

COMPREHENSIVE INTEGRATED CRISIS
DEFUSION INSTRUCTOR TRAINING
PROGRAM

SECTION TWELVE

CRISIS INTERVENTION

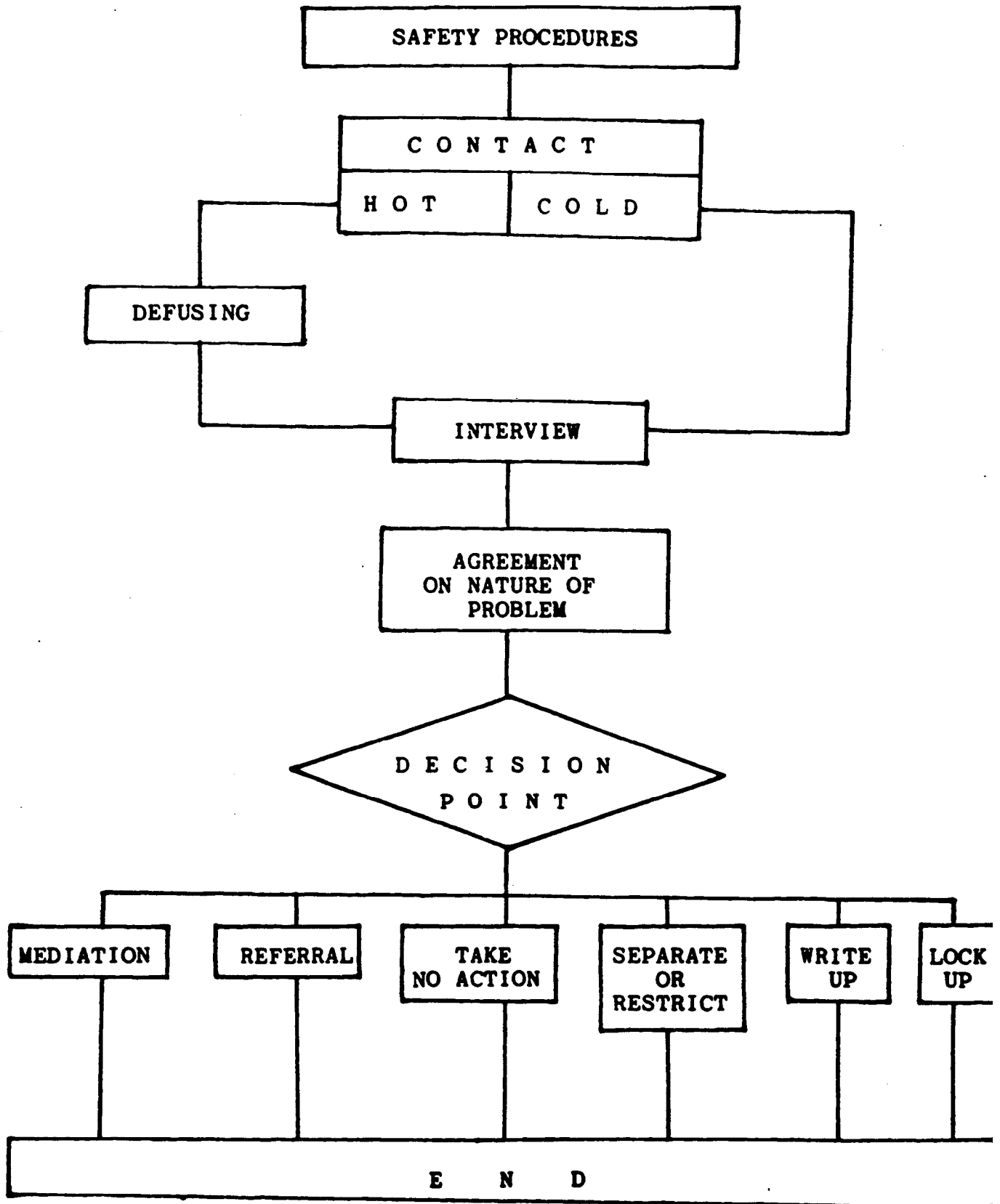
1. Historical Perspective -----	Page 1
2. Purpose of Crisis Intervention Training -----	Page
3. Planning for Crisis Situations -----	Page
4. Safety Procedures -----	Page
5. Defusing Techniques -----	Page
6. Brief Interviewing -----	Page
7. Mediation -----	Page
8. Referral -----	Page
9. Staff/Inmate Confrontation -----	Page

SECTION THIRTEEN

FIREARMS TRAINING

1. Safety Rules and Fundamentals of ----- Good Marksmanship	Page 1
2. Preliminary Revolver Instruction -----	Page
3. Preliminary Rifle Instruction -----	Page
4. Preliminary Shotgun Instruction -----	Page
5. Use of Deadly Force -----	Page
6. Firearms Qualification Courses	

F L O W C H A R T



NIC Grant

• 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz

INSTITUTIONAL CRISIS INTERVENTION - II

CLASS OUTLINE: SAFETY

I. INTRODUCTION TO COURSE

- A. Introductions
- B. What Is Crisis Intervention?
- C. Historical Perspective
 - 1. Police origins of program
 - 2. Correctional modification
 - 3. Institutional modification
 - a. Preliminary classes
 - b. Observations
 - c. Training of trainers
- D. The Purpose of Crisis Intervention Training:
 - 1. Intervention in disputes is frequently a necessary staff function.
 - 2. Disputes present serious safety problems for both staff and inmates.
 - 3. Almost any staff member may be the first person in a position to intervene in a dispute or may even be forced to contend with a dispute.
 - 4. Staff members who are with inmates on a day-to-day basis often see a situation building into a dispute well before a confrontation occurs. Dealing with the situation at this level can reduce the likelihood that the dispute will escalate into a fight, group confrontation or a riot.
- E. Course Goals
 - 1. To learn a highly specific procedure for managing and resolving interpersonal disputes. (It will not work every time.)

NIC Grant

- 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz

2. To review methods aimed at decreasing danger to staff in these crisis situations.
3. To develop a broader range of alternative responses to crisis situations.
4. To develop procedures for crises that are familiar to all staff and cut across job classifications within the institutions.
5. To review specific skills appropriate for handling disputes, conflicts and confrontations.
6. To provide appropriate service to the individuals involved in crisis situations.

F. Course Description: Seven Curriculum Sections

1. Safety
2. Defusing
3. Brief Interviewing
4. Mediation
5. Referral
6. Staff-Inmate Confrontation
7. Course Consolidation

G. Teaching Methodology

1. Class Materials
 - a. Outlines
 - b. Reading assignments
 - c. Self-study exercises
 - d. Evaluation forms
 - e. Exams
2. Simulations of disputes, practice exercises, small group work, video tape feedback.
3. Students need to come to class prepared and having carefully read assignments in order that class time may be spent on practice and supervision.

II. COURSE LIMITATIONS

- A. Learning crisis intervention methods is not a substitute for good safety precautions in crisis situations.
- B. This course is also not meant to substitute for backup in dangerous situations.
- c. These crisis intervention procedures are not meant to contradict or to question agency or institutional policy.

III. INTRODUCTION TO SAFETY CONCEPTS

- A. Some crisis situations are not dangerous, others are extremely dangerous. The problem is that it is often difficult or impossible to predict when a dispute will occur, and which ones will become violent.
 - 1. No staff member can approach every aspect of his job as if it involves extreme danger requiring extreme precautions constantly.
 - a. This type of regular strain can easily lead to serious personal, medical and professional problems (e.g., ulcers, heart attack, burn out, etc.).
 - b. This attitude and approach may also lead to overreaction on the part of staff, or other negative consequences for the individuals involved.
 - 2. The staff member's best protection against injury in a routine situation is to observe good safety procedures as a matter of course and, to make these procedures absolutely automatic.
 - 3. While one should not be tense in approaching new situations, he must be alert until the situation has been thoroughly assessed.
- B. Emotions or tempers are at or beyond the breaking point in many conflict and crisis situations. Poor handling of people in this highly emotional state may change a safe situation into a dangerous one.

- A. In some cases staff has advance notice and can plan or coordinate actions.
1. The opportunity to plan carefully for routine but potentially dangerous situations should not be missed. Searches, removal of an inmate to administrative segregation, PC movements and transportation outside the institution are examples of situations which can be made much safer and smoother if the procedure is well thought out and every staff member has been made aware of it.
 2. Other such opportunities for planning arise when staff has information that a crisis is developing or has developed.
 3. Similarly, staff may observe incidents or behavior indicating that a serious problem is developing.
 4. Obviously, preparation in these situations can go a long way toward increasing staff (and inmate) safety.
- B. At times a staff member will encounter a crisis situation spontaneously and this may happen almost anywhere in the institution.
1. Crisis situations without advance warning are particularly dangerous because the staff member has not been able to plan for assistance and may be forced to handle the incident totally on his own.
 2. Prior planning for in this type of situation is also important. It may be critical for the individual involved.
 - a. All institutional staff should give some thought to what they will do in an unexpected crisis. (For example, if cornered and threatened.)
 - b. It is all too easy to dismiss such considerations by assuming that a good staff member can get by on his credibility, or can get away with some "heroics". In fact, thorough advance consideration of the manner, methods and strategies you will hope to use may be much more valuable than resting on your credibility.

c. Evaluation of Information

1. Even information from other staff may be incomplete or incorrect. Do not assume you are being given a total picture of the crisis situation. Prejudging the situation can be very dangerous.
2. Remember that information about a dispute is typically one-sided, even if it came to you from a staff member. The information may have originated with one of the disputants or an inmate having a vested interest in the outcome. There may be a second or third side to the story.
3. Basic information for crisis and conflict situations:
 - a. Where is the problem occurring?
 - b. Nature of problem
 - c. Is there a weapon(s) involved?
 - d. How long ago did the confrontation occur, or is it still in progress?
 - e. Where did the information come from?
 - f. How many people are involved (and who is there) currently?
 - g. Potential for racial and/or group conflict?
 - h. Unusual circumstances?
 - i. Where is nearest help?
 - j. How much time can staff take to plan or evaluate?
4. Evaluate individuals involved in crisis (if time permits.)
 - a. Living unit staff sometimes fail to brief security personnel about the individuals involved and security staff sometimes fail to ask for this information. Just because you know an individual very well does not mean everyone does.
 - b. In an institution, information and communication are two of the central safety factors available. To be useful,

example, "Jones is a heavy dude" is not adequate information. 1 At his previous institution, Jones twice pulled a weapon on staff when confronted, but was talked out of an actual assault both times", is a great deal more useful).

