnesses' reports to submit. Is that correct?

MR. JONES: Yes, Sir. (9) I walked into the Gold Room just in time to see the divider topple over onto some tables and chairs. _____ (10) It sure looked like a mess to me. _____

PRESIDENT: You mean you saw it being pushed over?

MR. JONES: No, Sir. (11) I didn't see anyone push it over, since I was on the side of the divider away from the crowd. There was, however, some sort of noisy activity on the other side of the divider, and, as it fell, a large cheer went up from the crowd. _____

PRESIDENT: You told me that a friend of yours had been an eyewitness to it being pushed over.

MR. JONES: Yes, Sir, that was Mr. Bern. (12) Mr. Bern said that, even though it might have been accidental, he saw someone push the divider over. Those were his exact words. _____

PRESIDENT: Do you know this Mr. Bern very well?

MR. JONES: Yes, Sir. I have since heard there was a fight, but (13) Mr. Bern said there was only friendly scuffling, and, if he said it, I believe it. _____

PRESIDENT: After the divider had fallen and you could see the crowd, did you recognize any of them?

MR. JONES: Yes, Sir, a couple. (14) One fellow from the Rotary Club and one man from the Lions Club. _____

PRESIDENT: Thank you Mr. Jones. Next witness, please.

RECORDER: Mr. Lang of the Civitan Club.

PRESIDENT: Mr. Lang, you seemed to be anxious to testify. I could see you fidgeting while Mr. Jones was speaking.

MR. LANG: Yes, Sir. I am! (15) I knew something like this was going to happen. _____ (16) You just can't mix these Lions and the Rotary. They just don't mix, because they're two different breeds of cats. _____ Besides, I saw it all, and I know what happened.

PRESIDENT: Just a minute, Mr. Lang. I distinctly remember seeing you at the bar at the precise moment of the crash caused by the divider falling.

MR. LANG: Yes, Sir, that's true, (17) but I dashed into the Gold Room, and there stood the Rotary group with some pretty sheepish grins on their faces. They did it all right. _____

PRESIDENT: And these "sheepish grins" are what you base your opinion on that the Rotary personnel were to blame?

MR. LANG: No, Sir. (18) A friend of mine from the Lions Club told me later that he had personally observed the Rotary people pushing it over. _____

PRESIDENT: Thank you. Please call the next witness.

RECORDER: Mr. Fred Bell, club waiter.

PRESIDENT: Mr. Bell, you were serving drinks in the Gold Room?

MR. BELL: Yes, Sir.

PRESIDENT: Please tell us what you saw.

MR. BELL: (19) I saw these individuals engaged in a loud discussion, and then they began to "Indian wrestle", if you know what I mean. _____ (20) I heard bets being made on who was going to win, like, "\$1.00 on the wing" or "Who'll cover five on the Lions?" _____

PRESIDENT: I note, Mr. Bell, that you refer to these men as individuals and not as club members, although they were all identifiable as club members by their uniforms. Any reason why?

MR. BELL: That's just the point. (21) They were not all in club dress. Quite a few of them were in regular clothes. _____ (22) I suppose, though, that these people were guests at the dining-in. _____

PRESIDENT: Go ahead, Mr. Bell. These men who were wrestling and betting, were they drinking?

MR. BELL: Well, (23) they were sure keeping me hopping between the bar and the Gold Room. _____

PRESIDENT: Thank you Mr. Bell. Next witness, please.

RECORDER: Mr. Neal, a member of this board and of the Lions Club.

PRESIDENT: Mr. Neal, you were at the dining-in, and I understand, a witness to the events which led to the damage?

MR. NEAL: Yes, Sir. (24) I was one of the participants in the betting that was going on. We were betting on tests of strength. After a while, I realized that our location in the room could damage the divider, and I suggested that we move our games to a corner of the room. _____ (25) My suggestion was shouted down with remarks such as "We don't like that divider, anyhow. With a little luck we'll break it." _____

PRESIDENT: Do you recall who said this?

MR. NEAL: (26) I don't know their names, but I could probably point out two or three of them if I were to see them again. _____ (27) I didn't particularly find the divider attractive either. _____ As a matter of fact, as a board member, everyone comes to me with his gripes about the club. (28) The general consensus is that the club rules are made for the wheels without a thought for the run-of-the-mill dues payer. _____

PRESIDENT: Thank you, Mr. Neal. We shall take your comments under advisement. Call the next witness please.

RECORDER: Mr. Thomas Leon, of the Rotary Club.

PRESIDENT: Mr. Leon, we are pleased that you have volunteered to testify here. You may proceed.

MR. LEON: Thank you. I was a guest of the club manager on the night in question, and I felt a responsibility to "get him off the hook," so to speak. He is, by the way, a very good personal friend.

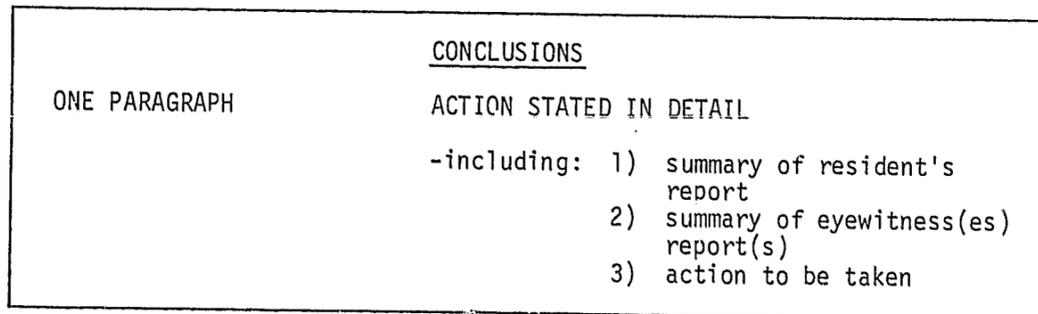
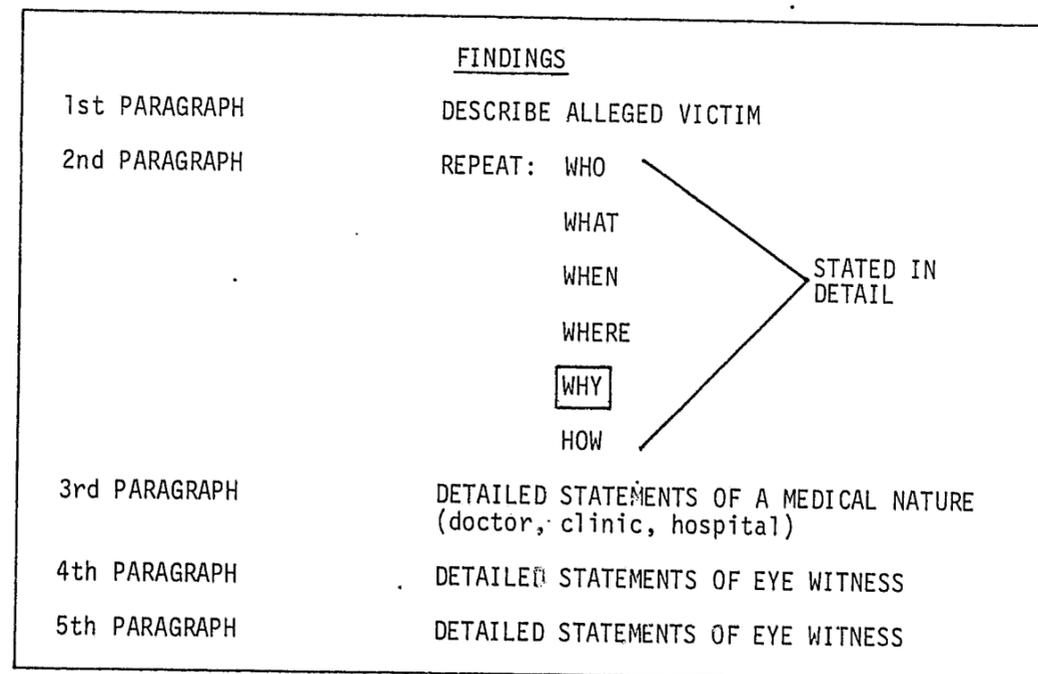
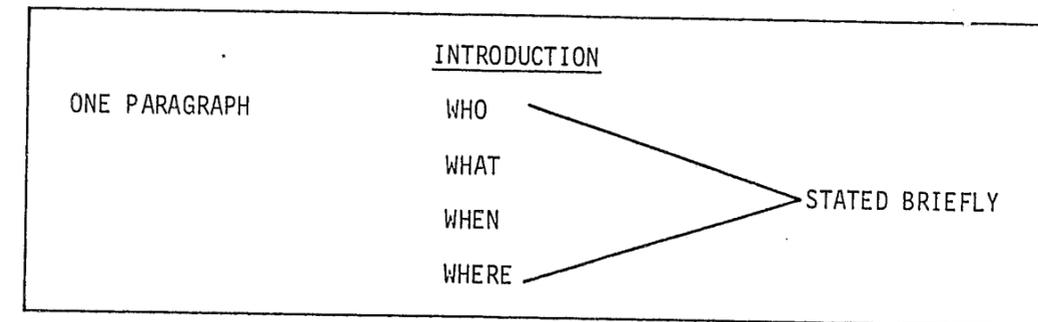
PRESIDENT: Your interest in your friend's welfare is commendable, Mr. Leon, but I can assure you that no one is "on the hook", least of all the club manager. Tell us, Mr. Leon, what is your occupation?

MR. LEON: I am a computer engineer.

PRESIDENT: Please tell us what you observed.

MR. LEON: If the board doesn't mind, I will confine my remarks to other areas, since that area of discussion has been adequately covered by other witnesses. As a personal friend of the club officer, (29) I was told by him that the responsibility for events such as occurred in the Gold Room is almost impossible to assign. _____ (30) On the basis of that statement, and what I have heard here today, I hope that you won't think me presumptuous if I suggest that we are wasting our time here, that you will never be able to assign the responsibility for the damages. _____ Rather than concentrate on that, I would prefer to see this board recommend the removal of alcoholic beverages from the club.

PRESIDENT: We shall consider your recommendation, Mr. Leon. Thank you. Gentlemen, this board is recessed for one hour. At the end of that time we shall reconvene to consider the testimony.



<u>INTRODUCTION</u>	
WHO	Project Good Oliver Twisted (resident) Mr. Potatoe (cook) Mr. Warm (superintendent)
WHAT	physical abuse
WHEN	day, date of report day, date of alleged abuse
WHERE	White Cottage

<u>FINDINGS</u>	
WHO	Describe alleged victim, Oliver Twisted
WHO	Mrs. Angel, Food Service Worker Mr. Potatoe, Cook Mr. Mouth, O.D. Arthur Mud, resident witness Albert Albert, resident witness
WHEN	day, date, time of incident
WHERE	dining hall service line
WHAT/HOW	residents in line to get salad Potatoe smacks spoon from Oliver's hand Potatoe curses him - walks around counter P. picks up chair - throws at Oliver's face Potatoe falls - takes out hook knife "I'll cut your throat" No one but O. saw knife 3 witnesses named

complete findings of Dr. Touch -----	
complete, factual, eyewitness statement of Mrs. Angel -----	
complete, factual, eyewitness statement of Arthur Mud -----	
complete, factual, eyewitness statement of -----	
Albert Albert -----	
complete statement from alleged abuser, Mr. Potatoe -----	

<u>CONCLUSIONS</u>	
SUMMARY and analysis of eyewitness reports, medical reports for corroboration with alleged victim's report.	
Action Taken	

*who -
what -
when -
where -*

*describe
alleged
victim -*

*Alleged victim's
statement -
who -
what -
how -
when -
where -
why -*

*Medical
report -*

*Eyewitness #1
who -
what - how -
when -
where -*

<u>INTRODUCTION</u>	
Project Good was contacted on Tuesday, October 14, 1972 by Oliver Twisted, a resident of White Cottage, alleging that he had been physically abused by Mr. Potatoe, WG-8, Cook, Culinary Staff on Saturday, October 11, 1972. Oliver's allegations were made in the presence of Mr. Phillip Warm, Superintendent of the Institution. An investigation of Oliver's allegations was conducted.	

(1) <u>FINDINGS</u>	
Oliver is a 16 year old committed resident of White Cottage. He is 64" tall and weighs 129 lbs. according to his medical records.	

(2) Oliver states (Exhibit A) that on October 11, 1972, around 6:30 p.m., he was in the dining hall service line and Mrs. Angel instructed the residents to get their salads. Oliver states that while getting his salad, Mr. Potatoe smacked the salad spoon from his hand and cursed him. Oliver states that Mr. Potatoe came from around the serving counter and picked up a chair and threw it at his (Oliver's) face. Oliver blocked the chair with his left arm. Oliver states that Mr. Potatoe tried to throw him down but instead got thrown down. Oliver also states that Mr. Potatoe had a hook knife in his pocket. Mr. Mouth submitted an incident report (Exhibit B). Oliver states that Mrs. Angel, Arthur Mud and Albert Albert witnessed the incident between himself and Mr. Potatoe.
--

(3) According to the Institution clinic records, Dr. Touch examined Oliver on October 11, 1972, for injuries sustained from being hit with a chair thrown by a cook. Dr. Touch diagnosed Oliver's injury to be swelling over the left ulna bone (midway between the elbow and wrist). On October 15, a reading of Oliver's X-rays was negative.

(4) Mrs. Ann Angel, Food Service Worker, who was on duty in the kitchen on October 11, 1972, states (Exhibit C) that Oliver was taking cucumbers out of the salad with a spoon when Mr. Potatoe knocked a spoon from Oliver's hand. Mrs. Angel states that Mr. Potatoe called Oliver a M____ F____, and picked up an apple and threw it at Oliver. Mrs. Angel also states that Mr. Potatoe then picked up a chair and hit Oliver. Mrs. Angel also states that Oliver didn't start the incident and did nothing wrong.

*Exhibit #2
who - how -
what -
when -
where -*

(5) Arthur Mud, resident of White Cottage, states (Exhibit D) that on October 11, 1972, he was in the dining hall and Oliver was picking cucumbers out of the salad. Arthur corroborates Mrs. Angel by stating that Mr. Potatoe smacked a spoon from Oliver's hand and cursed him. Arthur also corroborates Mrs. Angel by stating (Exhibit C) that Mr. Potatoe threw an apple at Oliver. Arthur states that Oliver was walking away and the apple missed hitting Oliver. Arthur further corroborates Mrs. Angel by stating that the cook (Mr. Potatoe) came from behind the service counter and picked up a chair and hit Oliver. Arthur states that Mr. Potatoe grabbed Oliver and attempted to throw him down, but Oliver turned around and threw Mr. Potatoe down. Arthur states that he did not see a knife that Mr. Potatoe is alleged to have.

*Exhibit #3
who - how -
what -
when -
where -*

(6) Albert Albert a resident of White Cottage, states (Exhibit E) that on October 11, 1972, he was in the dining hall and saw a chair hit the floor. Albert states that he doesn't know where the chair came from or whether it hit Oliver. Albert corroborates the statement of Mrs. Angel and Arthur Mud by stating that Mr. Potatoe grabbed Oliver first, and tried to throw Oliver to the floor. Albert states that Oliver eventually threw Mr. Potatoe after a brief wrestle. Albert states that he and some other resident broke up the altercation.

*Alleged wrong
over -
who - how -
what -
when -
where -*

(7) On October 19, 1972, Mr. Potatoe declined to be interviewed by Project Good staff. Mr. Potatoe stated that his incident report was his statement. According to his incident report, Mr. Potatoe states (Exhibit F) that he knocked Oliver's hand out of the salad. Mr. Potatoe further states that Oliver began cursing him and that he chased Oliver away from the serving line.

*Analysis of
evidence -*

CONCLUSION

Because of the extent to which the allegations of Oliver Twisted are corroborated by the statements of the alleged abuser, Mr. Potatoe, Mrs. Ann Angel, the Food Service Worker on duty, Arthur Mud and Albert Albert, resident witnesses and the information in the medical record, there is a preponderance of evidence that Mr. Potatoe used excessive force against Oliver Twisted and violated his rights to live in an environment free from threats or physical harm by hitting Oliver with a chair. I recommend that this report be forwarded to the Chief, Institutional Care Service Division for appropriate action.

Action taken -

EXHIBIT A

This is the statement of Oliver Twisted, resident of White Cottage. It was given to Mr. Danny Boy, an investigator of Project Good, in the conference room of the administration building on October 14, 1972.

On October 11, 1972, around 6:30 p.m., we were in the line and the lady (Mrs. Ann Angel) told us to get our salad. I went to get my salad and the man (Mr. Potatoe) smacked the spoon out of my hand and he started cursing me. He came from around the counter and picked up a chair and threw it at my face. I blocked the chair with my arm. He tried to throw me down but I threw him down. He had a knife and said "I'll cut your throat." When Mr. Mouth came, he put the knife back in his pocket. It was a hook knife.

I went to Children's Center Hospital that night (October 11, 1972). I went to the clinic this morning (October 14, 1972) and go for X-rays this afternoon.