- c. What do you know about the individuals involved that is current?
 - d. What can you find out about their past behavior in crisis situations?
5. On the basis of the above information (number 3 and 4) make a decision about how much help is needed and the strategy for managing the situation.

D. Communication

1. No staff member or members should attempt to handle a crisis situation without informing other staff, if possible, of the nature of the situation and the plan.
2. A clear contingency plan should be agreed upon about how soon help will be sent and under what conditions. Physical signals may be useful and can be worked out in advance.
3. A plan may be just a few sentences or phrases if that 'is all that time permits. It does not have to be fancy.
4. Do not forget to notify other staff as soon as the crisis is resolved or stabilized.

E. Teamwork (Use of Assistance)

1. Share information
2. Coordinate actions
3. Decide who will be in charge
 - a. Do not assume that everyone is clear about who is in charge.
 - b. It may be useful to agree to transfer control of the situation at a given point. For example, in an industries area, security might be in charge until two particular individuals are removed, but then they can transfer control to the industries supervisor and remain as backup while the rest of the inmate are dealt with.

4. Contingency plans in the event the situation gets out of hand.
- F. In-Progress Disputes
1. occasionally staff will encounter a dispute situation and will not have the opportunity to do any planning. When this occurs, certain minimum precautions should be observed.
 - a. Make sure help is on the way before getting involved.
 - b. A 'holding action' may be the best possibility until assistance arrives.
 - c. No staff member should allow himself to become isolated, if there is any choice.
 - d. A staff member should not ignore bystanders. The possibility of a set-up or "opportunity" assaults should *not* be discounted.
- G. Periodically Assess and Review Unit Safety Procedures
1. There is a natural tendency to get sloppy, become predictable or take short-cuts when things have been going smoothly.
 2. Every unit should periodically assess their safety procedures and safety problems and insure input from all staff and all shifts in the unit.
 3. While the responsibility for such assessment may be a supervisory role, everyone's safety is compromised to some degree if such reviews do not o c c u r .
 4. Share staff expertise on safety:
 - a. Many individual staff members have developed specific safety habits or procedures that make excellent sense and should be employed by all staff on the unit.
 - b. When individual procedures (no matter how good) are not shared, they can become a danger in a crisis because other staff do not know what that person is doing.
 - s. Debrief after 'critical incidents'.
 - a. There is a tendency to fail to examine fights, disturbances, injuries, etc. be-

cause of fear of being blamed or disciplined. In fact, formal and informal "blame. are assigned to staff anyway, and all that happens is that staff fail to get the few constructive aspects of an ugly situation while getting all of the negative aspects.

- b. There are few methods that are as effective in pinpointing problem procedures as analysis of situations in which things have gone wrong.
 - c. staff must approach such debriefing in an informal and positive manner and remember that the potential increase in safety far outweighs the usual defensiveness or fear about having one's behavior scrutinized.
 - d. Often a 1 critical incident analysis. will isolate far-reaching inadequacies such as lack of training or improper equipment or inappropriate policy.
6. Brief new and replacement staff about all procedures and problems unique to that unit.
- a. It is useful for each unit put on paper all of the unique safety procedures and problems of that unit (even those that are informal).
 - b. Every unit should have a procedure that guarantees that every new replacement or relief staff member will be briefed on procedures that are specific to that unit.
- H. In summary, the three most crucial elements of staff response to crisis and conflict are:
- 1. Planning
 - 2. Communication
 - 3. Teamwork

v. REVIEW OF SPECIFIC SAFETY PROCEDURES

- A. General Principles for Safety in Disputes
- 1. ASSESS the danger level of the situation.
 - 2. STABILIZE the physical situation.

3. MAINTAIN STABILITY throughout.

B. Specific Procedures

1. Assess the danger level.

- a. Do 'not announce your arrival unnecessarily.
- b. When entering rooms or units in which there may be trouble:
 - 1) Listen and watch (If possible) for 10 to 20 seconds before entering. This may provide information about the nature of the conflict and its violence potential.
 - 2) Clear bystanders from doorway area before entering.
 - 3) Look before entering.
 - 4) If it is dark inside a room or unit and light outside, wait for your eyes to dark-adapt before entering. They will do this only if you peer into the darkness for 10 to 20 seconds: you will continue to be at a visual disadvantage for an additional 30 to 60 seconds.
- c. Visually frisk all disputants (and the
- d. Ask and visually check to insure that all of the individuals have been located. How many individuals are actually involved in the conflict?
- e. **A basic rule is do not let any of the disputants get out of your sight until you have an idea of the violence potential of the situation.**
- f. What potential weapons are available to disputants (ashtrays, lamps, chairs, etc.)?
- g. Is there an escape route open to you if things deteriorate?
- h. By what route will more staff help arrive? Make certain back-up can get into the area.
- i. Where can you safely place bystanders? Disputants?

j. Back-up response

- 1) Get as much information as possible prior to responding.
 - a) Nature of situation
 - b) Location of situation
 - c) Urgency
 - d) Be aware of physical layout (e.g. shop, dorm, yard, classroom, offices?)
- 2) Stabilize your own area before leaving your post.
- 3) Before you leave your post, inform appropriate staff that you are going.
- 4) Move swiftly, but be in control. Don't rush in blindly.
- 5) Be aware of potential problems, e.g., clusters of inmates at your destination, inadequate lighting, etc.
- 6) Be particularly aware of inmates attempting to leave the scene.
- 7) If sufficient help is on hand, notify control and return to your post.

k. If a staff member unexpectedly finds an armed individual (gun, knife, etc.) who will not relinquish the weapon, or is threatening, the staff member should maintain as calm an attitude as can be managed.

- 1) Remove other inmates from the vicinity of the armed individual.
- 2) Try to leave as quickly as possible, but do not panic and run (unless chased, or too scared to do otherwise).
- 3) Talk steadily; do not let the situation get quiet and tense.

- 4) Do not physically block the armed individual's exit route from the room or hall.
- 5) Avoid undue psychological pressure on the armed individual (such as dwelling on what will happen when he is arrested).
- 6) Avoid threats or ultimatums.

2. Stabilize the physical situation

- a. Isolate the crisis. Either move the problem from the crowd or the crowd from the problem.
 - 1) Onlookers may decide to become participants.
 - 2) It is harder to resolve disputes when participants are worried about "backing down" in front of peers.
 - 3) Staff safety is minimal in the midst of a crowd of inmates.
 - 4) In many situations, staff can take the few participants out of the situation and leave the rest of the group.
 - 5) When the participants in a dispute cannot be moved, the uninvolved inmates can be sent to another location or their rooms. If possible, first move the most cooperative individuals. This usually means picking one or two people who you expect to be reasonable and asking them to move to another specified location. Do not simply tell the whole group to move. They may all look at each other to see if anyone is going to obey and you have an immediate confrontation on your hands.
 - 6) You will not always be correct in your quick judgment about who is and who is not centrally involved. It is not difficult to correct that later, after the incident has been calmed and you are talking to participants. Do not attempt to do any interviewing prior to separating the disputants from the

bystanders. It is difficult, dangerous, and can reopen the whole crisis.

- 7) It is critical that you not leave the group of bystanders unattended in order to deal with the main participants (unless there are no alternatives).
 - a) This can lead to inmates using disputes as diversions or taking the opportunity to pay back an old grudge.
 - b) Too often the tension that accompanies any serious conflict will lead to the group of involved inmates starting their own incident after the primary problem.
 - c) The staff member supervising the onlookers should be working to calm and divert them from the conflict rather than investigating the incident.
 - d) Occasionally, one staff member will have to deal with both disputants and bystanders. In this situation, the staff member may not be able to send the onlookers to another area (except possibly individual rooms). Under these conditions, he should establish some physical separation between the disputants and the crowd and then immobilize the crowd by getting them off their feet, either in chairs or on the floor, if possible.

b. Separation

- 1) If the disputants are behaving in a physically threatening manner toward each other, separate them.
- 2) If keeping the disputants together results in persistent yelling, then separate.
- 3) If neither 1) nor 2) occur, then do not separate the disputants.

c. General Rules for Separation

- 1) Separate only when necessary. Dealing with the disputants together when possible will be quicker, easier and more effective.
- 2) Separate only for as long as is necessary. Bring the disputants back together as quickly as possible.
- 3) In separating, the critical issue is to break eye contact between the disputants. This will usually allow disputants to cool down to a certain extent.
- 4) If you are with another staff member, you should maintain sight contact with each other even when disputants are separated into two (2) different rooms.

d. When moving disputants from one room to another, one staff member should accompany each.

- 1) The first inmate into the room should be led or encouraged to sit in the chair furthest into the room.
- 2) This will minimize possibilities of scuffling.
- 3) It is preferable that both staff take positions between the two inmates.

e. Seating the disputants is the best method of stabilizing the physical situation.

- 1) Inmates who are moving around are dangerous and hard to control, especially when you are outnumbered.
- 2) Tension is reduced when inmates are sitting. It is difficult to maintain a high level of anger when seated in a comfortable chair.
- 3) Discussion is facilitated when disputants are sitting. People are more used to talking while seated.

f. General Rules for Seating Disputants

- 1) Seat inmates as quickly as possible.
- 2) If inmates are potentially violent, seat them more than an arm's length from each other. Seat yourself between the disputants, and also out of arm and foot's reach of the disputants.
- 3) If the inmates are still upset, staff should choose the seating arrangement to minimize disputant eye contact.

g) Staff Seating

- 1) You may be seated when the situation has little potential for violence. This is your decision about what is appropriate.
- 2) Do not stay seated if either inmate gets up and is angrily pacing around.
- 3) You may sit down in trying to "model" for the disputants that they should sit. If they don't take your lead after a second or two, get on your feet.
- 4) Reaction time is considerably slowed if you are sitting compared to standing. Do not sink back into a deep chair. Your position should be forward on the edge of the chair, so that you can react quickly even when sitting.
- 5) In situations with two or more staff members, one can sit (to talk) while the other can stay on his feet as backup.

h. Try to avoid "crowding" people

- 1) People have different characteristic distances at which they are comfortable interacting. This is called personal space, and it differs from person to person.
- 2) In animals this distance is sometimes called the *fight or flight. distance. An animal crowded beyond this distance will attack if its escape routes are cut off -even if it is a very meek animal.