Mrs. Ann Angel, Arthur Mud and Albert Albert witnessed the incident.

I have read this one page statement and have had it read to me. I have also had the chance to make any changes, deletions or additions that I wanted. To the best of my knowledge, it is accurate, correct and complete.

Oliver Twisted

EXHIBIT B

UNUSUAL INCIDENT REPORT

Reported by: Mr. Mouth, O.D.

Type of Incident: Student and Staff Misunderstanding
Persons Involved: Oliver Twisted and Mr. Potatoe

Details of Incident: Student says Mr. Potatoe hit him with a chair on his arm. I did not see no trace of any marks.
Student is to seek medical treatment.

EXHIBIT C

This is the statement of Mrs. Ann Angel, Food Service Worker, Culinary Department. It was given to Mr. Danny Boy, an investigator for Project Good on October 14, 1972.

The boy (Oliver Twisted) didn't stick his hand in the salad. He had the spoon and was taking the cucumbers out. Mr. Potatoe cursed the boy for nothing and knocked the spoon out of the boy's hands. Mr. Potatoe called the boy a M_____ F_____, and then picked up an apple and threw it at the boy. Then Mr. Potatoe picked up a chair and hit the boy. The boy put his tray down and knocked Mr. Potatoe down. The boy didn't start the incident and he didn't do anything wrong.

Mrs. Ann Angel

CONTINUED

3 OF 5

EXHIBIT D

This is the statement of Arthur Mud, resident of White Cottage. It was given to Mr. Danny Boy, an investigator for Project Good in the School building on October 14, 1972, at about 3:30 p.m.

On October 11, 1972, I was in the dining hall and Saint E's (Oliver Twisted) was picking cucumbers out of the salad. Mr. Potatoe smacked the spoon out of St. E's hands. Then the cook said "Young boy, I'll F__ you up." St. E's said you aren't going to do nothing to me. Then Mr. Potatoe threw an apple at St. E's. The apple missed St. E. St. E's was leaving the line and was walking toward the back of the dining hall when the cook came from behind the counter and picked up a chair and hit St. E. Then the cook grabbed St. E. and tried to throw St. E down. St. E turned and threw the cook down. The cook was going into his pocket for a knife and St. E. pinned his hand down on the floor. I didn't see the knife.

I have read this one page statment and have had it read to me. I have also had the chance to make any changes, deletions or additions that I wanted. To the best of my knowledge, it is accurate, correct and complete.

Arthur Mud

EXHIBIT E

This is the statement of Albert Albert, resident of White Cottage. It was given to Mr. Danny Boy, an investigator for Project Good, in White Cottage on October 14, 1972, at about 6:30 p.m.

On October 11, 1972, I was in the line for dinner and I saw a chair hit the floor. I didn't see where the chair came from and I don't know whether the chair hit St. E (Oliver Twisted) or not. Mr. Potatoe grabbed St. E. first, and he tried to throw him down. St. E. threw the cook down on the floor. Me and some more boys broke it up. The counselors weren't trying to break it up. After the students broke it up, Mr. Mouth grabbed St. E's and told him to sit down.

Mr. Mouth came over to us and told us that we weren't suppose to break it up because the staff were suppose to do it. Mr. Mouth punished us for breaking up the fight by not letting us watch the movie.

I have read this one page statement and have had it read to me. I have also had the chance to make any changes, deletions, or additions that I wanted. To the best of my knowledge, it is accurate, correct and complete.

Albert Albert

EXHIBIT F

UNUSUAL INCIDENT REPORT

Reported by: Mr. Potatoe, Cook

Type of Incident: Student had hand in salad
Persons Involved: Oliver Twisted and Mr. Potatoe

Details of Incident: I, Mr. Potatoe, knott his hands out of the salad.
Then he, Oliver Twisted, started to cussening me.
Then I ran him away from the serving line.

AMERICAN CORRECTIONAL ASSOCIATION

OFFICIAL STYLE

In effect, it was hypothesized, that certain physical data categories including housing types and densities, land use characteristics, and ecological location constitute a scalable content area. This could be called a continuum of residential desirability. Likewise, it was hypothesized that several social data categories, describing the same census tracts, and referring generally to the social stratification system of the city, would also be scalable. The scale would be called a continuum of socio-economic status. Thirdly, it was hypothesized that there would be a high positive correlation between the scale types on each continuum.

Translation:

Rich people live in big houses set farther apart than those of poor people. By looking at an aerial photograph of any American City, we can distinguish the richer from the poorer neighborhoods. ("Sociological Habit Patterns in Linguistic Transmogrification." The Reporter, Sept. 20, 1956.)

AMERICAN CORRECTIONAL ASSOCIATION

SYSTEMATIC BUZZ PHRASE PROJECTOR

(-Newsweek, May 6, 1968)

Column 1

0. integrated
1. total
2. systematized
3. parallel
4. functional
5. responsible
6. optional
7. synchronized
8. compatible
9. balanced

Column 2

0. management
1. organizational
2. monitored
3. reciprocal
4. digital
5. logistical
6. transitional
7. incremental
8. third-generation
9. policy

Column 3

0. options
1. flexibility
2. capability
3. mobility
4. programming
5. concept
6. time-phase
7. projection
8. hardware
9. contingency

Basic elements of the Official Style:

- 1) It is built on nouns, vague, general nouns. (i.e., fixation, deviation, construction, education, organization)
- 2) These are often modified by adjectives made up for other nouns like them, as in "incremental output" or "functional input".
- 3) All action is passive and impersonal. Not "I decided to fire her" but "it has been determined that that individual's continued presence would tend to the detriment of the ongoing operational efficiency of the organizational unit in which the individual is currently employed".
- 4) Nothing is called by its ordinary name. You don't decide to "bomb a town": instead, "It has been determined to maintain an aggressive and operational attack posture." You don't "set up an office", you "initiate an ongoing administrative facility".

AMERICAN CORRECTIONAL ASSOCIATION

EMPTY FILLERS

Over-used verbs: give, do take, put, have, told, come, make, "to be" forms (sometimes)

Empty Fillers (Expletives): there is, there was, there were, there has been, there will be, it is, it was, it has been, it will be, etc.

Qualifiers and Intensifiers (Unnecessary in objective writing): very, extremely, most, much, quite, rather, fairly, basically, significantly, ultimately, definitely, merely, simply, only, absolutely, completely, totally, virtually, even, just, so.

Catchall Nouns: area, field, nature, manner, fashion, process, effort, factor, item, aspect, situation, case, kind, type.

Redundant Phrases (Detract from giving an idea emphasis): actual fact, may possibly, most unique, assemble together, necessary requisite, repeat again, reverts back, seeming paradox, successful achievement, surrounded on all sides, resulting effect, must necessarily, very unique, true fact, basic fundamentals, general rule, final outcome, close proximity.

WORKSHEET 1: Substitute Verbs "To Be" with Dynamic Verbs

Directions: Circle the verb "to be" and replace it with a dynamic verb (perhaps change one of the nouns already in the sentence into a verb form)

1. The following chart is a breakdown of the additional costs associated with the proposal.
2. For your information, attached is a copy of the Manual of Standards for Juvenile Detention Centers describing the standards expected by ACA.
3. This letter is to confirm our discussion of the Child Abuse Issue at this institution.
4. The use of alcoholic beverages during working hours is a violation of the State's Rules of Conduct.
5. The way in which each question is constructed is important.

WORKSHEET 2: Cut Away Deadwood

Directions: Rearrange words (change -ion and -ment nouns into verbal action words)

1. Elimination of the Oregon law and modification of the SP agreement would save one baggageman per trip.
2. The establishment of the Manual of Standards for Juvenile Training Schools and Services was accomplished in March, 1979 by ACA.
3. Selection of employees for mandatory training is performed by the department.
4. Needless to say, any States' expenditures in this regard are dependent upon Congress providing the necessary funds.
5. The only area in which the proposed agreement offers significant savings is in the reduction of the number of investigators necessary to operate this service.

WORKSHEET 3: Change Passive Voice to Active Voice

1. Lasting effects after counseling were shown in the High/Scope longitudinal studies.
2. A detention facility was founded in London by the McMillan sisters.
3. He introduced the first Code of Conduct Manual which was enforced in Blackenberg in 1842.
4. The research of Broom and Walker on the subject of body awareness was conducted through the use of a questionnaire.
5. Juvenile characteristics as described by Lamberg imply some very interesting factors about their attitudes toward authority.
6. A complete investigation was conducted by Mr. Perry at Cottage B.
7. The resident's swollen face was attested to by several officers.

WORKSHEET 4: Cross Out Expletives: Use Dynamic Verbs

1. It must be noted that all children do not develop at the same rate.
2. It is the task of the teacher to actively involve their students with that which they read.
3. Characteristically, there are three types of students at the secondary level.
4. It must be noted that in most of the studies, the majority of the children were from low income families.
5. Unfortunately, it is still the opinion of many officers that they can maintain order through intimidation.
6. It was hoped that the resident's problem would have been solved by now.
7. It is a widely held belief that children at this age are most responsive to example and kindness.

AVOID THE OFFICIAL STYLE
SIMPLIFY YOUR LANGUAGE

For example, instead of these:

above, abovementioned
accounted for by the fact that
add the point that
afford an opportunity
a great deal of
along the line of

as of now
as per
as related to
based on the fact that
by means of
by the use of
commence
communicate
concerning
due to the fact that
exhibit a tendency to
for the purpose of
for the reason that
for your information, if at
all possible (usually super-
fluous)
in case, in case of
in close proximity

Consider these:

the, this, that, those, these
due to, caused by
add that
allow, permit
much
like

now
Avoid This!
for, about
due to, because
by (when by is clear)
by (when by is clear)
begin
prefer a specific verb like
"write" or "phone"
about
because, due to
tend to
for, to
because, since
if possible
if
near

Adapted from Mary L. McGowan, 1980

Instead of these:

in conjunction with

in lieu of
in order to
in the course of
in rare cases
in reference to, with
reference to
in regard to
in relation with
in the amount of
in the case of
in the event of
in the event that
in the instance of
in light of the fact that
in the majority of instances
in the matter of
in the not-too-distant future
in view of the foregoing
circumstances, in view of the
fact that
involve the necessity of
it is often the case that
it stands to reason
it was noted that
it would not be unreasonable
to assume
notwithstanding the fact that

Consider these:

use with alone whenever
in conjunction is unnecessary
instead of, in place of
to
during
rarely
about

about
with
of, for
for, by, in, if
if
if
for
because
usually
about
soon
therefore

require
often
omit
if
I (we) assume, I (we) think

although

Instead of these:

of very minor importance
on account of the fact that
on a few occasions
on behalf of
on the grounds that
relative to this
subsequent to
take appropriate measures
taking this factor into consid-
eration, it is apparent that
the foregoing
the fullest possible extent
the only difference being that
the questions as to whether or
not
there are not many who
there is very little doubt that
to be cognizant of
to summarize the above
transpire
with reference to
with the exception of

Consider these:

unimportant
because
occasionally
for
because
about this
after
act
therefore, therefore it seems
the, that, those, this, these
omit, or use most fully,
completely
except that
whether
few
doubtless, no doubt
to know
in summary
happen, occur
omit (use about)
except

GUIDELINES

For Style

Have I used speech that is appropriate for this communication?
Have I used specific, concrete terms?
Have I been concise (eliminated long involved sentences, stock
phrases, unrec. 3 syllable words)?
Have I omitted emotional words? (or limited them?)
Have I omitted (a) expletives (there are/it is)? (FILLERS)
(b) over-used verbs (give, take, have, do, make)?
Have I changed inappropriate passive verbs into active verbs?
Have I converted -ion and -ment nouns into verbs or verbals?
Have I omitted words that sound conversational, pretentious or trite?
Have I emphasized points with parallel structure?

For Logic

Have I framed my main point in a single sentence?
Have I used facts to support or develop my main point?
Have I used transitional devices to move from one idea to the other?
Have I subordinated less important points?
Have I coordinated ideas of equal weight?
Have I eliminated foggy references?
Have I put my most important point at the end of the sentence?

CHECK SHEET

Name _____

Date _____

Style

- ___ use appropriate speech
- ___ use specific, concrete words
- ___ be concise
- ___ limit polysyllabic words
(where possible)
- ___ limit or omit emotional words
- ___ omit conversational, pretentious
or trite words
- ___ omit "fillers" (expletives)
- ___ use parallel structure
- ___ change passive to active

Mechanics

- ___ spelling
- ___ punctuation
- ___ vocabulary
- ___ verb tense
- ___ subject-verb agreement
- ___ fragment
- ___ run-on sentence

Logic

- ___ put main idea in one sentence
- ___ put main idea at end of sentence
- ___ sub. less important ideas
- ___ support with facts
- ___ use transitional devices
- ___ define unfamiliar terms
- ___ avoid redundancy
- ___ avoid foggy references
- ___ rearrange words for clarity

REWRITE CONCISELY

MEMORANDUM:

As per your request, the following is a list of recommendations made by staff and myself that, hopefully, will improve the quality of food and culinary services at this institution.

1. Exterminate the culinary vehicles that transport food to further reduce the possibility of food infestation.
2. Require greater supervision of residents delivering food to the detention and security facilities.

NOTE: Residents deliver food to the security facilities while culinary staff remain in the transporting vehicles.

3. Require staff to promptly submit Unusual Incident reports regarding food infestation in conjunction with prompt notification to facility administrators.
4. Require that culinary workers from the student population not be in home visit status, thereby reducing the possibility of massive food contamination from residents who may have contacted contagious disorders.
5. Require administrative staff to randomly sample and/or inspect meals arriving in security units at least twice a week, and on an ad hoc basis.

REWRITE CONCISELY

The purpose of this memorandum is to propose the separation of Mr. Tony Curtis as Group Leader of this Institution.

On March 3, 1972, it is alleged that Mr. Curtis assaulted a resident, Mr. Bernard Bruised. I have reviewed all of the material that has been made available to me concerning this case, which includes the results of our administrative investigation and the findings of Mr. Forthright, Ombudsman. In addition, I have reviewed the statements of all available witnesses to this incident. On the basis of my review, it is my feeling that Mr. Curtis was in violation of several specific provisions of ICSD Regulation #412 and acted in a manner unbecoming an employee of this institution.

In addition, it would seem reasonable that Mr. Curtis' behavior on the day in question could sustain a conclusion that he violated the rights of a resident for whom he had the specific responsibility for the care, custody and safety.

I have reviewed the past record of this employee. A pattern has been established which seems to indicate that this employee has been involved in a number of situations with residents where the excessive or unwarranted use of force seems to constitute a standard mode of operation.

At this time, I do not feel that any further conferences, proposals for periods of suspension, etc. will correct this employee's job performance. I am, therefore, proposing that all necessary action be instituted to terminate Mr. Curtis' employment with this institution. It is my strong feeling that it is in the best interest of all parties concerned to adopt this course of action.



The Seven
Essentials of Report Writing

WHO
WHAT
WHERE
WHEN
HOW
WHY
ACTION

(State Facts Only)

The 4 C's Evaluating Your Report

- A. Complete**
- B. Concise**
- C. Clear**
- D. Correct**

A Grievance Report:

- **Must Be of Observable Behavior or of Evidence Obtained Through Investigation.**
- **Includes Only Facts and Details.**
- **Does Not Contain Examples of Biases, Prejudices and Personal Judgments.**
- **Identifies Witnesses - Both Staff and Residents.**

A Grievance Report:

- **Identifies Witnesses -
Both Staff and Resident.**

A Grievance Report:

- **Does Not Contain Examples of Biases, Prejudices and Personal Judgments.**

A Grievance Report:

- **Includes Only Facts and Details.**

A Grievance Report:

- **Must Be
of Observable Behavior
or
of Evidence Obtained
Through Investigation**

**A Report
Is A Statement Which Gives An
Orderly Account Of,
Relates,
Repeats, Or
Tells Something
About An Incident Or Event
That Has Been Investigated,
Studied,
Observed, Or
Heard.**

WHO

- **Is Requesting the investigation**
- **Is (Are) the Alleged Victim(s)**
- **Is (Are) the Alleged Offender(s)**
- **Is (Are) the Witness(es)**
- **Is the Nurse, the Physician or
the Hospital Contacted**
- **Can Be Contacted Later for
Further Information**

WHAT

- Is the Charge
- Damage Was Done
- Evidence Supports Charge
- Actual Crime (Violation) Was Committed
- Kind of Weapon(s) - Tool(s) Were Used

WHEN

- Was the Crime (Violation) Committed
- Was the Crime (Violation) Reported
- Did the Investigation Begin
- Can the Alleged Victim / Witness Be Interviewed Further

WHERE

- Was the Crime (Violation) Committed
- Was/Were the Witness(es) When the Observations Were Made
- Were the Tools Obtained
- Can Additional Helpful Information Be Obtained

WHY (Motive)

- Was the Crime (Violation) Committed
- Was this Particular Resident Selected
- Was the Time of Commission Selected
- Were Certain Tools Used

(State Facts Only. Do Not Guess or Include Hearsay.)