- 3) People similarly get uncomfortable when their personal space is invaded, and an attack can be provoked from some people just by crowding them.
- 4) Also, when you are too close to a disputant, you may have to react without time to analyze the situation.
- 5) If you are at close quarters with the person, safety dictates that you should angle your body and not face him directly.

i. Certain locations are safer than others

- 1) Staff should attempt to move to the safest available location to deal with the dispute.
- 2) Cells, tiers and dorm areas are particularly dangerous due to the number of potential weapons present, and an inmate's feeling of territoriality (turf) in his own "house", as well as as restricted space for maneuvering.
- 3) Exercise rooms, culinary areas, etc., are also a problem due to available weapons 1
- 4) A housing unit office usually offers the best combination of safety, access to communications, privacy and the potential to observe the rest of the living unit. However, in a given -situation, simply choose the safest practical alternative.

j. Keep in mind that the danger level of a situation is much higher if only one staff is present than if two or more staff are present.

- 1) One staff member may be unable to separate disputants.
- 2) A single staff member may have to be more aggressive to obtain control, and therefore increase the chance of a brawl developing.

- 3) A single staff member is much more likely to be the victim of a set up, opportunity attack, or allegations of brutality.

3. Maintain Stability

- a. Continue to assess and reassess the situation by utilizing all of the information available.
- b. Remain alert; make sure that you will be able to react ahead of the disputants.
- c. Unpredictable people may be dangerous.
 - 1) While all people are unpredictable to some extent, some people are more so than others.
 - 2) People whose emotional states are subject to sudden and drastic changes:
 - a) Intoxicated people (alcohol or drugs)
 - b) People with emotional or psychiatric problems
 - c) People under extraordinary stress
 - d) YOU may not always know when you are dealing with problems of these kinds (a, b, c) but should attend closely to anyone whose behavior appears highly unusual.

VI. REVIEW OF LOCK-UP AND ROOM SEARCH PROCEDURES

A. Lock-Up

1. Detention and escort should always be accomplished by at least two staff members.
2. If possible, the inmate should be taken into custody in a safe physical setting, i.e., away from potential weapons.
3. Prior to taking an inmate to lock-up, remove or at least immobilize uninvolved inmates.
4. Staff should have a good description of detainee-

5. All involved staff should know why the inmate is being taken into custody.
6. Avoid touching people unless absolutely necessary (allow the inmate to save face).
7. If an inmate refuses, attempt to talk him out without threats or ultimatums. Do not demand a quick decision or a verbal surrender if the inmate is talking it out.
8. If physical force is required, make sure that sufficient help is on hand.
 - a. The more staff present, the less the inmate has to struggle to save face.
 - b. One staff member should never attempt to subdue an inmate except in self-defense or to prevent someone from being killed.
9. "Arrest at all costs" does not make sense. At times, the staff members may have to leave an inmate who is being supported by other inmates.
 - a. Wait until you have sufficient help and then take him into custody.
 - b. All you lose is time. He is not going anywhere.

B. Room Searches (General Guidelines)

1. If possible, use at least two staff members, for personal safety reasons, when inmates are in the area of the searches. Two or more staff will also help secure the area from other inmates, and provide better evidence and testimony if contraband is found.
2. Other inmates, including the room's occupant, should be locked down or otherwise prevented from entering the area.
3. If the inmate is in the room when the search team approaches, the inmate should be searched before the cell is searched.
4. The inmate is best searched away from other inmates and generally should not be searched in his cell.

INSTITUTIONAL CRISIS INTERVENTION II

READING ASSIGNMENT: DEFUSING TECHNIQUES

I. DEFUSING TECHNIQUES: DEFINITION

- A. Defusing means restoring order. Mediation, Referral or even calm talk is impossible until some semblance of order has been restored. Therefore, Defusing is the first order of business.
- B. The goal of Defusing techniques is to calm the disputants (that is to get them to stop their yelling or crying) so that they will talk with staff.
- c. Limitations
1. These are not techniques to solve disputes. When necessary, Defusing must be done before anything else can be done.
 2. NOT ALL DISPUTES DEMAND DEFUSING

In most cases, individuals are receptive (or at least reasonable) when staff arrives. However, staff sometimes arrive during the middle of a dispute and need to gain control. In other instances, when staff arrives the participants will be calm but the situation rapidly escalates either because of the actions of one inmate or staff.
 3. There are three (3) situations that most often need Defusing:
 - a. Disputants (one or more) are so angry or hostile with each other that they cannot be talked to.
 - b. Disputants (one or more) are upset, sobbing or hysterical. This situation is less common than an angry or violent one.
 - c. An inmate is so upset that he is forcing a confrontation with staff and/or refusing to follow an order.

II. USE OF FORCE

A. The Concept of Force

1. Force is generally thought of as physical. People think about force in terms of wrestling, fighting, mace, handcuffs, firearms, etc. In fact, force is far more complex. It is relevant in situations where fighting and weapons are never employed. In most kinds of situations it is possible to identify at least four (4) kinds of force: physical, psychological, nonverbal, and verbal.
2. It is also a mistake to think of force as something which was or was not used. It is much more useful to think of force in terms of degrees.
3. A staff member should be able to analyze almost any situation in terms of psychological force, nonverbal force, verbal force as well as physical force, and should be aware of what degree of each of these kinds of force was being used by each person in the situation. This more detailed understanding of the use of force will enable a staff member to better predict other people's reactions to his own force and also to anticipate when force will be escalated.

B. The Dimensions of Force

1. Psychological Force: Psychological force is present to some degree in almost all situations. For example, in any situation in which a staff member is interviewing an inmate, the inmate is being dealt with in some degree of psychological force because of the staff person's role. Similarly, a supervisor has some degree of psychological force which is brought to bear in any situation involving an employee.
2. Nonverbal Force: Nonverbal force may range from the use of one's hands while talking, to extreme measures like pulling back a fist in a threatening gesture. The important issue is to be aware of the degree of force being used and

INSTITUTIONAL CRISIS INTERVENTION IX

CLASS OUTLINE: DEFUSING TECHNIQUES

- I. Exam on Reading Assignment.

- II. Review of Reading Assignment
 - A. Definition of Defusing
 - B. Discussion of Force
 - 1. Concept of Force
 - 2. Dimensions of Force
 - c. General Principles
 - 1. Order Your Techniques
 - 2. Appropriate Force
 - 3. Avoid High Risk - High Gain

- III. Demonstration - "Approach Determines Response.

- IV. Demonstrations of Defusing Situations
 - A. Simulation
 - B. Video Tape Replay
 - c. Discussion and Critique

- v. Review Specific Defusing Techniques

- VI. Video Tape Training Films: Defusing

interpret it in the context of the situation in which it occurs.

3. Verbal Force : Verbal force also covers a wide range. "Please come with me said in a quiet voice is a very slight degree of verbal force, but verbal force nonetheless. Screaming at someone "shut up" or threatening someone, "If you don't come with me I'll kick your teeth in" are examples of high levels of verbal force.
4. Physical Force: This is the traditional kind of force. However, even with physical force people typically see force only if the situation involves a fight. In fact, force begins at the point at which touching occurs if that touching is used to lead someone, to direct someone, to separate two people, etc.

III. GENERAL PRINCIPLES FOR DEFUSING

A. Order Techniques from Less to More Aggressive ("Don't Burn Your Bridges")

1. If the aggressiveness of approach is slowly escalated, staff maximizes the alternatives available. If a hardline approach (as your first try) does not back someone down, then it is almost impossible to return to a lower key method.
2. You should exhaust all possible alternatives before allowing a hard confrontation to develop.
3. The more techniques a staff member knows for dealing with a potentially violent situation, and the more flexible he is in those situations, the smaller the chance he will have to use physical force.
4. Using a less aggressive approach, you can often get one or more of the disputants to cooperate with you. Even a small step toward cooperation can be an important beginning.

B. Use the Appropriate Level of Control

1. In most instances, disputes present difficult judgments as to the amount of control appropriate at a given moment.

2. Underreaction and overreaction are both costly (e.g., chronic fighters may react not to today's handling, but to the treatment they received during a prior fight).
3. Staff members do not necessarily have to engage in physical conflict to obtain control of a dispute. Control can be exercised along several dimensions in addition to the physical dimension. Staff should attempt to exhaust their psychological, nonverbal and verbal options prior to using physical control.
 - a. physical. control should be used as a last resort and only when sufficient help is available to prevail.
 - b. Although physical control is at times necessary, it has the potential to turn a minor conflict into serious violence.
- c. Avoid "High Risk - High Gain" Techniques
 1. Some techniques either work beautifully or cause the situation to deteriorate dramatically. These methods are called high risk - high gain, and should generally be avoided.
 2. Trying to joke with an angry person is a good example of the use of a high risk - high gain technique. It may totally change the person's mood and allow him to talk calmly, or it may further infuriate him that he is being taken lightly.
 3. Techniques that are basically embarrassing or belittling are actually high risk - low gain. A suggestion to "act like a man in front of your friends", may get the inmate to stop what he was doing, but he may be furious with the staff member who said it. The personal insult may lead to a more serious staff-inmate confrontation.
 4. The problem with high risk - high gain methods is that in too many cases they fail to work and the staff person is left with a more difficult situation than he originally faced.

IV. "APPROACH DETERMINES RESPONSE"

- A. The manner in which a staff member approaches an inmate can determine the type of response from t inmate.

- B. When it is necessary to give an order, the verbal message can be changed because of the tone of voice, body posture, gestures and facial expression. All of these factors can combine to produce anything from a polite request to a threat.
- c. Inmates are particularly sensitive to the issue of 'respect.. A perceived lack of respect on the part of a staff member may trigger verbal abuse or a confrontation.

v. CONDITIONS FOR SEPARATING DISPUTANTS

- A. Separate only when necessary.
- B. Separate if disputants appear likely to become violent with each other.
- c. Separate if disputants will not allow each other to talk without yelling at each other.
- D. Separate if the sight of one disputant is menacing, antagonizing or greatly upsetting to the other party.
- E. After separating the disputants and calming them, bring them back together as soon as practical. DO NOT CONSIDER BRINGING THE DISPUTANTS TOGETHER UNTIL IT IS CLEAR THAT THEY ARE CALM. During the separation, staff should be trying to calm the inmates and prepare them for sitting and talking about the problem.

VI. SPECIFIC TECHNIQUES FOR ANGRY, HOSTILE, HYSTERICAL AND/OR THREATENING SITUATIONS

- A. Calm, Direct Instruction
 - 1. This is the best initial approach: Host staff try this as a matter of course before other techniques, and with good reason.
 - 2. This technique is most effective when it is done very calmly and with a firm voice. It is often necessary to firmly repeat your instructions a number of times, escalating the loudness.
 - 3. If the inmate is hysterical, the first message for staff to give is that he is sympathetic and friendly, and would like to help.

- a. usually a soothing and reassuring manner is effective.
 - b. This is an excellent opportunity to try calm, direct instruction. It does not rule out other techniques, if unsuccessful.
4. *The medium is the message.
- a. The specific words used by staff to calm disputants may not be important. Personal style, tone, attitude and manner are important. Staff manner will be remembered long after the words are forgotten.
 - b. Words will rarely interrupt an excited emotional state -- another level of emotion may break that pattern. Thus, a calm approach may succeed in getting a calm response 1
- B. Other Defusing Methods: General Considerations
- 1. To be used when calm direct instruction fails.
 - 2. The following techniques all involve confusion or distraction of angry individuals with the goal of calming them without the use of threat or force. All of the following confusion and distraction techniques work to provide a break in the emotional level of the disputants. This may last for only a few seconds.
 - 3. The staff member must have a good idea of what he will follow up with. Otherwise, the fight or hysteria will simply re-escalate.
- c. Defusing Technique: Specific Skills
- 1. Distraction (2 techniques)
 - a. Surprise Comment
 - 1) Try to comment on something or ask about something having nothing to do with the current problem. For example, ask what was for lunch or who is responsible for fixing the radio, or if that was their package that came in the mail. Another approach is to ask about some trivia. matter that came up recently.

- 2) Comments which come from "out of the blue" may distract the participants and thus temporarily change, the mood of the moment. For example, if an inmate is yelling at another inmate, a staff member might try, "Do either of you know what the movie is tonight? I heard it was going to be good. 1
- 3) The central idea is to respond "out of character", or inappropriately, in hopes of breaking up the pattern of anger, aggression or hysteria.
- 4) Another version of this technique is being surprisingly friendly and over-helpful.

b. Request (Or Offer)

- 1) Requesting a small favor can often be a good method of distraction. For example, an inmate who is sobbing hysterically is still likely to give you a pencil if asked. In the process, he is likely to lose some of his emotion and start to talk.
- 2) If an inmate is making threatening gestures. For example, rather than giving a warning, you might ask if he would like a cigarette.
- 3) This is usually the best choice with a person who is hysterical when calm, direct instruction and a soothing manner don' t work.

2. Confusion: Mind Boggling

a. Feigned Misunderstanding -- "The Columbo Approach.

- 1) Even though a staff member can clearly see what the fight is about or

why someone is angry, he can pretend that he is quite dense. Since the dispute is obviously of great importance to the participants, if the staff member fails to grasp an important part of the argument, people will often stop and explain. The act of explaining usually causes them to lose some of their anger.

- 2) When the person turns in frustration to explain what is happening to the "dense. staff who doesn't understand, the person may still be irate, but he is at least talking to staff instead of yelling at the other disputant(s). The staff member may now be able to establish control.
- 3) For example, if an inmate screams at another, "I'm sick and tired of you playing games', the staff might say, "Oh, you don't want him involved in sports?. Since the inmates feel the matter was important enough to fight about, they would not like staff have a wrong impression so the participants will often go to great lengths to "straighten staff out" as to the true state of affairs. Note that staff deliberately misinterpret what was said, but did so with a sincere manner.

3. Last Resorts

- a. Some high risk methods may be used as a last resort only. Other high risk methods are not justified, even as last resorts. The reason is that they fail too frequently, and they have very serious consequences when they do fail. These methods may turn out to be the only option left to try, but there is no reason to attempt them early if safer techniques can be employed.
- b. Humor
 - 1) Some people can do this effectively-

some cannot. If it is very uncomfortable for a staff member to joke in a tense situation, then it probably will not work well for him.

- 2) This technique is risky. If the inmates involved do not respond with some appreciation of humor, they may be truly indignant at the attempt to joke.

C. Hard Shock

- 1) Basically, the staff member is trying to get through the person's emotional state by presenting a powerful alternative message. For example, "Hey! Knock it off, what's going on!" Or, "Quit that nonsense! Or I Shut up!" It communicates strongly that staff is fed up with what is happening and will tolerate no more. It often means yelling.
- 2) This is particularly effective if used immediately after the staff member has yelled the disputant(s) last name (to get his attention).
- 3) This is also a high risk technique (like humor), which frequently gets attention, but when it fails it often ruins the chances of gaining rapport with any other method. It may incense people further.

d. Legalizing: Emphasizing legal or formal (disciplinary, grievance) advice may calm the disputants, but it often backfires. It may further damage the situation by missing the essence of the problem and by angering the parties. It can be useful in some situations to give inmates a last option prior to chemical or physical restraint, but the option must be presented calmly and accurately. Many staff use this as an initial approach instead of a last resort, and it is a very poor first approach.

VII.

METHODS TO AVOID (HIGH RISK - LOW GAIN, AND HIGH RISK - NO GAIN METHODS THAT SHOULD NOT BE USED AT ALL)

- A. Belittling. This means making a fool of someone embarrassing them, or challenging them. For example, suggestions to someone that he "act like a person of some intelligence. may be calming but will often provoke anger.
- B. Threatening Detention. Actual detention of the inmate(s) may frequently be necessary. Threatening to detain an inmate is almost always a mistake as a means of defusing the problem. If the inmate is not intimidated by the threat of detention, the staff member has little option but to follow through.
- cm Use of Other Inmates. Frequently, when a dispute breaks out, whether verbal or physical, other inmates will move in and may even break up the dispute. Although it sometimes works out, this practice should be discouraged if staff are on the scene.
1. Occasionally, someone who is trying to break up a fight will himself become involved and thus increase the scope of the dispute.
 2. An inmate who is trying to help by breaking up a fight may himself be injured, or may use methods that staff cannot condone.
 3. It is especially important that staff not request inmate assistance in breaking up fights. There may be legal as well as practical problems.
 4. Use of other inmates may produce short-term results, but usually has much more serious long-term consequences that are entirely negative. Thus, it should be avoided.

VIII.

REVIEW OF DEFUSING

- A. Specific Steps
1. Separate only if necessary, and only long enough to calm down enough to bring together.
 2. First try calm, direct instruction.
 3. Next try a distraction technique.
 4. Next try a confusion technique.

- s. If nothing else has worked and the situation is still unmanageable and/or unstable, try a last resort method.
- B. Choose 2 or 3 of the distraction and confusion techniques that seem most comfortable to you personally.
 - 1. Practice these and try them. If one technique doesn't work or continues to feel awkward, it should be discarded and a new one chosen.
 - 2. The goal is to be able to try 3 or 4 different techniques (starting with calm instruction) in a 60-second period and to have these ordered from least aggressive to most aggressive. Practice is essential if this is to be accomplished in an angry, potentially violent situation.
 - c. It is critical to be prepared to take and keep control of the situation once you have gained a momentary lull with a defusing technique.
 - 1. For example, you are confronted with three inmates yelling at each other and making threatening gestures. You use a distraction technique and they abruptly stop yelling. If the silence surprises you and you fail to act then they will start up again. Instead, you should be prepared to give immediate instructions aimed at establishing control (such as, "All right, Jim, you sit down over there and Sal, you sit here").
 - D. A well-practiced set of defusing techniques will give you -excellent alternatives to simply watching a situation degenerate into a yelling contest or a physical confrontation.

IX. DEFUSING IN GROUP CONFLICT SITUATIONS

- A. Group Confrontations
 - 1. Staff members will of ten find a group of inmates who appear to be looking for trouble, or in an ugly mood, or building up to something or in some other way seem to have the potential to challenge the staff.
 - 2. Group Confrontations are one of the most difficult situations faced by staff in an institution. The potential for either an inmate or staff being injured increases as the number of inmates involved increases.

3. The potential for weapons being involved as well as the speed with which a verbal confrontation can escalate to a full scale riot make safety the primary consideration.

B. safety and Defusing Methods

1. There is nothing about a group or crowd conflict situation that justifies a staff member ignoring the safety issues and defusing principles that have been covered so far in this course.
2. Most of the safety and defusing issues are the same as they would be in a 2 or 3 inmate conflict. There are, however, some important differences.
3. Notify
 - a. Notify. other staff members on the unit as soon as group conflict is observed.
 - 1) Do not attempt to deal with the problem until you have alerted other staff.
 - 2) If you are hurt prior to notifying, staff may not know you are in trouble.
 - 3) You may be the victim of a set-up and not know it. Thus, you have to let other staff know as soon as you have an indication of serious trouble.
 - b. Call- for backup either by security or from nearest available source (possibly an adjacent living unit). Make sure you have sufficient help on hand as quickly as possible.
4. Assess: The staff member should utilize all available information to estimate the potential for violence being exhibited.
 - a. Numbers of inmates involved
 - b. Weapons and level of force being used
 - c. Injuries
 - d. Prior incidents or prior mood of unit
 - e. Racial or gang nature of situation
 - f. Who is involved (specific inmates)
 - g. Number of inmates present but not involved

5. Planning; Living unit staff should plan their approach and outline their alternatives only after security has been asked for back-up.

c. Additional Defusing Methods for Large Group Conflict

1. Direct the groups to disperse and secure themselves (calm, direct instruction)

2. Call the leaders of each group to meet with 'staff (it is preferable that the leaders be separated from the groups rather than having staff going among the groups.) Where the leaders are not known, let the group pick its representatives.