HOW

- **Did It Happen**
- **Was the Crime (Violation) Committed**
- **Was/Were the Tool/ Weapon(s) Used**

(Word Description of the Happening - in Chronological Order)

ACTION

- **Analyze All Evidence**
- **Evaluate Evidence**
- **List Any Further Actions on Your Part**
- **List Final Disposition of Case**

INTRODUCTION

FINDINGS

1st. Paragraph

2nd. Paragraph

3rd. Paragraph

4th

5th

CONCLUSION

INTRODUCTION

WHO: Is Stating the Alleged Violation?

: Is Present While the Statement is Being Made?

WHAT: Was the Alleged Violation?

WHEN: Did the Alleged Violation Occur?

: Is the Report Being Made?

WHERE: Did the Alleged Violation Occur?

: Is the Report Being Made?

FINDINGS

1st P	- Describe Alleged Victim (Age, Weight, Height) and Present Location
2nd P	- Who: Is Speaking : Allegedly Violated Speaker : Was Present During Incident - What/How: Happened (Step by Step in Chronological Order) - When: Exact Day, Date and Time Incident Occurred - Where: Exact Building, Room, Place in Room - Why: Give Reason Only If Alleged Victim States It <small>-(opinion)</small>
3rd P	- Who - What - When - Where } MEDICAL TREATMENT
4th P	- Who - What - When - Where } STATEMENT OF EYEWITNESS #1
5th P	- Who - What - When - Where } STATEMENT OF EYEWITNESS #2 -etc.
Last P	- Who - What - When - Where } STATEMENT OF ALLEGED WRONG-DOER

CONCLUSIONS

A. Make Decision

- 1) Weigh Evidence on Both Sides
- 2) Which Evidence is More Valid
- 3) Which Side Has the Preponderance of Evidence
- 4) Are Alleged Victim's Allegations Corroborated

B. Take Action

**THREE
ESSENTIAL ELEMENTS OF WRITING**

**WRITER
(YOU)**

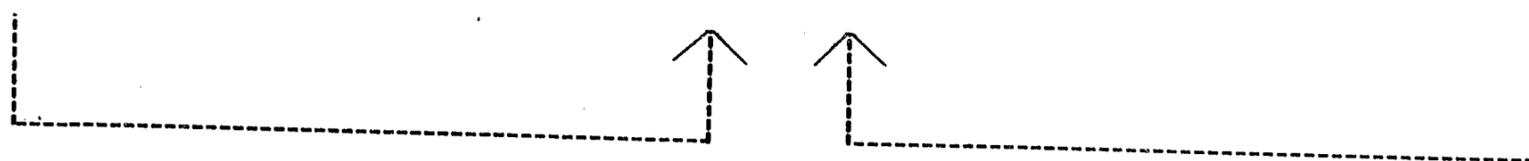
**READER
(ME)**

**MESSAGE
(IT)**

IMAGE

EMPATHY

LOGIC

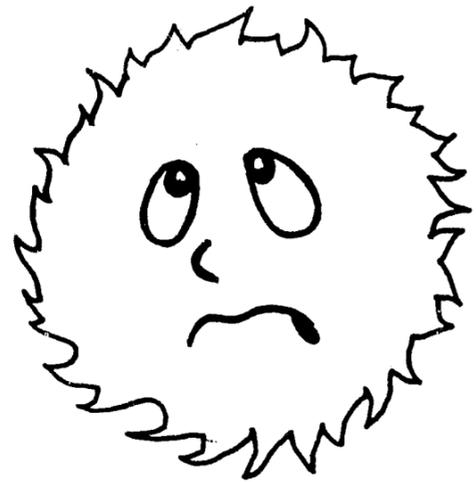


THREE ESSENTIAL ELEMENTS OF WRITING

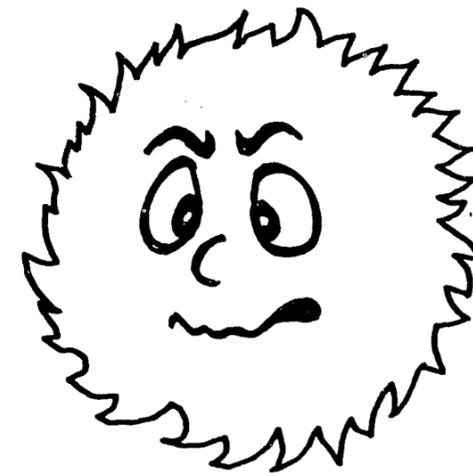
WRITER → **READER** ← **MESSAGE**

1. USE SPECIFIC
CONCRETE
WORDS
2. OMIT DEAD-
WOOD
3. OMIT EMO-
TIONAL WORDS
4. OMIT EX-
PLETIVES
5. OMIT OVERUSED
VERBS
6. USE ACTIVE
VOICE

1. FRAME MAIN
POINT IN A
SINGLE SEN-
TENCE
2. SUBORDINATE
LESS IMPORTANT
IDEAS
3. PUT MAIN IDEA
AT END OF SEN-
TENCE
4. COORDINATE
IDEAS OF EQUAL
WEIGHT



**“I Regret to Inform
You that Due to the
Fact that You Have
Cancelled Yet
Another
Appointment,
I Must Conclude
Our Relationship.”**



**Instead
Of:**

**“Because You
Broke Another
Date— We’re
Through!”**

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>As an Ombudsman, you are in a position of inter-relating with others close to 90% of the time. You must be aware, therefore, of the games, the types of manipulations that can and do occur with special frequency in a correctional setting. First, you must look at yourself. Your style of relating to others -- your own honesty in saying what you mean. The way you manipulate. And then you must look at the way others relate to you. Others either in a one-down position, in this case, detained juveniles; or those in a one-up position, the Center Staff, the Administrators, etc. This session will hopefully make you aware of the subtle signs of game playing and manipulation.</p> <p>At the end of this session, therefore, as you actively participate, you will be able to:</p> <ol style="list-style-type: none"> 1. Define game playing and manipulation. 2. Recognize the signs of game playing and manipulation. 3. List ways of changing manipulating techniques into actualizing techniques. <p>II. CONTENT PRESENTATION</p> <p>We glibly say that we need to treat people as <u>human beings</u>. This is written in all the textbooks on counseling and human interactions. But when we really</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>look at it, we rarely treat anybody (our friends and loved ones included) as human beings. We manipulate them to do those things <u>we</u> want them to do. We can manipulate like a dictator, a bully or a "nice guy" - sweet talking people into doing what we want them to do. But in doing this, we make others into "things" to be moved and - unfortunately - we, ourselves, become things in the process. For example, we might consider the bus driver simply as driver--on time or not--good driver or not; we expect the information clerk to give out information and get angry if she doesn't. But then-to the hairdresser, we become a head of hair; to the waitress, we become the "roast beef, medium rare," to the salesperson, we become the sale, etc.</p> <p>I guess the important questions to ask ourselves are: "Is this how I want to relate to other people?" "Is this what's best for them?" "Is this what's best for me?"</p> <p>Only you can answer these questions. Today we will explore many different ways we are manipulated and that we manipulate. Not one of us is completely all or any of one style. We certainly change our tactics with the various people we relate to in the course of the day. But often we display one or more of the manipulative types pretty consistently.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>But before we look at some specific games and manipulative styles, let's look at at least one possible cause for this behavior -- in the development of the social personality.</p> <p>What am I doing now?</p> <p>Right, I'm showing concern, affection, etc. But what am I really saying to this person? I'm saying "you are important to me." "You are worth my time and effort because you are important." "I don't want anything from you; I don't even want you to be moved somewhere else." "You are important, really, just because you're you." This one message, as we shall see over and over again, does not "get through" to certain people. And since these people think they (in and of themselves) are worth nothing, they devise some kind of phony front or mask which they use when dealing with people.</p> <p>What I did is called Stroking or Having Impact on Another. Stroking is one of the most crucial elements in the formation of a personality. Stroking, at birth or during early life is crucial to physical life--especially stroking of a physical nature. During later years, however, symbolic stroking (recognizing someone's existence and that they are important) is just as important to psychological life.</p>	<p>Shake hands with someone or hug someone.</p> <p>Write STROKING and HAVING IMPACT on flipchart.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>To begin to understand how manipulation becomes an ingrained and almost "natural" part of our personalities we need to look at the environmental and heredity factors that influence each of us from our earliest moment. So for purposes of our discussion here, let us assume that we are talking about a hypothetical person and let's follow his course of development from birth to adulthood. The first state of this person is:</p> <ol style="list-style-type: none"> 1. SYMBIOTIC INTIMACY, the state when the child is still in the womb. It is a "perfect state" in one sense. Perfect in that there is total security - a "being cared for." It is not a desired state in later life, however, because it is parasitic: one person feeds on the other. The <u>closeness</u> that one feels towards the other at that particular time, however, is precious and is desirable. Persons come into this world united to another human being and they spend the rest of their lives looking for that special kind of closeness again. 2. PHYSICAL BIRTH. This is a traumatic happening. The child is literally pushed out on its own, afraid and insecure. For the first time, he experiences hands touching him, light, heat, water. If he could talk, he'd probably say something like: "If I were you, I wouldn't do this to me." 	<p>Use flipchart</p> <p>Use flipchart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>3. STROKING OR IMPACT, that is handling, holding, rocking, plays a crucial role here. Stroking gives the newborn and young child a reason to live.</p>	<p>Use flipchart</p>
<p>4. PSYCHOLOGICAL BIRTH is the direct result of stroking. When the newborn is cleaned, wrapped and held close in strong arms, it is as though he is "born again," this time on a psychological level. This action gives the newborn</p>	<p>Use flipchart</p>
<p>5. THE WILL TO LIVE</p>	<p>Use flipchart</p>
<p>6. MARASAMUS is a word that appears on death certificates and it means simply "No known cause of death." Although this has not been proven beyond a doubt, the facts are that in those families or institutions where very little touching or caressing of the child happens, the child dies "from no apparent causes."</p>	
<p>7. DISEQUILIBRIUM. Let us say our hypothetical baby lives. We take her home. In all of our lives, as with our baby, we experience the state of disequilibrium. That is, "on-again - off-again" attention or stroking or impact. Let's take an example: Sue is 1½ years old. She is crazy about her daddy who loves her dearly. She waits for him to come home every evening. When he comes through the door, he lifts her high, tickles her, throws her up and down and generally smothers her with kisses.</p>	<p>Use flipchart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Sue is deliriously happy. She feels loved (stroked). But let's say on a given day, Daddy has had a bad day at work. Everything has gone wrong. He comes home tired and irritable. All he wants to do is have a beer and sit by himself for a while. When he arrives home, he opens the door and finds Sue waiting. He sighs, lifts her up, pecks her on the cheek and then says "Daddy is tired, Sue. You go play for a while." Now Sue is too young to understand that Daddy is feeling bad. What she thinks is that <u>she</u> has done something wrong. Daddy doesn't love her anymore. Because of our own ups and downs, we do subject others (especially our own small children) to this state of disequilibrium, which leads to their</p>	
<p>8. FIRST CENTRAL PROBLEM. Sue's first problem is to get strokes for herself. She feels unloved, unrecognized just being herself. She alone can make no impact on Daddy. So here is where Sue, at age 1½, begins to develop a manipulative life style and to play games the rest of her life (as we all do), only the manipulations and the games will become more sophisticated as she grows older.</p>	<p>Use flipchart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Sue might play the game of Seduction -- tilting her head, batting her eyes, saying cute things like "You're the best daddy in the whole world and I love, love, love you." When she acts in this way, she knows she'll get Daddy's attention--no matter what his mood is. The games gives her a</p> <p>9. BASIS FOR PREDICTABILITY. She knows the payoff and she plays to get it--even if it means treating Daddy like a thing.</p> <p>As juveniles or grown-ups, whether in or out of a correctional setting, we play "games" and develop particular manipulative styles for those much sought after payoffs - usually strokes of one kind or another. In general, we feel we must manipulate to ensure the reactions we want.</p> <p>Unfortunately, the more steeped in manipulating we become, the more we lose contact with real people, real emotions, real problems and real solutions. For the manipulator, the understanding of human nature is for just one purpose -- to control -- to get payoffs.</p> <p>Let's look at the stroking strategy in the "Why Don't You, Yes, But" game. One person presents a problem to someone who will listen and who will hopefully present a solution. But the player of this games does not really want a solution. What he says conflicts with</p>	<p>Use flipchart</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>what he wants. He wants attention, stroking, to have impact on other people. Don't forget" He may not think he has any other way to get it. And he wants the other player to admit that "his" problem is so big, so awesome, that it has no solution. A further source of satisfaction for the one-down player of this game is that he can scorn the one-up player for failing. Many payoffs here. Be wary of getting involved in this type of game (which occurs frequently in a helping profession). It is tiring and crazymaking. How could you turn this game around into a productive encounter?</p> <p>Again, because you are or will be Ombudsmen, you will be highly susceptible to another very basic life game described by Eric Berne - called Rescuing. So before we look at the manipulative types in general, let's talk about the "Rescue Game" in particular.</p> <p>By nature, most people are cooperative and need to work together; they need to help each other. In fact, situations in which one person needs help (such as a detained juvenile) and another person (the Ombudsman) is capable of offering it are happy ones, even joyful. This is a positive helping experience and is very different from the unpleasant and destructive experience called the Rescue Game. The thesis of this game revolves around the fact that at times, people need help to achieve what</p>	<p>Accept any answers</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>they want. Those who play the Game, however, believe that the people who need the help really can't be helped nor can they, at any point, help themselves.</p> <p>The Game has 3 roles: the Rescuer, the Persecutor and the Victim and they can be arranged in a triangle to show how people switch between them.</p> <p>The Victim in the Game feels helpless and hopeless; he pleads "Try and help me." The Rescuer's position matches the Victim's. He says: "You are helpless and hopeless; nevertheless, I'll try to help you." The Persecutor is similar with a slight variation. He says "You are helpless and hopeless and it's your fault." The Victim feels ashamed; the Rescuer feels guilty and the Persecutor feels angry. Let's look at how this game works. In the "Why Don't You, Yes, But" Game, one person is the Victim and others are the Rescuers. The Victim asks questions from a position of powerlessness and the Rescuers attempt to give answers. Every suggestion is discarded and a new one offered until eventually, the Rescuers get angry and switch roles. They become Persecutors and say angry, non-caring things. Remember, however, the Rescuer does not believe that the Victim can be helped or is able to help him or herself. He/she does believe that the Victim is a loser.</p>	<p>Show transparency "Triangle"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Ironically, the early social development of the personality may hold the answer for the Victim role. Children are often trained for this type of powerlessness. For instance, in a day's time, a seven year old boy or girl could, if left alone to learn it, get out of bed, get dressed, make the bed, cook himself some breakfast, make some lunch, take out the garbage, clean the dishes he dirtied, go out the door and down the street to school. He can do chores such as clearing the table, sweeping the floor, going to the store to buy anything he wants. If he comes home and finds out that there is no one home, he can figure out that his mother is probably at her best friend's house, call information, find out the number, make a phone call, and make plans to have dinner with a friend and stay overnight. All of these things that a seven year old can do are not usually allowed of him. Most households prevent a seven year old from freely using his powers to that full an extent so that most of them have to be awakened by mothers who then cook them breakfast, take them to school, pick them up, bring them home, cook dinner for them and arrange for their entertainment and social life.</p> <p>Children who are trained as Victims grow up with varying degrees of disability or incapacitation. Most</p>	

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<p>everyone is somewhat incapacitated by early childhood training -- but some people turn into full-fledged Victims who spend their time looking for Rescuers with whom they can perpetuate their powerlessness. The more extensive the Rescue and Persecution by the parents, the more severe the retaliation of the children when they grow up. In a home where this training is prevalent, children are prone to set parents up in all manner of bad situations; middle class children often do this by doing poorly in school, by refusing to work, by becoming drug addicts and/or by getting themselves arrested. Children know that one of the most terrifying experiences parents can have is for their child to be arrested and that they, the parents, will then be humiliated by the police, lawyers and judges.</p> <p>This retaliation or making a Victim of the Important Others in their lives extends to everyone in the Juveniles' lives--even and especially inside the correctional setting--where their own sense of powerlessness is heightened by more rules and regulations and bells.</p> <p>Let's look at each of the 3 roles in this Game. First, the Rescuer. The Rescuer is perhaps the most mystified in our society. Selflessness, doing for others, generosity are all encouraged. What is not pointed out,</p>	<p>Show transparency "Rescuer"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>however, is that we are encouraged to be selfless, generous and cooperative with people even if they are deceitful, selfish, stingy and uncooperative with us. This makes us easily exploitable. Being a Rescuer gives us a feeling of being one-up and this is its only pleasure; it does remove us from the Victim, one-down role.</p> <p>Second the Persecutor. The Persecutor is the inevitable outcome of the Rescue and Victim roles. Any person who rescues by helping someone else when that person is not helping himself is inevitably going to become angry with him. Every time the person in the Victim spot is rescued by someone else, he is perfectly aware of the fact that he is one-down and kept one-down by the Rescuer and that the Rescuer is interfering with his ability to be powerful. So a person who has played Victim will also inevitably become angry. It is possible, in fact, to predict that every Rescue-Victim transaction will eventually end in a Persecute-Victim transaction.</p> <p>And third, the Victim. There are victims and Victims. A real victim is a person who is being oppressed by another person. Some are "pure" or actual victims and are not contributing to their one-down position. For example, a person being run over by a truck, or a person being robbed on the street are actual</p>	<p>Show transparency "Persecutor"</p>