3. Approach the leaders. If calling fails, staff may choose to go to the groups to deal with the leaders. This should be done only after careful assessment of the safety issues for staff. When using this technique, there should be at least two staff going to the groups and one other staff observing.

a. The aim of this approach should be to get the agitators to talk to staff rather than to the other groups of inmates.

b. Use Calm Direct Instruction (e.g., "Talk to me", "Tell me what's going on, talk to me.")

c. Some limited use of other verbal techniques such as feigned misunderstanding may be appropriate if the inmate is particularly loud or upset.

d. Staff should keep each other in sight.

e. Where possible, staff should attempt to break eye contact between agitators. (i.e., position themselves so that the inmate cannot both talk to staff and see members of the other group(s) at the same time.)

f. Once the staff member has the attention of the agitator, he should be attempting to separate that inmate from the rest of the group. ("Let's go talk about it but not here..") This is the point at which staff should attempt to reduce the size of the groups. ("We will talk about it but first let's get people down to their rooms" or "Let's talk about it, but we need to get the groups away from each other first.")

g. If staff can simply delay the actual violence, it will buy time for necessary backup personnel to arrive and prepare to deal with the situation. Also, if staff can stop the escalation process and take away the momentum of the situation, the likelihood of violence is sharply reduced as time passes.

4. **If the approach** and talk strategy fails to **divert the group**, staff-should consider utilizing hard shock tactics and high risk - high gain. These approaches should be reserved until it is apparent that the choice is either hard shock or physical force and/or chemical restraint. Also, these approaches should be held in reserve until sufficient backup and assistance is available to cope with a situation that starts to deteriorate.

b. Crowd Situations: In crowd situations, it is sometimes very important that the staff members set the tone rather than wait to see what develops. This is particularly true in situations where a crowd is becoming threatening toward staff (as opposed to inmate-inmate conflicts).

1. All too often everyone stays quiet and the tension builds until one of the inmates taunts or challenges the staff member; the other group members pick up the tone and the confrontation is then very difficult to avoid.

2. It is far easier to quickly say something casual to the group ("How are you doing?" or "That lunch was awful, wasn't it?", etc.) that does not even demand an answer. Then you can follow that with a question to a specific individual - the question should have nothing to do with what the group is doing and the individual should be someone you expect to be reasonable.

3. After the tension is reduced, and only then, you may choose to ask one of the group leaders if there is a problem. As a rule of thumb, you will usually do better talking to one or two individuals well after the group has dissolved.

C. Avoid approaches that increase the chance of violence.

1. Do not plead.

2. Do not threaten.

INSTITUTIONAL CRISIS INTERVENTION-11

CLASS OUTLINE: BRIEF INTERVIEWING

- I. Exam on Reading Assignment
- II. Review of Procedures in Crisis Intervention
- III. Review of Reading Assignment
 - A. Definition
 - B. Goals
 - C. When to Stop Gathering Information
 - D. Approach and General Principles
 - E. Specific Interviewing Techniques
- IV. Decision Point (Flow Chart)
- v. Video Tape Training Films: Brief Interviewing
- VI. Small Group Practice: Brief Interviewing

● 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz

6/87

READING ASSIGNMENT: BRIEF INTERVIEWING

I. BRIEF INTERVIEWING

A. Definition

1. Brief interviewing is an efficient technique for situations in which the staff member has little or no information about what has happened and the individuals being interviewed do.
 - a. Obtaining information is one of the most frequent and important requirements of the staff member's job.
 - b. Communications with other staff members, and prevention of confrontations, both depend on a person's ability to check out his observations of unusual conditions or actions, and to get- information from individuals who may know something useful.
 - c. Institutions put a far greater burden on staff than other criminal justice agencies; to do this difficult task without interrupting ongoing duties.
 - 1) Police, probation, courts, paroles are all much freer to take time to talk to individuals when a need arises.
 - 2) In many areas of institutional work, conversations must occur in brief time periods, with staff carrying out other functions at the same time. Whenever staff has the responsibility for large numbers of inmates, the opportunity to focus attention on one or two individuals is substantially reduced.
 - 3) These realities combine to place a premium on efficiency in interviewing.'
 - d. In a crisis situation, the information gathering process will usually be completed in 5 to 10 minutes Usually this will allow

● 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz

time to try to resolve the problem when interviewing is completed.

2. Brief interviewing is a necessary step early in most confrontations because the staff member may not know what has happened, or what the dispute is about.
 - a. Prevention of violence frequently depends on the staff member's ability to intervene early. Such intervention is only possible if the staff is able to obtain accurate information.
 - b. Brief interviewing is particularly important since it provides the participant's view of a dispute. While the staff member may have some other view of the situation it is critical that he find out how the inmates involved see things, since it is their own views that led them to fight.
 - c. When confrontations occur between inmates, the content of the dispute can best be obtained by interviewing the individuals involved.
 - d. In all of these situations, resolution of the crisis depends on the staff member's ability to determine the nature and scope of the problem. Fair and consistent decisions are only made if the staff has comprehensive, accurate information about the thoughts, feelings, attitudes and behavior involved in the dispute.

B. The Importance of Interviewing Skills

1. Very few people have good interviewing skills. This includes professionals in social work, psychiatry, psychology, law, medicine and others who regularly spend a lot of time interviewing.
2. Brief interviewing skills will help a staff member quickly identify the important aspects of a situation. A staff member who has good interviewing skills may get more information in five minutes than an untrained staff member is able to get in fifteen or twenty.

3. Brief interviewing should enable a staff member to better manage situations in which several inmates are arguing or yelling at once.
4. Brief interviewing may be applied to many other work activities. An efficiency expert would report that most of a staff member's *time* in an institution is spent responding to the many inmate requests for 1 minor. items. Brief interviewing provides a mechanism whereby those requests can be heard, while the staff member's need for efficiency is preserved.

c. Brief Interviewing Is Not:

1. Interrogation: Interrogation has very different goals and requires different techniques. It is in some ways, almost the opposite of Brief Interviewing. In interrogation, staff often know the questions that are relevant, and know the answers 1 The trick is often to get the suspect to acknowledge the answers.
2. Structured Interviewing: A structured interview is when a staff member already knows the kinds of information that are needed. Routine reports, for example, may necessitate that the staff member obtain answers to specific pre-established questions. Taking a medical history is another example of a structured interview. In structured interviews, the staff knows what questions must be asked, but does not know the answers.
3. In Brief Interviewing, the staff not only doesn't know the answers, usually he doesn't ever know what questions are relevant.

d. Goals of Brief Interviewing:

1. To quickly and efficiently determine the nature and scope of a crisis situation. (In other words, what type of situation is it, and how large?)
2. To identify each participant's specific views, issues, and concerns in the crisis.
3. To provide sufficient control of the interview process 1
4. To accomplish this without sacrificing harmony between the inmate(s) and the interviewer, i possible.

5. To leave all disposition options open.

- II. WHEN TO STOP GATHERING INFORMATION: The staff member is finished with brief interviewing when he can summarize the problems. That is, each of the individuals interviewed must agree that he understood their side of the argument, and has stated it accurately.
- A. If the staff member can say, "The problem seems to be this and this for you Mr. Smith and this and this for you Mr. Jones., he has provided a summary. If Smith and then Jones acknowledge that he has summarized their basic issues accurately, then he is done interviewing.
- B. Often the staff member will summarize the problem and one of the disputants will say, "No that's not it," and explain further: or one will say " Well, the real problem is not that, it's.." In this case, the staff member resumes the interview until he is in a position to summarize again.
- C. The summary at the end of Brief Interviewing is particularly useful in that it is self-correcting. If the staff member accidentally forgets a major issue, or states the problem incorrectly, the inmates will tell him. When a summary is accepted by each involved party, the staff member has some assurance that he has enough information to make his decision.
- D. It is not necessary (nor will it often occur) that the disputants see the problem the same way. Usually each person will have a very different story to tell. Therefore, it is necessary that each person's view be summarized to that person at the end of the Brief Interview.
- E. The importance of interviewing disputants together:
1. The tendency for staff members who always interview disputants separately is to expect problems if they talk to inmates together, and to expect that everyone will "clam up" because they will be seen as trying to get the other inmate(s) in trouble with the staff.
 2. In Brief Interviewing, it is important to interview all involved parties together. This is the only way everyone can completely understand the issues and believe that nothing has been said under the table or out of their hearing (that no one has squealed on them to staff) 1

3. If the staff member's goal is to informally resolve the dispute, interviewing disputants together is a more efficient use of time, and crucial to the resolution.
4. If the staff member has decided to abandon informal resolution options, then he may interview the inmates separately. In this case, interrogation-style interviewing may also be used in preparation for possible disciplinary action.

III. THE APPROACH TO BRIEF INTERVIEWING (11 KEY PRINCIPLES)

A. Establish Rapport (Attempt to put the people at ease)

1. Since the brief interview begins only after some degree of order has been restored. Staff member should work to maintain (and increase) a tone of calmness.
2. When the staff member looks relaxed and comfortable, there is a tendency for the inmates to become more relaxed as well.
3. Whenever possible, interviewing should be done in a setting where the staff member can focus his attention on the disputants. This will permit the staff member to be more relaxed, and allows maximum freedom to employ good rapport building techniques.
4. When it is necessary to conduct the interview in a large group setting (e.g., exercise yard, work, school or living unit free-time) rapport is much more difficult to establish. The staff member will be unable to focus all his attention on the disputants, and he will be unable to maintain good eye contact.
5. In this case, careful attentive listening is the best approach. Frequent verbal feedback can be used to demonstrate that the staff member is paying close attention to what is being said.
6. When possible, interview the disputants away from other inmates. Attempt to determine initially, who is involved and take them to another location. If you find others were involved (as a result of this brief interview), you can bring them in to join you. If some of the inmates you thought were involved are not, they can be excused.

B. Don't Talk Too Much

1. The goal is to get information from the other person. Talk only enough to keep him talking and to maintain necessary control over the interview.
2. If the staff member talks a great deal, he is being inefficient. It is what the disputants have to say that is important.

c. Maintain Control

1. The staff member should be in good control of the interview throughout. He should be able to discourage a disputant from rambling, prevent or stop bickering, lead someone back to a relevant topic, all without talking a lot or giving constant orders.
2. The staff member may be able to say only a few sentences during a 10-minute interview and still know that he was in control.
3. Anytime the staff member lets the interview take a direction which will not lead to the objective of summarizing the major issues, he is losing control.