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<p>Mother Superiors, Father Superiors, the Rank Pullers, the Boss, the Junior gods. The Dictator gets his strokes mostly by putting other people down.</p> <p>The <u>Weakling</u> is usually the Dictator's Victim, the polar opposite. He develops great skill in coping with the Dictator. He exaggerates his sensitivity. He forgets, doesn't hear, is passively silent. Variations of the Weakling are the Worrier, the "Stupid-Like-A-Fox," the Giver Upper, the Confused, the Withdrawer. This person's favorite game might be called "Corner." Or damned if I do and damned if I don't. Nothing he does is right. He always looks frustrated.</p> <p>The <u>Calculator</u> exaggerates his control. He deceives, lies and constantly tries to outwit and control other people. Variations of the Calculator are the High Pressure Salesman, the Seducer, the Con Artist, the Intellectualizer. A favorite game of this person might be NIGYSOB. (Now, I've Got You, You SOB). The calculator sets up his Victim in a double bind; first, the calculator uncovers a lie, or some cheating or some pilfering and then asks the Victim if he or she said or did "...". When the Victim lies about the incident (which we presume he would), the calculator has him caught two ways: the first offense <u>and</u> the lie.</p>	

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<p>The <u>Clinging Vine</u> is the polar opposite of the Calculator. He exaggerates dependency and powerlessness. He asks to be led, be fooled, be taken care of. He lets others do his work for him. Variations of the Clinging Vine are the Parasite, the Crier, the Perpetual Child, the Hypochondriac, the Attention Demander, the Helpless One. The Clinging Vine plays Games like "Stupid"; "Wooden Leg," and "Why Does This Always Happen to Me?" He laughs at his own clumsiness and stupidity and implies sullenly "I am stupid, that's the way I am, so do me something." In this Game, he can get out of work, break rules, pretend not to know regulations. This person has learned, at an early age, that everyone will be satisfied with him so long as he is stupid." In his "Wooden Leg" Game, he constantly asks (again as he does something stupid or nothing at all), "Well, what do you expect from someone as disturbed, as pathetic, as hurt, etc. as I am?"</p> <p>The <u>Bully</u> exaggerates his aggression, cruelty and unkindness. He controls by implied threats of some kind. He is the Humiliator, the Hater, the Tough Guy, the Threatener.</p> <p>The <u>Nice Guy</u> exaggerates his caring, loving; he kills with kindness. In one sense, he is much harder to</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>cope with than the Bully. You can't fight a "nice" guy. Curiously, in any conflict with the Bully, Nice Guy almost always wins. Variations are the Pleaser, the Non-violent One, the Never-Ask-For-What-You-Want One. One of his favorite Games is "Look How Hard I was Trying." This player, for example, will announce he has an "ulcer" but that he'll keep on working but he makes sure everyone knows it.</p> <p>The <u>Judge</u> exaggerates his criticalness. He distrusts everyone and is blameful, resentful, slow to forgive. Variations of the Judge are the Know-It-All, the Blamer, the Deacon, the Resentment Collector, the Shoulder, the Shamer, the Comparer, the Persecutor. He revels in games like "Ain't It Awful."</p> <p>The <u>Protector</u>, the last of the manipulative patterns, is the direct opposite of the Judge. He exaggerates his support and is non-judgmental to a fault. He spoils others, is over-sympathetic and refuses to allow those he protects to stand up and grow up for themselves. Instead of caring for his own needs, he cares only for others' needs. Variations of the Protector are Mother Hen, the Defender, the Embarrassed-for-Others, the Fearful-for-Others, the Sufferer-for-Others, the Martyr, the Helper, the Rescuer. His game is called "I'm Only Trying to Help You." This game is</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>also played heavily by those in the helping professions. This person gives advice freely, abundantly -- even when he knows the other probably will not take the advice seriously. The payoff is his own bewilderment at others ungratefulness. He quickly moves into the Judge pattern or Persecutor role.</p> <p>Basically, then, there are four manipulative systems: Top-dog, Under-dog, the competitive manipulator (who alternates between top and under-dog), and the indifferent manipulator.</p> <ol style="list-style-type: none"> 1. The active manipulator attempts to control others by active methods. He assumes the role of the powerful one - top dog - gets satisfaction (strokes for himself and impact on others) by capitalizing on others' feelings of powerlessness. Uses techniques like creating obligations and expectations, pulling rank, pushing people around like puppets. 2. The passive manipulator is the reverse of the active. He decides, since he cannot control his own life, that he will give up and allow the active manipulator to control him. He feigns helplessness and stupidity and plays the underdog. <p>Whereas the active manipulator wins by winning, the passive person wins by losing. Settles for negative strokes rather than no strokes at all.</p>	<p>Show transparency "Four Systems"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>3. The competitive manipulator sees life as a constant game of winning and losing in which he has to be the vigilant fighter. All life is a battle. All others, competitors. Alternates between top-dog and under-dog.</p> <p>4. Indifferent manipulator. He plays hopeless, indifferent to and withdraws from his contact with another. His stock phrase: I don't care. He treats another as if he were dead, a puppet who has lost the capacity for growth and change. The secret is that he still cares and has not given up or he would not continue to play the manipulative game.</p> <p>Just as there is a way to stop playing the Rescue Game, there is a way to use the strengths and characteristics of the manipulator for more wholesome, healthy relationships'. We call this change: actualizing. From the manipulator, therefore, can come the actualizer.</p> <p>A manipulator's style of life involved four fundamental characteristics: deception, unawareness, control and cynicism. The actualizer's style is marked by four opposing characteristics: honesty, awareness, freedom and trust. The change from manipulation to actualization is in general on a continuum from deadness and deliberate-ness to aliveness and spontaneity. Let's look at each set separately.</p>	<p>Show transparency "Manipulators - Actualizers"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>1. Manipulators use deception, phoniness. They use tricks, games, strategies and maneuvers. They put on an act, play a role to create an impression. Expressed feelings are deliberately chosen to fit the occasion.</p> <p>1. Actualizers, on the other hand, are honest, transparent, genuine. The actualizer is able honestly to be his feelings, whatever they may be. He is characterized by candidness, expression, and genuinely being himself.</p> <p>2. Manipulators are unaware, possess a quality of deadness and boredom. The manipulator is unaware of the really important concerns of living. He has Tunnel Vision, seeing only what he wishes to see and hears only what he wishes to hear.</p> <p>2. Actualizers are aware, responsive, alive and interested. The actualizer fully looks and listens to himself and others. He is fully aware of nature, art, music and the other real dimensions of living,</p> <p>3. Manipulators control. They are closed and deliberate. The manipulator plays life like a game of chess. He appears relaxed, yet is very controlled and controlling, concealing his motives from his "opponent."</p> <p>3. Actualizers are free, spontaneous and open. The actualizer has the freedom to be and express his potentials. He is master of his life, a subject and not a puppet or object.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>4. Manipulators are cynical. They distrust. He is basically distrusting of himself and others. Down deep he doesn't trust human nature. He sees relationships with humans as having two alternatives: to control or be controlled.</p> <p>4. Actualizers trust, have faith and believe in others. The actualizer has a deep trust in himself and others to relate to and cope with life in the here and now.</p> <p>Let's look again at our circle of manipulators and see how the characteristics of each pattern can be changed into actualizing behavior.</p> <p>As the manipulator is a many-faceted person of <u>antagonistic</u> opposites, so the actualizer is a many-faceted person of <u>complimentary</u> opposites.</p> <p>From the <u>Dictator</u> develops the <u>Leader</u>. He leads rather than dictates. He is forceful, yet not dominating. He listens first, then makes decisions or gives advice or relinquishes authority.</p> <p>The complimentary opposite of the Leader is the <u>Empathizer</u>. Because of this characteristic, the Leader listens with awareness. He is also aware of his own weaknesses. He demands good work, but he accepts the human tendency to err.</p> <p>The actualizer integrates both his leadership and empathy.</p>	<p>Show transparency "Circle"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>From the <u>Calculator</u> develops the <u>Respector</u>. Rather than using or exploiting, the actualizer respects himself and others as persons, not things.</p> <p>The complimentary opposite of the Respector is the <u>Appreciator</u>. He does not simply depend on others, but appreciates the different skills that others have to offer. He appreciates different points of view from his own and does not need to have other people think the same as he thinks.</p> <p>The actualizer integrates both his respect and appreciation.</p> <p>From the <u>Bully</u> develops the <u>Assertor</u>. The Assertor enjoys a worthy foe, but he is direct and straightforward. He is not hostile and dominating as is the Bully.</p> <p>The complimentary opposite of the Assertor is the <u>Carer</u>. The Carer is not the obsequious Nice Guy, but is affectionate, friendly and deeply loving.</p> <p>The actualizer integrates both his assertion and caring.</p> <p>From the <u>Judge</u> develops the <u>Expresser</u>. The Expresser is not judgmental of others but is able to express his own convictions strongly.</p>	

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<p>The complimentary opposite of the Expresser is the <u>Guide</u>. The Guide does not protect or teach others, but gently helps each person to find his own way.</p> <p>The actualizer integrates both his expression and guidance. He does not think for others but with them. He helps others help themselves by his own expression of views and yet gives each the right to make his own decisions.</p> <p>I would like to read a quote from Martin Buber right here because he expresses so well why a man should spend his energy actualizing rather than manipulating:</p> <p>Every person born into this world represents something new, something that never existed before, something original and unique. 'It is the duty of every person... to know and consider that he is unique in the world in his particular character and that there has never been anyone like him in the world, for if there had been someone like him, there would have been no need for him to be in the world. Every single man is a new thing in the world, and is called upon to fulfill his particularity in this world...' Every man's foremost task is the actualization of his unique, unprecedented and never recurring potentialities, and not the repetition of something that another, and be it even the greatest, has already achieved.</p>	

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Martin Buber, THE WAY OF MAN. Chicago: Wilcox and Follett, 1951.</p> <p>III. APPLICATION</p> <p>I would like you now to break into your small groups and work on these authentic, but "names" changed to protect the innocent" statements. The directions are on the front of each sheet. Please have one person in your group read the statement as it might have sounded, coming from a juvenile, then answer these 4 questions:</p> <ol style="list-style-type: none"> 1. Is this a real victim or one who plays Victim? 2. Which type of power play is at work here: one-up or one-down? 3. Identify the manipulative pattern (if there is one): and 4. Identify the specific game (if there is one) <p>IV. SUMMARY</p> <p>In this session, I wanted each of you to be able to define Game playing and Manipulation. Will someone do that for me now?</p> <p>Also, I wanted you to be able to recognize the signs of game playing and manipulation which you did very well on the small group exercise.</p> <p>The last objective was that you be able to list the ways of changing manipulative techniques into actualizing techniques. Let's look at the circle once more and list</p>	<p>Get feedback from each group</p> <p>Get feedback</p> <p>Show transparency "Circle"</p>

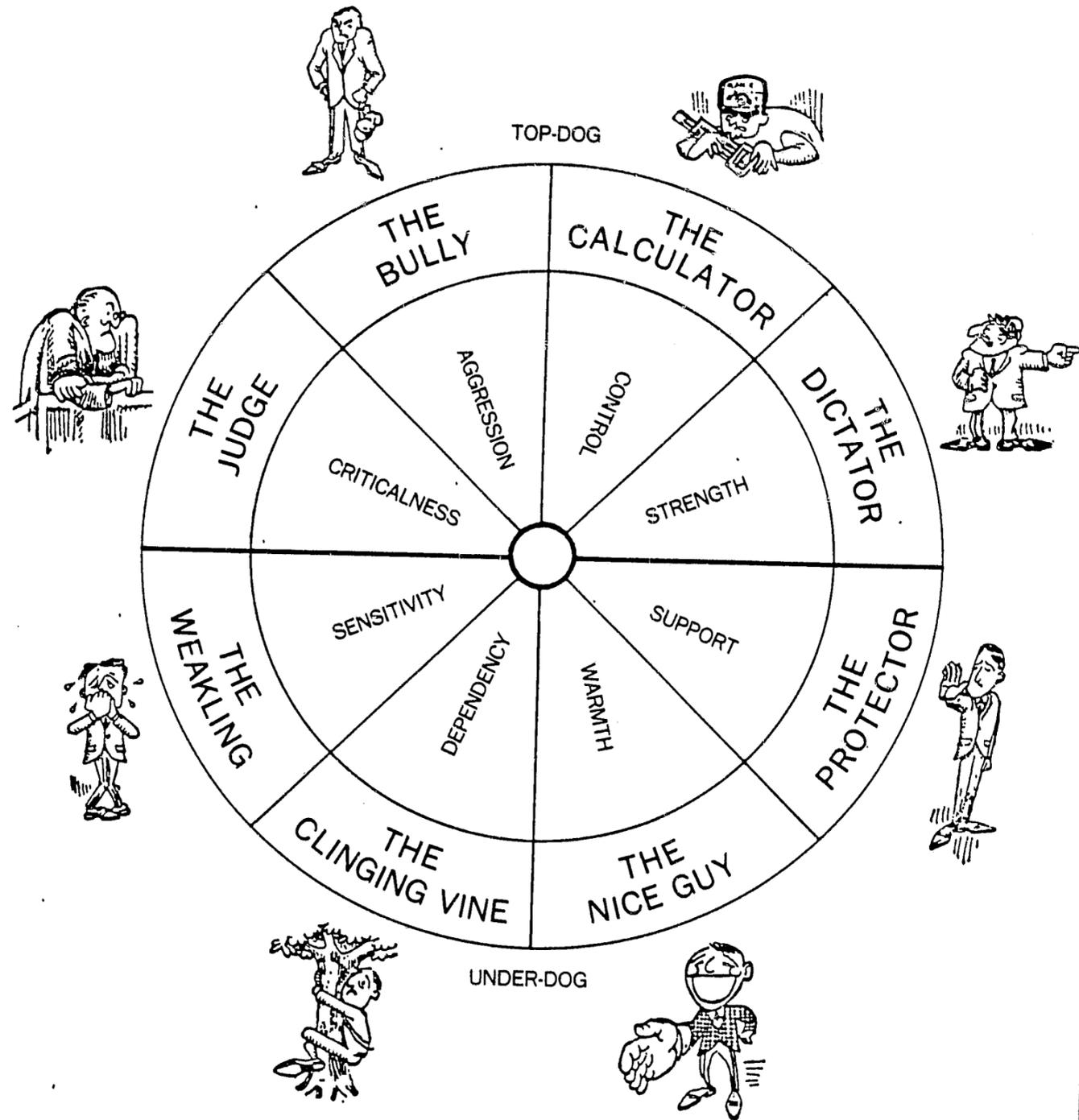
INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>them together. The Dictator becomes the Leader; the Weakling becomes the Empathizer. The Calculator becomes the Respector; the Clinging Vine becomes the Appreciator. The Bully becomes the Assertor; the Nice Guy becomes the Carer. The Judge becomes the Expressor, and the Protector becomes the Guide.</p> <p>V. EVALUATION</p> <p>Accomplished within lesson.</p>	

JUVENILE STATEMENTS

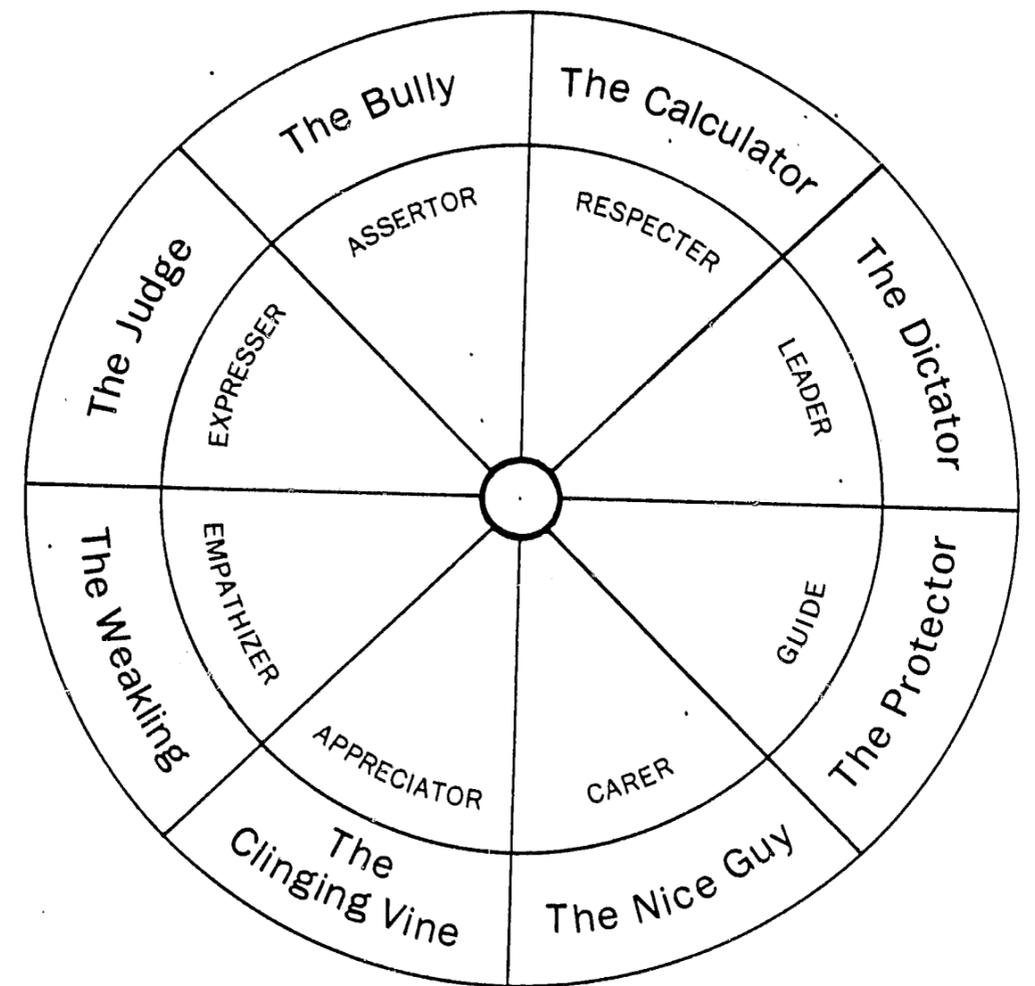
1. Mr. Mad lets the boy (unknown) pick on me. Our counselor went to lunch and he had both sides. He doesn't do anything when the boy picks on me. Also, I need to cash my check so I can get some clothes.
2. I don't know the counselor's name but he allows this tall boy to holler at me and to take things from me.
3. I don't appreciate being called anybody's m_____f_____. Mrs. Head has a vulgar mouth and is always cursing us. I told the counselor that one of his boys hit me with a pear and he told me to mind my m_____f_____ business.
4. I will deal with the shit and Mrs. Head when she comes on duty. That's alright. You don't have to write me up because I'm going to kill that bitch. The bitch didn't mention that my hand was cut.
5. The teacher lied on me. She told Mr. Mad that I said I was on clean-up detail and I didn't say it.
6. Milton is trying to say that I stole his cigarettes and I didn't take them. When he was visiting, his cigarettes were laying on the bed and his door was open. I went into the room and put his cigarettes in his brief case. When I left his room, the cigarettes were still in there.
7. The toilet in my room is broken and it floods or doesn't flush at all. I haven't told the counselor in the day but I told the night man.
8. I have some shorts and Mrs. Head won't let me wear them to the dining hall.
9. I've been up here for a week and the mosquitos are eating me up everyday. Even in the living room, we get bit by mosquitos.
10. Everytime I get in an argument with Dixon, he threatens me. He says he's going to body slam or smack me. He always cusses at me for nothing.
11. I kept telling Mr. Hand that the boys keep hitting me in my head and he said he ain't got nothing to do with it--that it's between me and them.
12. Mr. Peacock burned my feet Saturday night and he's been pressing me. I told the priest about it and he said he was going to write up the incident but he didn't.

13. Mr. Man is treating me unfair. He smooches me in the face and calls me names. He hasn't hit me but when the other kids pick on me or I have a problem, I tell him and he says it ain't his problem.
14. My problem is my social worker, Mrs. Sugar. It seems that she never calls me over to her office to talk to me about nothing. I always have to call her and when I do go to see her, she talks very smart to me.
15. I not really saying Mrs. Peacock is mean or anything but I don't think she should holler at us. We can't holler at her.
16. Mr. Peacock is always harassing me. He seems to single me out to tell me to shut up when there are others talking. I don't like the way he calls me baby either. He says I'm a constant complainer and this is why he is always telling me to be quiet. I would also like for you to call my mother and ask her to send me some more clothes.
17. I had an appointment with Dr. Zen because I have a bad ear ache and my ear hurts so bad that I cannot hear out of it and he said there was nothing wrong with it. He didn't give me anything for the pain and my ear is still hurting.
18. Mr. Mad saw me playing with cards before school classes. I was shuffling the cards and Mr. Mad took my cards. Little Max was playing cards and Mr. Mad didn't take his cards.
19. I didn't have a shirt on so the teacher wouldn't let me in class. My shirts were in the wash. (Teacher: Dumfry washes his shirts every morning knowing that he won't be allowed in class without a shirt. It's his excuse not to attend class.)
20. I need someone to talk to me. I get depressed because I don't have anyone to talk to me.
21. Mr. Mad said that I tried to abscond and told everybody in the living room that he was going to lock me up. He took me to room 8 and locked the door. I was hitting on the door trying to explain that I go off in the room.

The Manipulative Types



The Actualizers

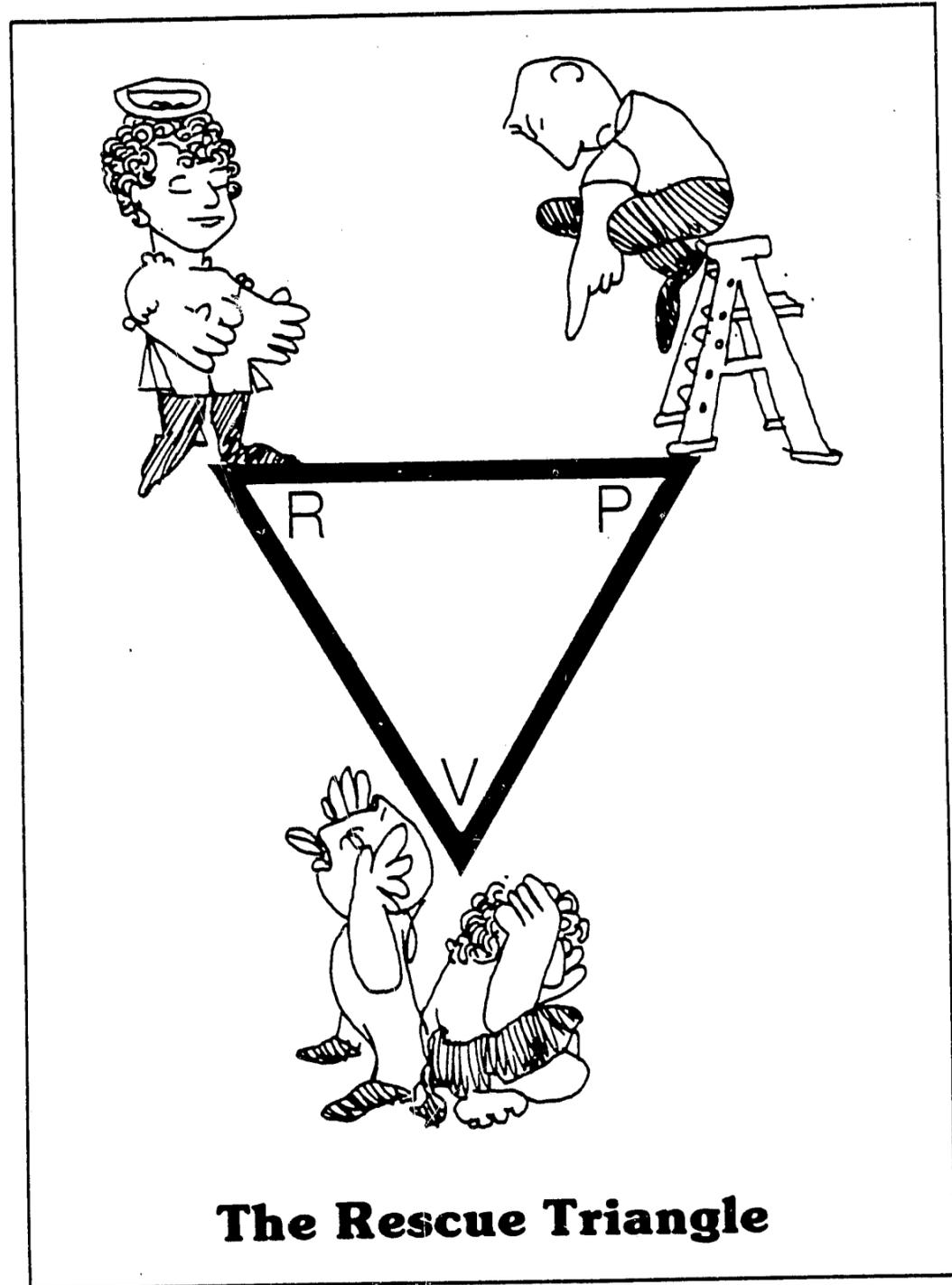


Manipulators → Actualizers

- | | |
|-----------------------|---------------------|
| 1. Deception | 1. Honesty |
| 2. Unawareness | 2. Awareness |
| 3. Control | 3. Freedom |
| 4. Cynicism | 4. Trust |

Four Manipulative Systems

- Top-Dog Manipulator**
- Under-Dog Manipulator**
- Competitive Manipulator**
- Indifferent Manipulator**

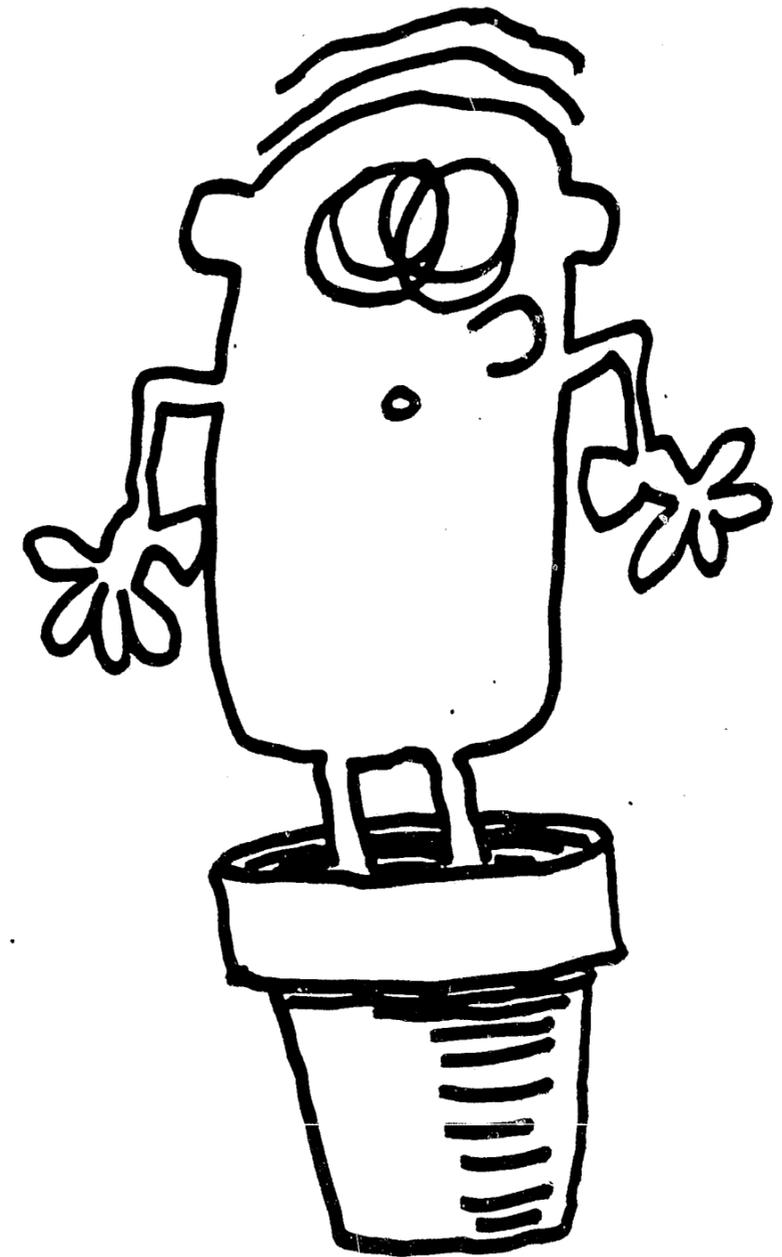


Rescue Rules

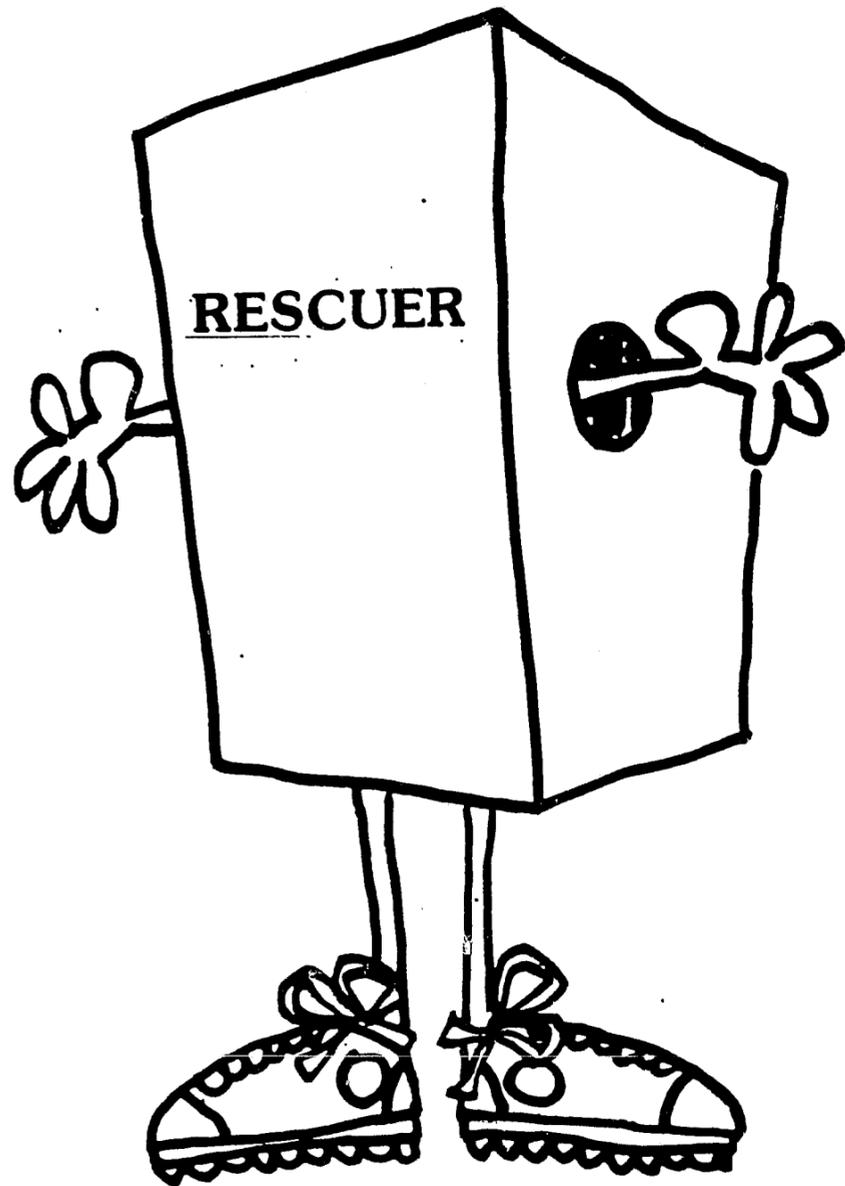
- 1. Don't ever believe that a person is helpless (unless he/she is unconscious).**
- 2. Help people who are feeling helpless to find ways in which they can apply the power they do have.**
- 3. Don't do more than 50% of the helping.**
- 4. Don't do anything you don't really want to do.**