D. Don't Argue

1. Do not try to uncover "truth" in the situation. It is usually a waste of time to try to discover which person's view is right. The staff member's job is to obtain a clear, concise statement of the problem as each disputant sees it even if he is certain that their stories are distorted.
2. Even if the staff member strongly disagrees with a story, his job at this point is to obtain information about that individual's thoughts and feelings, not to convince him of anything.
3. Do not make statements like, "you're wrong", or "That's not the way I see it". These will put people on the defensive, decrease rapport, and prevent the staff member from obtaining a complete picture.

E. Maintain Strict Impartiality

1. There is no simpler way to earn someone's anger than to take sides against them in a dispute over some emotional issue.
2. The staff member needs to avoid being used as a "tool" of one party, against another. To avoid angering an unhappy, potentially violent person who has been sided against, he should make it a rule not to indicate who he thinks is right and who is wrong (at least during Brief Interviewing).
3. Moreover, he should avoid looking like he is passing judgment by questioning one of the parties as if he were wrong and being supportive and friendly to the other party.

F. Hear All Involved. Parties

1. Do not let one disputant speak for another. Try insure that all parties are secure enough to speak freely.
2. Check that all parties are hearing (not necessarily agreeing with) each other.
3. Let each person define the situation independently.
 - a. Do not listen to one inmate's story and then turn to the other and ask, "Is that all true?" or "Did you do that?" this puts the second inmate in a defensive position and makes it appear that you have taken sides.
 - b. Instead of the above, ask each person to describe the situation with a neutral question. (For example, 'Jim, what's going on here?' 'Joe, what happened?')
 - c. There are many reasons why inmates may already be touchy: If the disputants are of different ethnic groups; if one has a really ugly committing offense; if one has a worse disciplinary record; if one is better known by the staff member, etc. It is all too easy for the inmate to see' bias in the interview situation.

4. When someone is telling his story, prevent others from interrupting. Be firm. ("I'm trying to get Jim's view of the story. You will get your turn later.")

G. Do Not Try To "Solve the Problem' (Do Not Make Suggestions)

1. The purpose of the interview is to gather information. Unfortunately, there is a strong tendency for staff to try to solve the problem before it is stated. The staff member should not try to resolve the situation until the interview is complete.
2. Avoid making any suggestions during the interview. Too often the staff member will end up defending his own suggestions, or explaining them.
3. This habit (giving advice instead of discovering what is happening) is the most difficult habit for most staff to break.

H. Don't Let The Inmate Interview You

1. Often inmates will ask a staff member for a personal reaction or opinion. Questions such as, 'Would you put up with that?', "Do you believe him?", "Have you ever had trouble with that staff member?', etc., are frequent.
2. Do not answer these questions. Once a staff member responds to such questions, he frequently loses his neutrality and has to explain his own background or situation to the inmate.
 - a. The easiest way to handle this is to ignore the question and continue with the interview.
 - b. If the person persists, the staff member should simply state that he has to find out what is going on, and that he is not familiar with the situation.

I. Avoid Leading Questions and Jumping to Conclusions

1. This is a difficult habit to break. But to make statements like, "Don't you think your temper is a major source of the problem here?" might make a person feel that he is being cross-examined.

4. When someone is telling his story, prevent others from interrupting. Be firm. ("I'm trying to get Jim's view of the story. You will get your turn later.")

G. Do Not Try To "Solve the Problem" (Do Not Make Suggestions)

1. The purpose of the interview is to gather information. Unfortunately, there is a strong tendency for staff to try to solve the problem before it is stated. The staff member should not try to resolve the situation until the interview is complete.
2. Avoid making any suggestions during the interview. Too often the staff member will end up defending his own suggestions, or explaining them.
3. This habit (giving advice instead of discovering what is happening) is the most difficult habit for most staff to break.

H. Don't Let The Inmate Interview You

1. Often inmates will ask a staff member for a personal reaction or opinion. Questions such as, "Would you put up with that?", "Do you believe him?", "Have you ever had trouble with that staff member?", etc., are frequent.
2. Do not answer these questions. Once a staff member responds to such questions, he frequently loses his neutrality and has to explain his own background or situation to the inmate.
 - a. The easiest way to handle this is to ignore the question and continue with the interview.
 - b. If the person persists, the staff member should simply state that he has to find out what is going on, and that he is not familiar with the situation.

I. Avoid Leading Questions and Jumping to Conclusions

1. This is a difficult habit to break. But to make statements like, 'Don't you think your temper is a major source of the problem here?' might make a person feel that he is being cross-examined.

2. Often in his eagerness to summarize the problem a staff member will jump to conclusions that have not been stated by the involved parties. Remember, one should always let the disputants define the situation. A staff member should check out his understanding of what is being said. He should not assume that he understands exactly what the individual is trying to communicate.

J. Be Specific

1. The more general the information a staff member gets, the more likely it is to be unclear. As a general rule, try to clarify generalities and pin down the details of each participant's story.
2. In many cases, making the disputants provide specific information will help to resolve the crisis because the specifics are much more easily dealt with than are the general accusations being thrown about.

K. Listen and Clarify

1. Since the goal in Brief Interviewing is to understand what has been happening and what is now happening, it stands to reason that the staff member will have to listen very attentively to the stories presented by each disputant.
2. When some part of the information being received (verbal or nonverbal) is unclear, the staff member should check out his understanding with the party who gave the information
3. The staff member may have to get clarification on a number of points before he is certain of understanding the issues precisely as the disputants perceive them.

L. Review of the Principles in Brief Interviewing

1. Establish Rapport
2. Don't Talk Too Much
3. Maintain Control
4. Don't Argue
5. Maintain Strict Impartiality

6. Hear All Involved Parties
7. Do Not Try To "Solve the Problem" (Do Not Make Suggestions)
8. Don't Let The Inmate Interview You
9. Avoid Leading Questions and Jumping to Conclusions
10. Be Specific
11. Listen and Clarify

IV. SPECIFIC INTERVIEWING TECHNIQUES

- A. The general principles above are an aid to anyone conducting a Brief Interview. But there are certain specific skills which can greatly influence both the accuracy and the efficiency of the interview. These techniques should be used, however, ONLY WHEN THE NEED ARISES. Their intent is not to get the staff member to talk differently or to play verbal games with people, but to encourage the participants to give clear, accurate information.
- B. Specific interview techniques are aids in reaching the objectives of the interview. That is, to allow the staff member to gather the information in an accurate and efficient manner so that he may summarize the problems of each participant as they see them.
- c. Listening Responses
 1. Why use listening responses?
 - a. Most people need some feedback or some indication that they are being listened to when talking. A person who is asked a question and starts to answer, may stop or become uneasy if the questioner maintains a stone-faced stare.
 - b. If a staff member has to ask a lot of questions in order to maintain the flow of information, the interview can become an interrogation.
 - c. If a person is providing relevant information, the staff member needs to be **able to encourage the person to continue without breaking in and perhaps breaking**

his train of thought. The more the staff member is compelled to say, the greater the chance of "leading" the conversation.

2. now to use a listening response:
 - a. Listening responses are basically neutral, nonjudgemental expressions or gestures which show interest and/or understanding to the speaker.
 - b. Brief comments like 'I see', "oh", "um hum", "I understand', 'Yes', can be used to encourage a speaker without intruding on his story or indicating belief or disbelief.
 - c. A small gesture such as a nod, a smile and eye contact are often sufficient to maintain some rapport with the person talking.
 - d. Neutral phrases such as 'Tell me more about it', 'Go on', or 'Explain what happened next' are very effective.
3. Echoes, which are a repeating of a word or few words a person said, can be extremely helpful. For example, if a person said, 'I don't know what's the matter with this joint. It used to be different', you might repeat, 'It used to be different?' Using echoes in a questioning tone encourages a person to clarify what he is saying without addressing a direct question to him, or otherwise interrupting the flow of his story. An echo is a special case of the listening response in that it seeks clarification as well as providing encouragement.
4. Listening responses can be used to maintain subtle but strong control over interview situations.
 - a. If a staff member is trying to observe a large group of inmates while talking to the disputants, neutral listening responses like, 'I see', or 'um hum' will prevent the person the staff person is talking to from thinking that the staff member is paying no attention to him, even though he cannot maintain eye contact.
 - b. Just as paying attention to what a person is saying increases the likelihood of his

continuing to talk about it, the reverse is also true; that is, not attending will decrease the likelihood. If a staff member is talking with someone who rambles a great deal and will not stay on a relevant subject, the staff member can use listening responses to encourage him when he speaks relevantly and simply give no feedback when he verbally wanders. It involves acting interested when the person is saying something relevant and 'turning off' when he says something off the track. This method is sometimes better than saying, 'Stay on the subject', or something equally harsh or overbearing.

D. Paraphrase

1. Why use paraphrases

- a. Unfortunately, verbal communication is not always as precise and accurate as we think. Everyone has had the experience of carefully explaining something only to find out that the listener has not understood the point at all. In the interview situation, the disputant is doing the talking and the staff member is listening. Both may continue thinking that the staff member is understanding everything the inmate says perfectly well, when in fact, this is not the case.
- b. There are several reasons why verbal messages are misunderstood:
 - 1) The speaker may be using slang or other expressions which have multiple meanings.
 - 2) Statements may be so general that they can be interpreted in a variety of ways.
 - 3) The staff member is trying to process a great deal of information in a very short time, so errors in understanding naturally occur.
- c. There is only one way to be certain whether or not you have gotten the right message, That is to get the speaker to clarify it. We often do this in normal conversation by

asking, "What did you mean?" or 'Tell me more", or by saying, "I don't understand.'

2. What a paraphrase accomplishes

- a. If a person tells you his address, you will usually repeat it to make sure you heard it correctly. Surprisingly enough, however, if a person makes a complex statement, most people will express agreement or disagreement with that statement without trying to find out whether or not they really understand what the other person intended. This problem is particularly severe in emotional situations.
- b. A paraphrase is a method to check whether or not you have understood what someone has just said. Paraphrase means feeding back to the other person what his statement conveyed to you. If the staff member states in his own words what the remark meant to him, then the other person can determine whether his message came through as he intended. Further, if the person thinks staff did not get the point, he can explain further.
- c. The primary purpose of paraphrasing is to increase the accuracy of the communication, and thus, the degree of mutual or shared understanding. However, a second purpose is that by only attending to selected statements, staff can also direct the discussion to areas that seem important.
- d. CAUTION: While it is important to paraphrase for content clarification, the staff member must avoid 'leading' the person into areas he has not raised as relevant to this dispute.