Persecutor



Victim



Let me help you

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>I would like six volunteers to come forward. Five of you will go to another room. The sixth will stay here with the group.</p> <p>All of you are to act as observers for this communication experiment. You should take notes on what you observe. Note any additions, deletions or distortions so that you can share your observations with the group when we have finished.</p> <p>I will now read the accident report to you (volunteer #1). You may not take notes on what you hear.</p> <p>Accident Report: "I cannot wait to report this accident to the police. I must get to the hospital as soon as possible."</p> <p>"The delivery truck, heading south, was turning right at the intersection when the sports car, heading north, attempted to turn left. When they saw that they were turning into the same lane, they both honked their horns but continued to turn without slowing down. In fact, the sports car seemed to be accelerating just before the crash."</p> <p>Now I want you to repeat to the next person what you heard from me. Tell the message in your own way.</p> <p>You (6th volunteer) are to assume you are a policeman; listening to what volunteer #5 tells you.</p>	<p>Explain the purpose and logistics of Rumor Clinic.</p> <p>Read report</p> <p>Call in Volunteer #2, then #3, 4 and 5. Return and repeat the process.</p> <p>The 6th Volunteer is to assume the role of a policeman.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Now that you have listened, I want you to write the message on newsprint so the group can read it.</p> <p>This was the original message. I would like you to compare it with the policeman's report.</p> <p>I would like to know what you thought of the experience. What additions, deletions, distortions did you notice? Is this typical of human communication? What can we deduce from this exercise about verbal human communication?</p> <p>Listening is one of the most neglected of the communicative skills. Traditionally, the listener has not used this skill well. We have neglected to assume our responsibility in the communicative process. Many poor listeners have tried to place the entire burden of the "speaker-listener" process on the speaker.</p> <p>The speaker does initiate the communication process, and has a certain responsibility for controlling it. Yet the speaker should not be held accountable for the failure of another to listen. Successful communication depends upon cooperation between both the speaker and the listener.</p> <p>How many opportunities to listen do we have in one day of our lives? How well do we use these opportunities? An adult spends considerably more time listening each day than in any one of the other</p>	<p>Prepare message on newsprint ahead of time.</p> <p>Facilitator leads a discussion with entire group on implications of the Rumor Clinic.</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>communicative skills of speaking, reading or writing. A study of white collar workers conducted by a university research group asked workers to keep track of what they did during their waking hours at 15 minute intervals over 2 months. Conclusion!</p> <p>Seventy percent of the worker's time was spent in verbal communication:</p> <ul style="list-style-type: none"> 9% Writing 16% Reading 30% Talking 45% Listening <p>If this is true of the average white collar worker, at least the same percentage of time must be spent by those of us who fulfill an ombudsman/advocacy/guidance coordinator role in state and local department of corrections.</p> <p>Another study at Columbia University showed that people can hear effectively three times as fast as they can talk.</p> <p>What can we do to develop and improve our listening skills? Well, first of all we must remember that hearing is not listening. We hear, often without listening, whenever sound waves strike our eardrums. We cannot always honestly say that we have listened. Frequently we do not remember what we hear, because we did not listen. How many times have we been embarrassed by not knowing the name of a new acquaintance because of failure to listen when they were introduced.</p>	<p>Show transparency "Worker's Time"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>People frequently complain that they cannot retain as much of what they hear as they should. It could be that their problem is caused by a failure to concentrate. What can a person do to focus attention on a speaker and improve concentration? The answer lies in forming good listening habits.</p> <p>Good listening habits can be acquired by practicing 8 skills:</p> <ol style="list-style-type: none"> 1. Find an area of interest. Bad listeners discount the speaker. Once this decision is made, it serves to rationalize any and all inattention. Good listeners try to arouse interest - they ask themselves; what is this person saying that I can use? Such questions lead us to screen what we are hearing in a continual effort to sort out worthwhile elements. G. K. Chesterton said "There is no such thing as an uninteresting subject; there are only uninterested people." 2. Judge Content, Not Delivery. Don't alibi inattention by thinking to yourself What an Awful Voice! or Look at His/Her Roots! A good listener may notice distracting characteristics of mannerisms but then thinks "I don't care what this person looks like or sounds like I want to find out what he/she knows." Can we blame the speaker if we are poorly equipped 	<p>Show transparency "Find Area of Interest"</p> <p>Show transparency "Judge Content"</p>

CONTINUED

4 OF 5

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>6. Resist Distractions. Good listeners tend to adjust quickly to any kind of unusual situation. Poor listeners tend to tolerate bad conditions and at times even create distractions themselves.</p> <p>We live in a noisy age. We are distracted not only by what we hear, but by what we see. Poor listeners tend to be readily influenced by distractions.</p> <p>A good listener instinctively fights distraction. Sometimes the fight is easily won - by closing a door, shutting off the radio, moving closer to the person talking, or asking them to speak louder. If the distractions cannot be eliminated that easily, then it becomes a matter of concentration.</p> <p>7. Keep Your Mind Open. Human beings have certain psychological deaf spots which impair an ability to perceive and understand. These deaf spots are the dwelling place of our most cherished ideas, connections and complexes. Often, when someone invades one of these areas, with a word or phrase, we turn our mind in a defensive manner because someone has invaded our area of sensitivity. It is hard to believe in moments of cold detachment that just a word or phrase can cause such an emotional eruption. Yes, with poor listeners it is frequently the case; and even with very good listeners it is occasionally the case. When such emotional deafness occurs, communication drops rapidly to zero.</p>	<p>Show transparency "Resist Distractions"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Among the words known to serve as red flags to some listeners are: mother-in-law, capital punishment, landlord, redneck, determinate sentencing, inmate, guard, income tax, communist, juvenile delinquents, juvenile rights.</p> <p>Effective listeners try to identify and to rationalize the words or phrases most upsetting. Often the emotional impact of such words can be decreased through a free and open discussion of them.</p> <p>8. Capitalize on Thought Speed. Most persons talk at a speed of about 125 words a minute, most of us could think easily at about four times that rate. It is difficult - almost impossible - to try to slow down our thinking speed. Thus we normally have about 400 words of thinking time to spare during every minute a person talks to us.</p> <p>What do we do with our excess thinking time while someone is speaking? If we are poor listeners, we soon become impatient with the slow progress the speaker seems to be making. So our thoughts turn to something else for a moment, then dart back to the speaker. These brief side excursions of thought continue until our mind stays too long on some interesting but irrelevant subject. Then, when our thoughts return to the person talking, we find they are far ahead of us. Now it's harder to follow and increasingly easy to take off on side excursions. Finally we give up; the person is still talking, but our mind is in another world.</p>	<p>Show transparency "Thought Speed"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>Now that we have discussed the skills necessary to be a good listener I would like to discuss another skill we must have in addition to listening: Empathy. To empathize means to "get into the other's shoes," "to feel what the other feels".</p> <p>Do you think this is an easy task?</p> <p>Empathy means not only listening to another's words, although that is important, but listening for tone, pauses inbetween words, the kind of words used, etc. and also observing the speaker's behavior. Gestures can betray tension, fear, joy, peace, etc.</p> <p>Let's try an experiment dealing with Empathy. We will form a semi-circle and place 2 chairs in the center, one for the speaker and one for the listener. I would like 2 volunteers to sit on the 2 chairs. The person sitting in the speaker's chair (which should be facing the semi-circle) tells of a <u>real</u> situation or problem that is really occurring right now. It can be a simple problem; for example, "I really have so much work to do. I don't have the time to be at this workshop." The important point is that the speaker should choose a real feeling to tell the group - not a simulated one. After the speaker finishes telling the problem, the group waits 10 seconds and then responds with three words: "You feel _____." (Fill in a word to express what the speaker is feeling.) This exercise is designed to help the group empathize by trying to capture the exact emotion the speaker is experiencing. As each person in the</p>	<p>Get feedback from participants</p> <p>Put chairs into a semi-circle. Have 2 chairs facing each other in the center of the circle. Ask for volunteers to sit in the chairs.</p> <p>30 minutes</p> <p>Each person in the semi-circle should respond in turn.</p> <p>Discuss the answers with the entire group to determine why one answer is better than the other.</p>

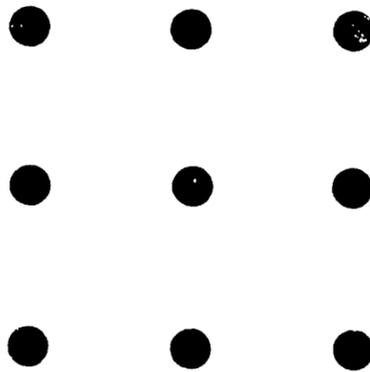
INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>semi-circle states their one word emotion, they should receive immediate feedback from the speaker. Only the speaker knows exactly what he/she is feeling.</p> <p>Feedback is an inherent part of listening and interviewing. So it is crucial that we understand the <u>most appropriate</u> and <u>effective</u> ways of giving feedback.</p> <p>Feedback means any overt response - verbal or non-verbal - giving specific information to a person about how his/her behavior in a particular situation affected someone or something.</p> <p>Feedback is a learned skill; not an instinct. Most of the human exchanges we have are <u>not</u> feedback. That's because we interpret information rather than report it objectively.</p> <p>For example: WRONG: "You're always late. There's something wrong with you."</p> <p>RIGHT: "You began the session two minutes late."</p> <p>Generally, we share our opinions, facts or feelings in the course of a single conversation; we rarely give just information.</p>	<p>Show transparency "Feedback"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>assumptions are clarified and checked, your feedback may be wide of the mark, particularly if you reach a conclusion. For example, <u>A</u> says to <u>B</u>:</p> <p>WRONG: "You did not give instructions pertaining to subdividing the group. You need practice in giving instructions." (The fact was that the teams were formed before <u>A</u> arrived.)</p> <p><u>A</u> could have checked out his assumptions that groups need instruction for subgrouping before drawing an inferential conclusion. His assumption was that <u>B</u> had neglected an important step and therefore <u>B</u>'s training skills were inadequate. <u>A</u> could have said to <u>B</u>:</p> <p>RIGHT: "I noticed you didn't tell the group how to subdivide for the task. I think it's an important step and wonder if you think it wasn't necessary."</p> <p>There are already enough ill-founded assumptions and inferences in the world. We need not add to this confusion.</p> <p>3. Confronting</p> <p>The confronting statement is something to avoid in giving feedback. It assigns responsibility for the impact of someone's behavior to the person performing the action.</p>	<p>Show transparency "Leveling"</p>
<p>The confronting statement is something to avoid in giving feedback. It assigns responsibility for the impact of someone's behavior to the person performing the action.</p>	<p>Show transparency "Confronting"</p>

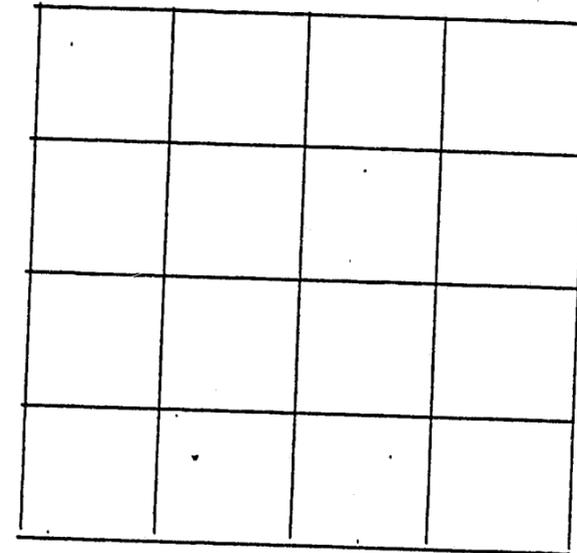
INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>EXAMPLE: "You ignored Janice and she feels left out." (You are responsible for my assumptions about Janice's feelings.)</p> <p>Although one may make an observation about someone's behavior and its impact on another person, there is <u>no</u> right method of confronting when giving feedback.</p> <p>The object of feedback, then, is the transmission of reliable information so that persons receiving it may establish a data base from which to change their behavior, <u>if they elect to do so.</u></p> <p>Three useful questions to ask yourself before giving any feedback are:</p> <ol style="list-style-type: none"> 1) Can the behavior I am reporting be changed or modified? (If the answer is "no" then don't go on.) 2) Is the data I am about to report both accurate and objective? 3) How can I discover if the data received is the same as the data that I reported? <p>Human interactions are so complex, they usually contain a mixture of observations, assumptions, feelings and conclusions. Until these components are singled out, made clear and given objectively, there is no feedback, only an exchange.</p>	<p>Show transparency "Questions About Feedback"</p>

INSTRUCTIONAL CONTENT	NOTES TO TRAINER
<p>I will now pass out a short self-quiz on feedback. Please take it yourself. We'll check it together.</p> <p>APPLICATION - To reinforce these concepts, I would now like you to form triads. I will give each triad a series of resident complaints. Please take turns in the triad: one person be the complainant, one the investigator and one, the observer. Then switch roles for the next complaint. The observer should thoughtfully give feedback to the 2 role players, commenting on the use of feedback, assuming, leveling and confronting. Please go through each complaint.</p> <p>SUMMARY - Let's review what we accomplished today. Our objectives were that you would be able to:</p> <ol style="list-style-type: none"> 1. Name The 2 Elements in Communication 2. List 4 of The 8 Listening Skills 3. Define Empathy 4. Identify 4 Types of Appropriate Feedback <p>EVALUATION</p> <ol style="list-style-type: none"> 1 - 3 Accomplished Throughout the Lesson. 4 Distribute and Collect Completed Handout on Feedback. 	<p>Handout: Short Quiz on Feedback.</p> <p>Handout: Resident Complaints.</p> <p>Talk about "what happened" during the Triad Session.</p> <p>Ask for Oral Feedback for Objectives 1 - 3.</p> <p>Distribute Handout for Objective 4.</p>

9 DOTS



Directions: Connect all nine dots using only four straight lines. Do not retrace any lines and do not take your pencil off the paper.



HOW MANY SQUARES DO YOU SEE?

28. RUMOR CLINIC: A COMMUNICATIONS EXPERIMENT

Goal

To illustrate distortions which may occur in transmission of information from an original source through several individuals to a final destination.

Group Size

Unlimited. There should be a minimum of eight participants.

Time Required

Thirty minutes.

Materials

- I. Copies of the Rumor-Clinic Observation Form for process observers.
- II. Newsprint and a felt-tipped marker.

Physical Setting

- I. A meeting room. All observers are seated facing an area where the rumor clinic is staged.
- II. A separate room in which volunteers can be isolated.

Process

- I. The facilitator asks for six volunteers. (The rest of the group remains to act as process observers.)
- II. Five of the six volunteers are asked to go into the isolation room. One remains in the meeting room with the facilitator and the observers.
- III. The facilitator distributes Rumor-Clinic Observation Forms to the observers, who are to take notes on the proceedings.
- IV. He then reads the "accident report" on the Observation Form to the volunteer, who may not take notes on what he hears.
- V. The facilitator asks a volunteer in the isolation room to return.
- VI. The first volunteer repeats to the second what he heard from the facilitator. It is important that each volunteer transmit the message in his own way, without help.
- VII. A third volunteer returns, and the second repeats what he heard from the first.

- VIII. The process is repeated until all volunteers but the sixth have had the message transmitted to them.
- IX. Then the sixth volunteer returns to the room. He is told that he is to assume the role of policeman. The fifth participant repeats the message to the policeman. Afterwards, the policeman writes the message on newsprint so the group can read it.
- X. The facilitator then posts the original message (previously prepared on newsprint) so it can be compared with the policeman's version.
- XI. Observers are asked to report their notes. Volunteers then discuss their experience. The facilitator leads a discussion with the entire group on implications of the Rumor Clinic.

Variations

- I. The succession of messages can be recorded (either audio or video) for replay during the processing.
- II. The message can be rewritten to be more pertinent to the particular group.
- III. A brief silent film, "Fidelity of Report," can be used as the message. (See '72 Annual, page 246, for a reference.)
- IV. The entire group can be used as conveyors of messages. (No observers are used.) Groups of six are formed, and five persons from each group are sent to the isolation room. The facilitator reads the message to the remaining participants. One member from each group is brought back into the meeting room at the same time to receive the message. The final members simultaneously write the message for all to see.

RUMOR-CLINIC OBSERVATION FORM

Accident Report: "I cannot wait to report this accident to the police. I must get to the hospital as soon as possible."

3.

"The delivery truck, heading south, was turning right at the intersection when the sports car, heading north, attempted to turn left. When they saw that they were turning into the same lane, they both honked their horns but continued to turn without slowing down. In fact, the sports car seemed to be accelerating just before the crash."

Volunteer	Additions	Deletions	Distortions
1			
2			
3			
4			
5			
6 (Policeman)			

RUMOR-CLINIC OBSERVATION FORM

Accident Report: "I cannot wait to report this accident to the police. I must get to the hospital as soon as possible."

"The delivery truck, heading south, was turning right at the intersection when the sports car, heading north, attempted to turn left. When they saw that they were turning into the same lane, they both honked their horns but continued to turn without slowing down. In fact, the sports car seemed to be accelerating just before the crash."

VOLUNTEER	ADDITIONS	DELETIONS	DISTORTIONS
1			
2			
3			
4			
5			
6 (Policeman)			

SHORT QUIZ ON FEEDBACK

Directions: Using the code in the box below, place the appropriate letter (or letters) in front of each item.

R (Reporting)	=	Giving the receiver factual data.
A (Assuming)	=	Telling what the facts mean to you.
L (Leveling)	=	Using "I" to tell the receiver how your assumptions made you feel.
C (Confronting)	=	Using "you" to communicate your judgement to the receiver.
G (Gross)	=	Giving the receiver unmanageable information.

Example:

R,A You spoke rapidly; I'm guessing you had a lot to say in just a short time.

- _____ 1. Your lips moved rapidly - your words came out very fast.
- _____ 2. You've got to speak more slowly so people will understand you.
- _____ 3. I noticed you were late for each of the three sessions yesterday.
- _____ 4. I found myself getting annoyed because you've been late to three sessions in a row, now.
- _____ 5. Your accent is really seductive, you know.
- _____ 6. I saw people yawning and looking out the window; I guess they were bored.
- _____ 7. Your voice was loud and clear - I heard everything you said.
- _____ 8. I saw you smiling when I messed up my presentation.
- _____ 9. When you told that last joke, no one laughed.
- _____ 10. You really cut her down when you ignored her question.
- _____ 11. There's something about you that just turns me off.
- _____ 12. Those freaky clothes you wear turn me off.

FOR TRIADS

RESIDENT COMPLAINTS

On December 10, 1972, around 5:00 p.m., Mr. Mad called me into his office and asked me if I knew anything about the ammonia thrown in the office. He started choking Charlie Brown and then sent me, Charlie Brown and Warren Oates to our rooms. Mr. Mad came into my room saying he was going to put some ammonia on my clothes because someone had put some ammonia in his coat pocket. He was mad and just took the top off of the ammonia and threw it in my face. He took me to the bathroom and tried to get the ammonia out of my eyes. I couldn't see and the ammonia burned my eyes.

On Saturday, January 3, 1973, Mr. Mad smacked me and handcuffed me to the bed. Charlie Brown told Mr. Mad that I threatened him. I tried to apologize to Mr. Mad for cursing but nobody would listen. Nobody saw what he did to me and I'd like to call my lawyer.

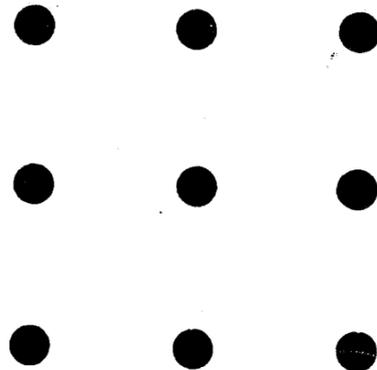
On July 3, 1973, around 6:30 a.m., I told Mr. Mad that I couldn't find a clean shirt so I laid down on the couch and fell asleep. Mr. Mad came up behind me and slapped me on the back. He hits real hard and it hurt. I jumped and flicked. I picked up a bucket and threw it at him. When we went outside, he started teasing me. I got angry, picked up a glass bottle and threw it at him. I think Max Hurt saw Mr. Mad slap me.

Mr. Peacock, Group Leader, has been threatening me. He has been threatening to send me to maximum security and to change my level of custody for no reason. Daily, he threatens to stop my shelter house placement. He presses me and he isn't the counselor who works our side.

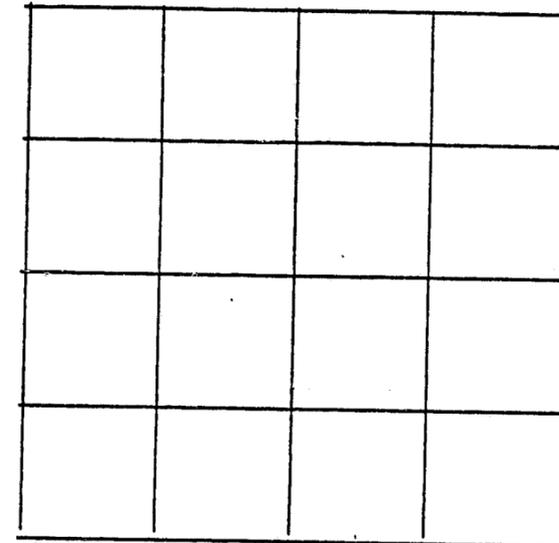
For Triads
Resident Complaints
page 2.

We were in mess hall, and Mr. Peacock, Group Leader, told me to straighten up the trays. I straightened up my tray and then said, "What you want me to do next?" Mr. Peacock came up in my face and turned me around and got me in a yoke hold around my neck, and was trying to put me to sleep. I tried to break his hold on my neck and he then picked me up and tried to throw me in the trash can and he also threw me on the floor. They took me to the hospital to see about my neck but the doctor was not there and my neck is still hurting. If I had tried to defend myself, the other staff would have jumped on me.

9 DOTS



Directions: Connect all nine dots using only four straight lines. Do not retrace any lines and do not take your pencil off the paper.



HOW MANY SQUARES DO YOU SEE?

Communication Problem

“I know you believe that you understand what you think I said, but I am not sure you realize that what you heard is not what I meant.”

Worker's Time

9% Writing

16% Reading

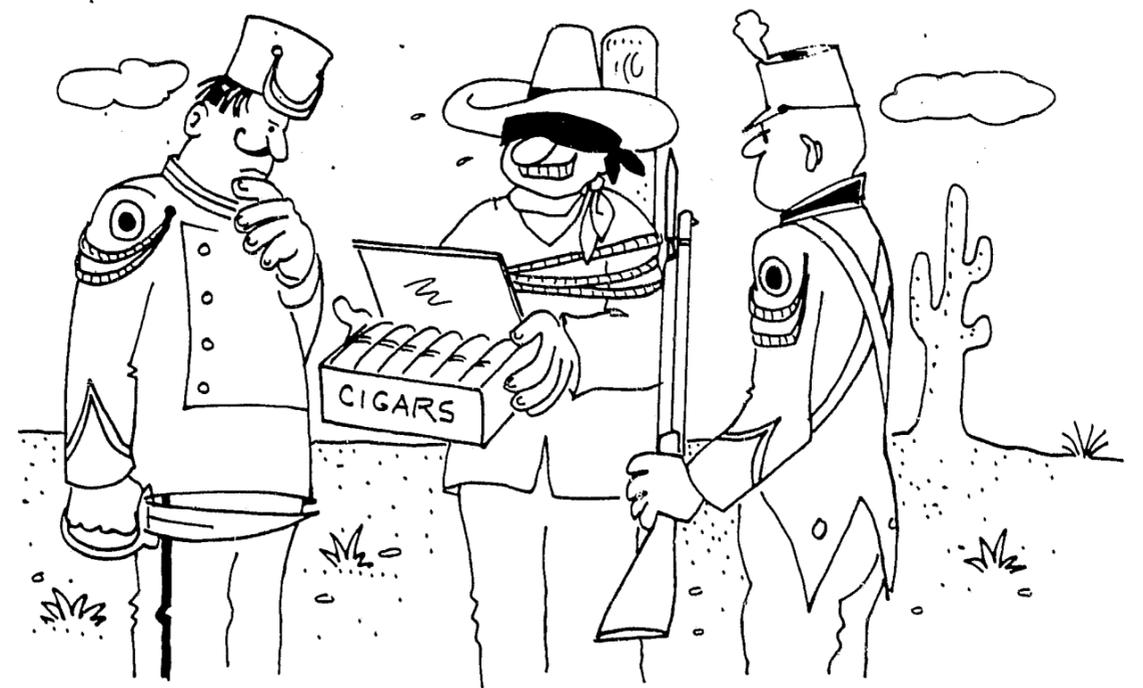
30% Talking

45% Listening

WORK AT LISTENING



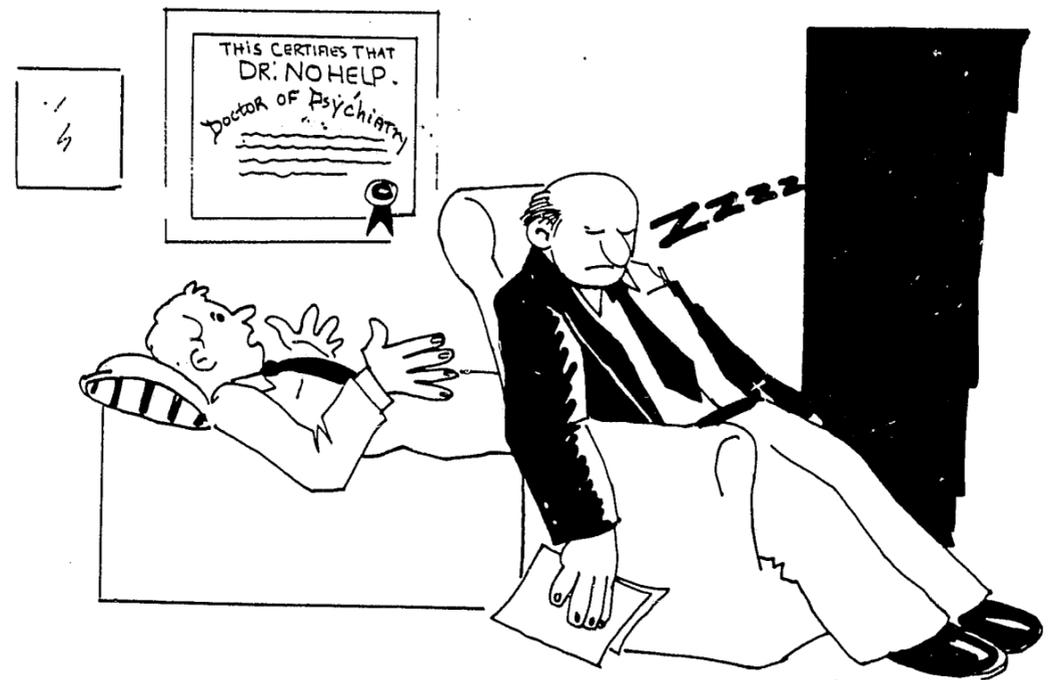
HOLD YOUR FIRE



KEEP YOUR MIND OPEN



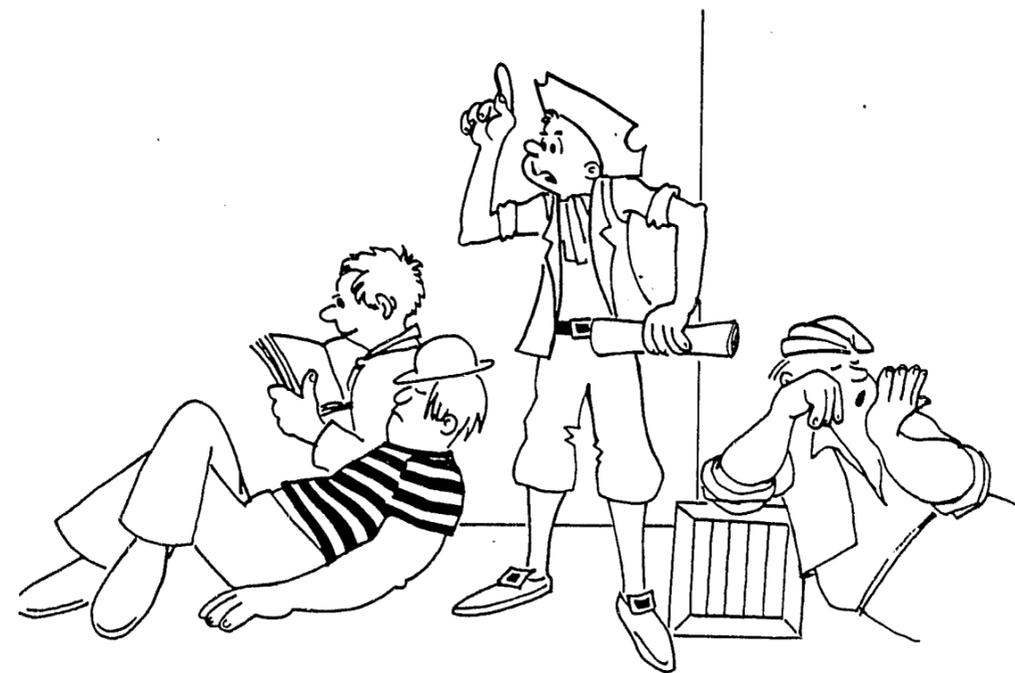
LISTENING FOR IDEAS



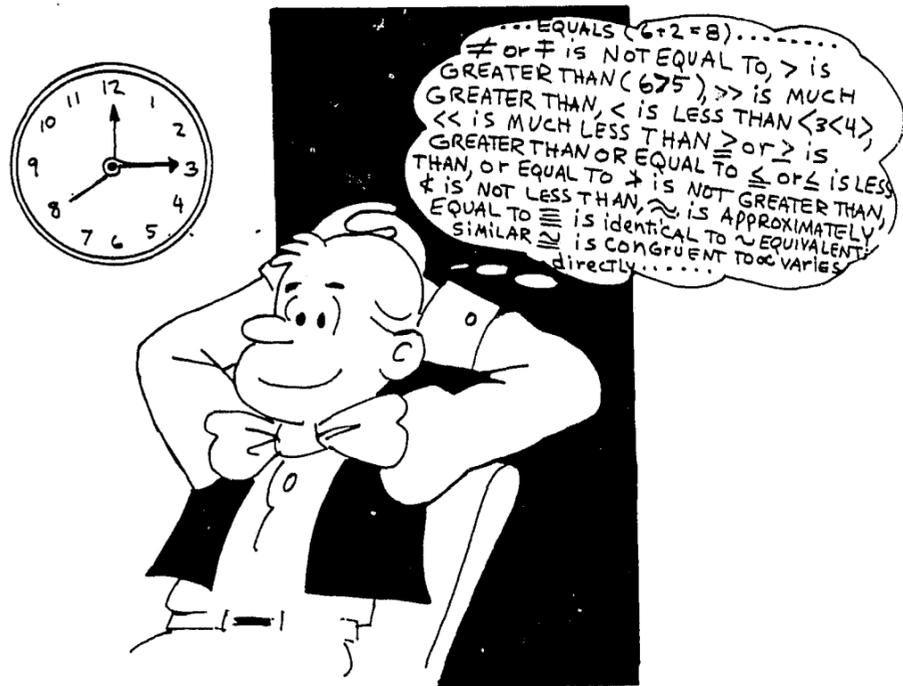
RESIST DISTRACTIONS



JUDGE CONTENT NOT DELIVERY



CAPITALIZE ON THOUGHT SPEED



FIND AREA OF INTEREST



STEPS IN GIVING FEEDBACK

REPORTING

MAKING ASSUMPTIONS

LEVELING

CONFRONTING

FEEDBACK

WRONG: "You're always late.
There's something
wrong with you."

RIGHT: "You began the session
two minutes late."

REPORTING

WRONG: "You really need to work on your ability to give instructions."

RIGHT: "When you gave instructions for the exercise, you mentioned what participants were supposed to do, but did not mention either how they were to sub-divide or which rooms they were to use."

MAKING ASSUMPTIONS

WRONG: "You did not give instructions pertinent to sub-dividing the group. You need practice in giving instructions."
(The fact was that the teams were formed before A arrived.)

RIGHT: "I noticed you didn't tell the group how to sub-divide for the task. I think it's an important step and wonder if you think it wasn't necessary."

LEVELING

WRONG: "Your style of presenting material turns me on."
(What happens to me is a result of your behavior.)

RIGHT: "I've been listening to you and I'm turned on. I feel elated and excited.
*(I want you to know my mood. This is information about **me**, not you.)*

CONFRONTING

EXAMPLE: "You ignored Janice and she feels left out."

(You are responsible for my assumptions about Janice's feelings.)

QUESTIONS ABOUT FEEDBACK

1. Can the behavior I am reporting be changed or modified?

(If the answer is "no" then don't go on.)

2. Is the data I am about to report both accurate and objective?

3. How can I discover if the data received is the same as the data that I reported?

RICHARD LUCAS/JOHN OLIN

MEMORANDUM

TO: Jennifer Day
Acting Commissioner, CSS
Department of Human Services
CSS, Project ATIS

FROM: William Moore, J.D.
Acting Project Director
Project ATIS

SUBJECT: Investigative Report

This transmits the results of the Project ATIS Investigation into allegations that Mr. John Olin, Group Leader, Maple Vale Youth Center exercised poor judgment and unnecessary force by pushing Richard Lucas, resident Maple Vale Youth Center on August 31, 1981. Richard received multiple bruises and lacerations of the neck and jaw.

Attachments

WM:ers

RICHARD LUCAS/JOHN OLIN

INTRODUCTION

On September 1, 1981, Project ATIS received a written complaint from Richard Lucas, resident of Unit 8a, Maple Vale Youth Center. Richard alleged that John Olin, Group Leader, Maple Vale Youth Center, struck him in his face on August 31, 1981. An investigation was conducted.

FINDINGS

Richard Lucas is an 18-year-old resident of Maple Vale Youth Center. He is 5'8" tall and weighs 154 pounds according to Maple Vale Clinic records. Richard is committed to the Institutional Care Services Division.

Richard states (Exhibit A) that on August 31, 1981, at approximately 2:00 p.m., Mr. Alex Kerns, Group Leader (Unit 8a), Ralph Glasgow (resident of Unit 8A), Steve Brice (resident of Unit 8A), and he had come to Unit 10B to pick up supplies from the Supply Room which Mr. Olin operates. Richard states that in the process of securing the supplies, he asked Mr. Olin for some personal articles for himself. Richard also states that Mr. Olin very vehemently denied his request and threatened him. Richard states that Mr. Olin's denial of his request resulted in a hostile exchange of words between himself and Mr. Olin. Richard states that after this exchange of words, Mr. Olin became enraged and struck him in his jaw with his fist. Richard also alleges that Mr. Olin choked him and stuck his fingers in his neck causing bruises and lacerations to his neck, and swelling his jaw.

Ralph Glasgow, resident witness, states (Exhibit B) that he was in the supply room at the time of the incident and corroborated Richard's statement that Mr. Olin hit Richard in the face. Ralph states that Mr. Olin and Richard exchanged heated words and Mr. Olin hit Richard and choked him. Ralph further stated that Mr. Danca implored of Mr. Olin not to strike Richard again for fear of injuring him.