3. How to paraphrase

- a. Rule 1: The first rule of paraphrasing is DON'T MERELY REPEAT OR RESTATE what the person has said. Some people wrongly think of paraphrasing as merely putting the other person's ideas in another way. Unfortunately, trying to say the same things with different words only results in the illusion of mutual understanding as in the following example.

Inmate: "I'm in a bad place today.

Staff: "You mean you're not in a good place?"

Inmate: "Exactly. I'm not comin' from a good place."

Here the staff member has clarified nothing.

- b. Rule 2: Ask yourself, "What did he mean?", and then use the paraphrase to check out your conclusion. The effective paraphrase is not a trick or a gimmick. It is a way of trying out what you think the person meant. The person can then tell you whether or not it matches what he intended. A proper paraphrase might have sounded like this:

Inmate: "I'm in a bad place today."

Staff: "You mean you feel sick?."

Inmate: "Oh no. I mean I'm down because my people didn't make it."

Staff: "Oh I see. You're feeling unhappy that no one visited you this weekend.'

Inmate: "Exactly. My brothers told me they'd both drive up last Saturday, but they didn't show."

As you can see, the staff first thought, "What did the inmate mean by, "I'm in a bad place today". His paraphrase, "You mean you feel sick?." checked out this conclusion. Since he misunderstood, the inmate corrected him.

- c. It takes a considerable amount of practice to become really good at paraphrasing; keep in mind the specified rules. Remember:

- 1) Don't just restate.
- 2) Ask yourself what did the speaker mean? Take your best guess. Then check it out.
- 3) Offer one paraphrase to the speaker, not two or three options.

E. Perception Check

1. Why use perception checks:

- a. Talking not only communicates facts, it also provides a way for people to express their feelings. Just as it is important to be sure that we have understood what a person means, it is also important to understand what they feel.
- b. People express themselves through verbal and nonverbal methods. All the information a staff member gets from a person -- his words, his gestures, his facial expressions, postures, tone of voice, and so on -- lead to a perception about how the person feels. If the person's anger is clear, there is no need for a perception check. On the other hand, if the person looks one way but says the opposite, a perception check may help the inmate to clarify his position.

2. What a perception check accomplishes:

- a. Perception checks are descriptions (often in the form of questions) of what is perceived to be another person's feelings. Just as the paraphrase is a check of meaning, a perception check is a test of whether or not the staff member has understood accurately the person's expressions of feelings.
- b. For example, a staff member may say to an inmate: "I get the impression that you are upset with what the Parole Board did." The inmate may never have said anything exactly like this, but the staff member has inferred the feeling from the inmate's manner and comments. The staff member must check out his conclusions to be sure that is really what the inmate is feeling. The most direct way to check if a perception is accurate, is to ask.

3. How to use perception checks:

- a. There are two elements in a perception checks:
 - 1) It is a description of feelings.

2) It is tentative.

- b. Don't ask why someone feels the way they do. For example, if you said, "Why are you so angry with the Grievance Committee?" you would not be checking on his feelings as much as forcing the inmate to respond to your assumption about his feelings. You may in fact have been quite wrong in thinking that he is angry. It is an accusation.
- c. Identify the perception check as your own view of the person's feelings. You also must make it clear to the person that you are not certain, and that is why you are checking with him.

Use phrases like:

"You seem to feel..."

'As I understand your feelings...'

'I get the impression that....'

'Is it true that. ...'

'It sounds to me like you feel....'

'Is it right that...'

- d. Avoid expressing either approval or disapproval. Never say, "It seems to me that you shouldn't complain so much about your work assignments", or "I think you have the right to be disappointed that your request was denied." These are not perception checks. These are value judgments, which may have the effect of further angering the individual. Such statements do not help assure you that your initial perceptions were correct.

F. Asking Open Questions

1. Why use open questions:

- a. To encourage a person to give the maximum amount of information with the least amount of interruption.
- b. You ask, "Do you have a problem" and the person says, "Yes."

You ask, "Why did you blow your cool?" and the person says, "I'm not sure."

You ask, "Don't you agree it's a waste of time to rant and rave?" and the person says, "Yes."

- c. In all of the above examples, the question has been 'closed' rather than 'open'; in each case the reply has been useless in giving the staff member the information needed to decide what to do.
2. How to ask open questions (and avoid 'dead ends')
- a. Don't ask questions that lead to "yes" or "no" answers. They provide little information and put pressure on the staff member to have the next question ready. (Yes-no questions are excellent in interrogation situations, but very poor in interviewing.)
 - b. Questions that begin, "Do you think" or "Do you agree" usually produce 'yes' or 'no' answers.
 - c. Don't use complicated and lengthy questions, particularly those that ask several things at once.
 - d. Use neutral questions that make a person think. Examples are, "What do you think about it?"; "What do you have in mind?"; "How do you mean?".
 - e. Try not to ask a lot of "Why" questions. They sometimes produce useful responses but they often lead to a dead end, i.e., there is nothing left to say, we have found the explanation.
 - f. One alternative method to asking why questions is to begin sentences with "how" or "what". These questions require the person to explain and to provide information. "What" and "how" are usually the best kind of questions for Brief Interviewing. ("How did this start?"; "What happened then?"; "What else is important here?")

G. Silence

1. Situations in which silence may be appropriate
- a. The staff member is trying to determine what an argument is about and the person

is either afraid to talk much or else is uncooperative.

- b. The person may be giving "yes" and "no" answers but volunteering very little actual information.
- c. The disputants are angry and keep glaring at each other but neither tells the staff member what is happening.

2. The Skill

- a. Say nothing -- and look at the person as if you expect him to speak.
- b. In all of the above examples, silence is probably an appropriate response. In the three cases, the individuals are not giving much information, and silence on the part of the staff member usually says, 'Go on and tell me more; I'm waiting.. Remember that the inmate is usually ill at ease with silence and will soon start talking in order to relieve the tension.
- c. It is particularly important when interviewing inmates who may feel in a one down position that a staff member be able to patiently use silence. Some inmates may hold the firm belief that no staff will listen to them even when they are right. Usually with patience and by maintaining a comfortable silence, the staff member can encourage most individuals to open up.
- d. A NOTE OF CAUTION: There are two situations where silence is a bad choice:
 - 1) Silence should not be used with an individual who is still quite hostile. The additional pressure of the silence directed at him could result in his blowing up again. Clearly, this technique does not relax people.
 - 2) Secondly, silence should not be used as a means of beginning an interview. It is easy to get into a stare-down, or confrontation.
- e. Silence should be used together with other interviewing techniques. For example, you may have just asked a good

open question and not be getting a useful response. It may be effective to wait the person out to get an answer. Silence is not effective if it is used as an isolated procedure.

H. Summary

1. A short summary after a long description of one part of a problem may help to focus the issue for both the disputants and the staff member (who will need to remember it for his final summary). A summary is a way of translating large amounts of information into shorter, more condensed units which are easier to remember.
2. The staff member may purposely use a summary to break into a stream of fast talk. This gives the disputant the message that he must talk more slowly so the staff member can follow follow him.
3. The staff member may summarize, or resummairize, simply to gain control. Not only does this force the disputants to sit back and relax a bit, it also tends to lower their emotional level when they realize that they really have made their point and the staff member does understand their view.
4. A summary is also useful when you don't know what else to do. For example, you have had so many interruptions while doing a Brief Interview with four inmates, that you are lost and have forgotten some of what's been said. A summary will put you, as well as the inmates, back on track, and will usually be self-correcting.

I. Summary of 6 Brief Interviewing Techniques

1. Listening Responses (and Echo as special case)
2. Paraphase
3. Perception Check
4. Open Questions
5. Silence
6. Summary

INSTITUTIONAL CRISIS INTERVENTION-II

CLASS OUTLINE: MEDIATION

- I. Exam on Reading Assignment

- II. Review of Course: Decision-Making in Crisis Situations
 - A. Safety Procedures
 - B. Defusing (optional)
 - c. Brief Interviewing
 - D. Decision Point (at the end of Brief Interviewing)

- III. Review of Reading Assignment
 - A. Definition
 - B. Goal
 - c. When to Use Mediation
 - D. How to Mediate

- IV. Issues in Effective Mediation

- v. Useful Techniques

- VI. Video Tape Training Films: Mediation

- VII. Small Group Practice: Brief Interviewing & Mediation

- VIII. Demonstration of Mediation: Video Tape Playback

● 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz
6/87

INSTITUTIONAL CRISIS INTERVENTION II

READING ASSIGNMENT: MEDIATION

I. MEDIATION: DEFINITION

- A. Mediation is the process of informally resolving a conflict. It is the term for attempting to work out something constructive with the disputants, rather than using the disciplinary process or writing a behavior report, or giving a warning. In Mediation the staff member tries to help the disputants do something with the problem or problems that have been identified during the interview.
- B. The goal of Mediation is to help the individuals agree upon a specific course of action (and to leave them with a positive feeling about that course of action).
1. The final agreement reached may be the idea of one of the disputants, but more frequently it will be a compromise which represents the interests of both parties.
 2. Some situations will look promising for mediation and a staff member may spend 10 minutes of concentration and energy only to see that he is making little progress. The staff member should not expect to reach mediated solutions in every dispute.
- C. When to Mediate: After Brief Interviewing is Completed. The staff member should complete the Brief Interview portion of the intervention before attempting to Mediate. This means that the staff member and the disputants are in agreement about the major aspects of the problem or problems (although the disputants may see things very differently, they at least acknowledge that the staff member understands their view). Remember that the end point of Brief Interviewing is when the staff member can summarize and the parties involved agree that the staff member has stated each person's general issues correctly.

● 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz

II. SITUATIONS IN WHICH TO MEDIATE

A. Specific Situations Indicating Mediation

1. If the disputants are still quite angry with each other, then do Mediate. It will often help to calm them down.
2. Do Mediate if the individuals are so vague in their complaints and problems that what they are saying is unclear. Example: "He's been messing with me." Your first reaction to vague information is to do more Brief Interviewing, but if people are still vague, then mediate.
 - a. It isn't clear what else to do, and
 - b. they may arrive at a very specific compromise even though they can't define the problem well. (That is, **they can** say what they want
3. Do Mediate when no other alternative seems satisfactory and the disputants claim they have no ideas as to what they might do; keep trying for a few minutes in the hope that they will come up with something that offers some chance of preventing a future confrontation.
4. If the parties express the desire to "sit down and talk this out" then the staff member may still play a valuable role even if he thinks that the people will talk on their own. The staff member's presence can assure a serious effort at negotiating.