RICHARD LUCAS/JOHN OLIN

ATIS - page 2.

Steve Brice is a resident of Unit 8A. Steve was also present in the supply room on August 31, 1981, at the time of the incident. Steve corroborated the statements of Richard Lucas and Ralph Glasgow by stating that Richard requested personal items from Mr. Olin, and Mr. Olin became enraged after an exchange of words. Steve further corroborates Richard by stating that Mr. Olin struck Richard in the face, and choked him. Steve also stated that Mr. Danca intervened and took Richard out of the Unit.

The medical record indicates that Richard was seen by Dr. Daniel on September 1, 1981, in the Maple Vale Clinic. The medical record indicates that Richard was hit on the left mandible (jaw) at an angle. Richard was also treated for abrasions on the left side of the neck. Richard was sent to St. Louis General Emergency Room to determine if his jaw was fractured.

In a statement written by Mr. John Olin (Group Leader) on August 31, 1981, he wrote "I pushed him out to close the door of the supply room and he pushed me back and there was a small altercation." When Mr. Olin was asked to explain what he meant by "small altercation," Mr. Olin said, "small altercation means me and Richard and the corner in there." (He was pointing towards the supply room of Unit 10B.) Mr. Olin was also asked was it necessary to push Richard out of the door, and his (Olin's) reply was, "Yes, it was necessary to push Richard out of the door." Mr. Olin's statement is attached (Exhibit D).

Mr. Roger Danca (Group Leader) submitted an unusual incident report (Exhibit E). Mr. Danca states that he was not an eyewitness to what took place in the supply room, but did leave Richard and Mr. Olin engaged in an argument. Mr. Danca states that he heard boisterous conversation coming from the supply room and had to intervene.

RICHARD LUCAS/JOHN OLIN

ATIS - page 3.

CONCLUSION

Because of Mr. John Olin's statement of August 31, 1981, the extent to which residents Ralph Glasgow and Steve Brice corroborated the allegations of Richard Lucas, coupled with the medical record, there is probable cause to believe that Mr. John Olin exercised poor judgment and unnecessary force, in pushing Richard, which violated the right of Richard Lucas to live in an environment free from threats of physical harm.

It is recommended that this report be forwarded to the Chief, Institutional Care Services Division, for appropriate action.

RICHARD LUCAS/JOHN OLIN

ATIS
EXHIBIT "A"

Following is a statement by Richard Lucas, resident of Unit 8A, Maple Vale Youth Center, DOB: 3/21/63. It was given to Theresa Green, an investigator for Project ATIS, in Social Service on September 1, 1981, at about 10:30 a.m.:

"My counselor, Mr. Danca, took us to the supply room to get some supplies for our unit. I asked Mr. Olin to give me some underwear and he told me to get out of the supply room before he did something to me. I told him he wasn't going to do nothing to me. Mr. Olin then stole (hit) me in my face and choked me, leaving scratch marks on my neck and my jaw is swollen too. Steve Brice and Ralph Glasgow were my witnesses. They saw Mr. Olin hit me. I didn't attempt to hurt Mr. Olin or anything. My counselor, Mr. Danca, was there, and he stopped Mr. Olin from hitting me again. Mr. Danca said I shouldn't have talked back to Mr. Olin."

NOTE: Project ATIS investigator, observed bruises on resident's neck and resident's jaw also appeared to be swollen. Investigator took resident (Richard Lucas) to the nurse (Ms. Barbara Parker, who later that afternoon had resident examined by doctor. Project ATIS was later informed that Richard would be sent to St. Louis General for a possible fractured jaw).

I have read this one (1) page statement and have had it read to me. I have also had the chance to make any changes, deletions, or additions that I wanted. To the best of my knowledge, it is accurate, correct, and complete.

Richard Lucas

RL:TG:ers

RICHARD LUCAS/JOHN OLIN

ATIS
EXHIBIT "B"

Following is a statement by Ralph Glasgow, resident of Unit 8A, Maple Vale Youth Center, DOB: 5/24/66. It was given to Theresa Green, an investigator for Project ATIS, in Social Service, on September 2, 1981, at about 11:20 a.m.:

"Mr. Olin stole (hit) Richard Lucas right in the jaw, then he choked him. Mr. Danca had taken me, Steve Brice, and Richard Lucas to the supply room to pick up our supplies. Richard asked Mr. Olin for some shirts and underwear and Olin told him he wasn't giving him nothing. Richard told Mr. Olin you don't pay for a damn thing and he (Mr. Olin) came out from behind the counter and hit Richard. Mr. Olin hit Richard and then choked him. Mr. Danca stopped Mr. Olin from hitting Richard again. Mr. Danca said, "Hold on Olin -- don't hurt him." Mr. Danca wasn't in the room when Olin hit Richard - he was kind of outside of the door."

I have read this one (1) page statement and have had it read to me. I have also had the chance to make any changes, deletions, or additions that I wanted. To the best of my knowledge, it is accurate, correct, and complete.

Ralph Glasgow

RG:TG:ers

RICHARD LUCAS/JOHN OLIN

ATIS
EXHIBIT "C"

Following is a statement by Steve Brice, resident of Unit 8A, Maple Vale Youth Center, DOB: 9/11/64. It was given to Theresa Green, an investigator for Project ATIS, in Conference Room, on September 1, 1981, at about 12:15 p.m.:

"Mr. Danca, Ralph Glasgow, Richard Lucas and me were in the supply room of Unit 10A. Richard Lucas asked Mr. Olin for a pair of underwear. Mr. Olin said "no". We gathered the supplies and was leaving and Richard asked Mr. Olin again for a pair of underwear and Mr. Olin got mad and came around the counter and stole (hit) Richard in the jaw with his fist. Mr. Olin then started choking Richard. Mr. Danca then stopped Mr. Olin and said, "Come on Olin don't hurt the boy". Richard started cursing Mr. Olin then and Mr. Danca took us back to the cottage."

I have read this one (1) page statement and have had it read to me. I have also had the chance to make any changes, deletions, or additions that I wanted. To the best of my knowledge, it is accurate, correct, and complete.

Steve Brice...

SB:TG:ers

RICHARD LUCAS/JOHN OLIN

ATIS
EXHIBIT "D"

Richard Lucas came to the supply room with Mr. Danca to pick-up supplies for 8A. He ask me for some clothes. I told him that I was working getting cleaning supplies out not clothes. He began to use profane and vulgar language. Mr. Danca and two other students left with the supplies. I ask Lucas to leave and he refuse to do so. I pushed him out to close the door of the supply room and he pushed me back. And there was a small altercation. Mr. Danca came back and pull Lucas from the supply room and had to use force to do so.

John Olin
Group Leader
8/31/81

RICHARD LUCAS/JOHN OLIN

ATIS
EXHIBIT "E"

Reporting Incident:

Roger Danca

Extension 2405

Group Leader

Maple Vale

Date of Incident: September 2, 1981

Place: Supply Room

Persons Involved: Mr. Olin and students Richard Lucas

Description:

As I, Mr. Danca, was leaving the supply room with two students, S. Brice and R. Glasgow, the third student R. Lucas was left in the supply room arguing with Mr. Olin about some clothing. A few seconds later I heard a boisterous conversation coming from that area. I opened the door and found Mr. Olin trying to remove Richard from the supply room. I, Mr. Danca, restrained Richard and walked him outside.

PAUL QUICK/FRANK CREAMER

MEMORANDUM

TO: Jennifer Day
Commissioner of Social Services
Department of Human Services
Commission on Social Service

FROM: Jody Herbert
Project Director, Project ATIS
Date: May 4, 1981

SUBJECT: Results of Investigation

This transmits the results of the investigation conducted by Project ATIS into the allegation made by Rolling Hill resident Paul Quick that Mr. Frank Creamer, Group Leader, had thrown a chair at him and struck him in the leg.

It is recommended that this report be forwarded to the Chief, Institutional Care Services Division, for appropriate action.

PAUL QUICK/FRANK CREAMER

INTRODUCTION

On March 3, 1981, Project ATIS staff received a verbal complaint from Paul Quick, resident of Hunt Cottage, Rolling Hill School. Paul complained that he had been hit with a chair thrown by Mr. Frank Creamer, Group Leader. An investigation of the allegations was conducted.

FINDINGS

Paul Quick is a 17-year old resident of Rolling Hill School. Paul was recommitted to Institutional Care Services Division on October 31, 1981.

Kennedy Cottage residents arrived at the Central Dining Room at approximately 6:00 p.m. on March 3, 1981. Approximately 10 minutes later, Paul was standing in line conversing with another resident. Paul states (Exhibit A) that he was talking to Lonnie Hicks when he stepped out of line. He says that Mr. Creamer picked up a chair, so he (Paul) jumped back in line. Paul states that Mr. Creamer didn't say anything, he just threw the chair and that the chair hit a table and slid across the floor hitting him on his left leg. He says that Mr. Creamer then said, "I told you all to get in line." Paul also named Kenneth Eisinger, Roger Goodwin and Joseph Johnson as resident witnesses, and that Messr's Harry Lucas and Walter Metcalf were staff who witnessed Mr. Creamer throwing the chair.

Kenneth Eisinger, Roger Goodwin and Joseph Johnson are residents of Kennedy Cottage. Kenneth, Roger and Joseph provide statements (Exhibits B, C, and D, respectively) which corroborate Paul Quick's allegation that Mr. Creamer threw a chair which hit Paul on the leg.

Paul was examined at the Youth Infirmary at 6:55 p.m. on March 3, 1981. The medical report indicates that upon admission, a physical examination of Paul Quick showed that the lateral aspect (mid portion) of the left thigh displayed swelling about two inches in diameter. There was slight tenderness and the impression was a contusion (bruise).

PAUL QUICK/FRANK CREAMER

ATIS - page 2.

Mr. Frank Creamer states (Exhibit E) that he was supervising a total of 33 students, both the A and B Sides of Kennedy Cottage. Mr. Creamer states that upon arrival at the Dining Hall, the students became unruly and that Paul Quick began slap-boxing and playing in line. Mr. Creamer says that he threw a chair in front of the line at the wall to get the students' attention but that no student was hit by the chair. After the chair throwing, the students became orderly.

Neither Mr. Harry Lucas, nor Mr. Walter Metcalf, Group Leaders, submitted Incident Reports as requested by Project ATIS staff through Mr. Simon Sample, Supervisory Institutional Officer on March 3, 1981, at approximately 7:30 p.m.

CONCLUSION

Mr. Creamer admits that he threw a chair at or near a group of residents "to get their attention." The statements of Paul Quick, corroborated by those of Kenneth Eisinger, Roger Goodwin and Joseph Johnson, along with the medical record, clearly indicate that Mr. Creamer's very questionable "attention getter" also resulted in injury to one of the residents committed to his supervision.

It is recommended that this report be forwarded to the Chief, Institutional Care Service Division for appropriate action.

PAUL QUICK/FRANK CREAMER

ATIS
EXHIBIT "E"

Reporting Incident:

Frank Creamer
Counselor
Rolling Hill
Extension 290

Date of Incident: March 3, 1981
Time: 6:10 p.m.

Place: Dining Hall

Persons Involved: Kennedy Cottage Students

Description:

Counselor was supervising students from the A and B side of Kennedy Cottage. A total of 33 students. As counselor began lining students up from the gym to go to the dining hall several students on the A side of the unit began running around chasing each other playing as counselor was lining up the B side. Students from both sides were unruly and it was hard for one man to control both sides. Students from the B side went into the dining hall first and with counselor's directions proceeded to get behind Hunt students in line. The A side of the unit was told to sit down. The B side students were told to move back and leave a space between Hunt and Kennedy students. Students continued unruly behavior talking loud and slap-boxing in line.

Paul Quick had a long white paper hat on his head which counselor told him to remove. Student said he wasn't going to remove hat. Finally a Hunt Cottage student came over and got the hat. Quick began slap-boxing and playing again along with other students in the B side line. Counselor threw a chair in front of the line at the wall to get students attention. It's a fact no student was hit by chair. Students became quiet and orderly and resumed walking properly in dinner line. Counselor went on

PAUL QUICK/FRANK CREAMER

ATIS
EXHIBIT "E" (page 2.)

his lunch break several minutes later. On his return four students were missing, Paul Quick, Roger Goodwin, Kenneth Eisinger and Joseph Johnson. The A side counselor told me students went to control with Mr. Moore.

Counselor was transferred to Franklin Cottage by 8:45 by O.D. Mr. Jones worked Kennedy B the rest of the night. Students had not returned as counselor departed unit.

Students are continuously plotting against counselor saying they want Mr. Creamer to get fired or transferred because of his strick behavior code.

Paul Quick is a ringleader in Kennedy Cottage who gets others to follow him in diversive actions. Roger Goodwin is constantly trying to persuade others to go against counselor and put his name in the yellow box, for anything. Kenneth Eisinger and Roger Goodwin are merely followers.

Frank Creamer, Group Leader

Action:

Mr. Creamer was reassigned to Washington Cottage pending complete investigation and interviews by Mr. Moore with the above four residents. Student Quick was taken to YI, treated and returned. Results of medical finding is unknown to this O.D. No other action at this time. Based on the above and Mr. Creamer's statement I recommend that he, Mr. Creamer, be returned to his assigned unit with specific instructions, directions and training by his direct supervisor as to how to handle explosive situations and problems. Also additional staff is needed in order to provide proper relief for lunch.

Simon Sample, O.D.

PAUL QUICK/FRANK CREAMER

ATIS
EXHIBIT "A"

The Statement of Paul Quick

This is the statement of Paul Quick, resident of Kennedy Cottage, Rolling Hill School, DOB January 8, 1964. It was given to William Moore, an investigator for Project ATIS, in Administration Building Conference Room, on March 3, 1981, at about 6:30 p.m.

I was talking to Lonnie Hicks and I stepped out of line. Mr. Creamer picked up a chair and I jumped back in line. He didn't say anything he just threw the chair. The chair hit the table and slid across the floor and hit me on my left leg. He then said, "I told yall to get in line." Kenneth Eisinger, Roger Goodwin, and Joseph Johnson saw what happened. Messr's. Lucas and Metcalf (staff) saw him throw the chair.

I have read this one page statement and have had it read to me. I have also had the chance to make any changes, deletions, or additions that I wanted. To the best of my knowledge, it is accurate, correct, and complete.

Paul Quick

PAUL QUICK/FRANK CREAMER

ATIS
EXHIBIT "B"

The Statement of Kenneth Eisinger

This is the statement of Kenneth Eisinger, resident Kennedy Cottage, Rolling Hill School, DOB May 2, 1964. It was given to William Moore, an investigator for Project ATIS, in Administration Building Conference Room, on March 3, 1981, at about 6:45 p.m.

We were standing in line and Little Lonnie told one of the boys to get back in line. The next thing I knew Mr. Creamer picked up a chair and threw it. The chair hit Paul Quick on the leg. Mr. Lucas and Mr. Metcalf saw him throw the chair.

I have read this one page statement and have had it read to me. I have also had the chance to make any changes, deletions, or additions that I wanted. To the best of my knowledge, it is accurate, correct, and complete.

Kenneth Eisinger

PAUL QUICK/FRANK CREAMER

ATIS
EXHIBIT "C"

The Statement of Roger Goodwin

This is the statement of Roger Goodwin, resident of Kennedy Cottage, Rolling Hill School, DOB November 4, 1964. It was given to William Moore, an investigator for Project ATIS, in Administration Building Conference Room, on March 3, 1981, at about 7:55 p.m.

We were in line in the dining hall around 6:15 p.m. I told Mr. Creamer that I wasn't feeling good so he told me to sit down. I sat down at a table and Mr. Creamer picked up a chair and threw it and said, "Y'all get in line." The chair went across the table, bounced on the floor, and hit Paul Quick on the leg. Then he told Mr. Oglesby that he was going out to lunch.

I have read this one page statement and have had it read to me. I have also had the chance to make any changes, deletions, or additions that I wanted. To the best of my knowledge, it is accurate, correct, and complete.

Roger Goodwin

PAUL QUICK/FRANK CREAMER

ATIS

EXHIBIT "D"

The Statement of Joseph Johnson

This is the statement of Joseph Johnson, resident of Kennedy Cottage, Rolling Hill School, DOB October 14, 1963. It was given to William Moore, an investigator for Project ATIS, in Administration Building Conference Room, on March 3, 1981, at about 7:05 p.m.

We were standing in line in the dining hall and we were talking but not loud. A couple of people were out of line near the back of the line. I think Mr. Creamer said cut the rap or something like that. He picked a chair up and all of a sudden threw it. The chair hit Paul Quick on the leg. Mr. Creamer started mumbling and he left. He told Mr. Oglesby to hold the line for him. Mr. Oglesby hadn't come in when Mr. Creamer threw the chair.

I have read this one page statement and have had it read to me. I have also had the chance to make any changes, deletions, or additions that I wanted. To the best of my knowledge, it is accurate, correct, and complete.

Joseph Johnson

END