B. Situations That Do Not Indicate Mediation

1. If one of the two parties in the dispute has moved on, left the area, -or been locked up, then Mediation at that moment is not possible. Some Defusion may be called for, and the situation may provide an excellent opportunity to strengthen your relationship with the remaining individual by interviewing him as to his view of the problem. Note that in terms of changing the situation for the better, there is a far greater chance if both parties are present, even if one is angry.
2. If some other alternative is clearly more appropriate or mandatory.

3. Occasionally, the staff member will intervene in a dispute and find that the parties are well on their way toward settling, or that they jump into a constructive discussion of what to do before he (staff) has much of an idea as to the nature of the problem. Don't interfere in these cases. It is not critical that the staff member know the issues involved. It is possible to provide excellent support for the Mediation process without knowing exactly how the individuals got into the argument.

III. HOW TO MEDIATE

- A. The basic method of mediating a dispute is quite simple: in fact, the difficulty is in trying to hold yourself and the disputants to these simple procedures.
- B. Individual Steps In Mediation
 1. Ask for suggestions: Having gained some agreement as to the problem, the staff member should say something like, "Tell me, how can we solve this problem?", or 'What ideas do you have for making sure this doesn't continue after we leave this room?' The suggestions must come from the disputants.
 - a. Most people will resist this and try to throw the problem back on the staff. ("Don't ask me, you're the one who works here", etc.) It may take several questions and some waiting to produce any ideas from the disputants.
 - b. Be persistent and determined. The staff member cannot solve their problems: the disputants may be able to. It may require some verbal pressure before the inmates believe that they will have to solve the problem.
 - 1) Constructively
 - 2) Themselves
 - 3) Before they can go.
 2. Check out each idea with the concerned When one of the inmates makes a suggestion, immediately try to get a reaction to it from the other inmates.

- a. People will seldom agree on the first or second suggestion made, so the staff member must be prepared to go through the getting ideas and checking-out process several times and be ready to work for a compromise.
 - b. Do not criticize the idea. Occasionally, inmates will agree to try something that the staff member thinks is ridiculous. The staff member's job is to get them together, not to substitute his judgment (however good) for their's (no matter how bad). If two inmates decide that the only way to end their argument about a stereo and cigarettes is to both stop using the stereo and flush the cigarettes, the staff member should let it alone even if he disagrees.
3. Arrive at a Specific Agreement: Do not insist on a "total" settlement of all issues. If the disputants can agree to a compromise or plan for some problems, that may be a reasonable place to stop, summarize and consolidate. One small constructive step can exert a positive effect on the way those inmates will get along with each other in the future.
 4. Summarize the Agreement:
 - a. As soon as the inmates mutually agree to some course of action, the staff member should try to make them feel good about it, (even if it seems a weak solution to him). It is important that the staff member summarize the agreement for the inmates. He will probably say something like, "Okay, Joe, when you get your next store order, you're going to give Frank the two cartons of cigarettes you owe him. Until then Frank will keep the radio in his locker.' And, "Frank, you agree to turn the centerfold over to Joe as soon as you get the remaining payment."
 - b. Make sure that both parties are clear as to the nature of their part of the agreement as well as the other party's. You (the staff member) should also be very clear about the agreement.
 5. **Encourage solution** the disputants that their agreed-upon solution is a constructive step that they should follow up on.

- a. This is essential. In many cases people's emotions have changed to a more positive outlook. The staff member can help reinforce this change in mood by reinforcing their feelings of having done a good job at reaching a solution.
- b. The staff member's encouragement may significantly affect the disputants' follow-through.
- c. In Summary, the General Procedure Is:
 1. To get suggestions from the disputants as to how the problem could be solved.
 2. To check out each proposal with the other disputants.
 3. To arrive at a specific agreement about a course of action.
 4. TO summarize for all parties their part of the agreement.
 5. To encourage the disputants to follow-through on the agreed-upon course of action.

IV. ISSUES IN EFFECTIVE MEDIATION

A. Maintain Control

1. After the staff member has successfully interviewed, summarized and pressed the disputants for suggestions; his job is still not done. It is extremely important that the staff member not let this progress slip away through re-escalation of the conflict. As the Mediation progresses, the disputants may address each other directly in a constructive attempt to reach a compromise.
2. If the disputants appear to be negotiating well on their own, do not interfere. However, do help the individuals to consolidate their verbal agreements. Do remain alert in order to take control as soon as their direct discussion deteriorates.

3. If the disputants do begin to negotiate, there may be one or two points at which the tone becomes argumentative. Often, reminding the disputants of the specific topic under discussion is sufficient to ensure control, but when that does not work, a careful summary of the issues may help. This requires attentive listening on the staff member's part to be ready to intervene when necessary.
- B. Stay Neutral (the impossibility of determining who is at fault).
1. Remember to stay neutral and not to take sides in an argument. In many disputes that do not involve serious disciplinary violations, the staff will never know who is 'really' at fault.
 2. If the staff member enters the dispute by disagreeing with one person's view, he may be trapped by the other person. At that point, the staff member's ability to manage the mediation objectively decreases, and he is likely to anger the person whose story he didn't accept.
- c. Don't Make Suggestions
1. No habit is harder to break than coming up with solutions to other people's problems. The trouble is that people will seldom follow-through on the staff member's suggestions even when they are excellent. They do a poor job of following through on their own ideas: they do an even worse job of following through on other people's ideas.
 2. Staff lead lives which are vastly different from those of inmates. In addition, there may be economic, cultural or age differences. The solutions which would make good sense in the staff member's life may not fit at all in the inmate's view of things.
 - 3: If the solution fails, the inmates will pay the price for that failure. The staff member will bear none of the burden. Thus, more sense to let inmates come up with their own solutions.
 4. Once the staff member accepts this approach it will make disputes far easier to deal with. He will no longer feel that he has to do something about someone else's problem. Instead, the staff member will see the situation as one which the participants themselves must

change. (The staff member then has a much less difficult role; that of facilitating the inmates' attempts to solve their own problems.)

v . MEDIATION TECHNIQUES

A. Listening and Clarifying

1. One of the basic skills involved in Mediation is clarifying. This involves being certain that you, as well as the participants, understand what each person has said.
2. Brief Interviewing techniques will be useful throughout Mediation in gaining clarity. When the meaning of a disputant's suggestion is unclear, when an individual seems displeased even though he agrees to a suggestion, when the response becomes too lengthy, good interviewing techniques will help the staff member clarify the issues and move the Mediation process along towards an agreement.
3. Phrases like, "Do you mean you would accept a substitute for the payment promised?", or "Are you saying that is the most important issue to you", help the speaker to verify or better state his position. Many conflicts have been settled when each of the disputants begins to comprehend the other person's point of view.

B. Summarizing

1. This technique is very simple but extremely useful because as an argument progresses, people tend to forget what the other person has said.
2. Frequent summary statements by the mediator tend to keep the participants on the topic and to keep track of the early agreements reached as the Mediation continues to new issues.

c. Concentrate On The Most Difficult Disputant

1. During the Mediation phase, it is helpful to spend the most effort on the individual offering the least cooperation. (Most people have a tendency to do the opposite.)
2. The least cooperative person may be openly hostile or may be silent or may be doing most of the talking in an attempt to influence the staff member.

The staff member should use his judgment to decide who is the "toughie".

3. Also, the 'toughie' may switch as the Mediation moves on. For example, early on the person who owes a debt may sit silently, but then start to participate as the staff member concentrates on him. Now the "collector" may become openly hostile, at which point the Staff member will have to concentrate on him.
4. This does not mean to ignore a cooperative disputant. In fact, the Staff member should utilize him as the first *source* of a suggestion for resolving the dispute. The burden then falls on the less cooperative person to respond to the initial suggestion.
5. It is essential that you get the 'toughie' involved in the Mediation process, because without everyone's participation, the chances of success are minimized.

E. Do Not Insist On Settling All Issues

1. Often the mediated agreement will only cover some of the problems raised during Brief Interviewing. The staff member should not make any attempt to bring up these additional issues.
2. The best criterion for deciding whether a specific problem must be considered in mediation is whether the disputants insist on dealing with it.
3. People will often "throw in" a large number of complaints and demands once they get involved in a dispute, even though they are actually concerned with just one or two issues.

F. HOW TO HANDLE IMPROPER DEMANDS

1. During Mediation you may find inmates suggesting things that are illegal, or violations of Departmental directives or institutional rules, c are the province of the staff.
2. In any of these cases, you should *step in* immediately and clearly declare the idea "out of bounds". Inform the inmate that it is not possible because it is illegal, or because it is not something the other disputant *can* decide, or whatever the reason may be. The inmate should be asked for an alternative idea that would solve *t!* problem.

3. For example, you might say, "Ann, the question of TV hours is not something you can ask Marie to change because it is set by staff for the whole unit. What other way do you see to handle this?"

VI. THE STAFF MEMBER'S PRESENCE

- A. The Effect Of The Staff Member In The Mediation Process
 1. The mere presence of the staff member requires the disputants to deal with each other differently. Each inmate must respond to both the staff member and the person he was arguing with, instead of to that person alone. For example, an inmate who might ignore another inmate if they were alone, will find he cannot easily continue this maneuver in the staff member's presence.
 2. Although it is not possible for the staff member to be completely objective and impartial (since he rapidly becomes a participant in the interaction) it is possible for him to set up a rule that both parties will be heard equally. Neither the inmate with more weight-to throw behind his issue, nor the inmate who attempts to con staff into supporting his position, will get very far with their strategy.
 3. A staff member, by dealing equally and fairly with each inmate, creates a much different climate for the resolution than an inmate leader, for example, who might have been asked to intervene. In the presence of the staff member, an inmates' connections or personal reputation should not bias the decision.
 4. When problems are settled by staff decision, there are at least two important results, both of which are negative:
 - a. The main responsibility for enforcing the decision falls upon staff.
 - b. The inmates involved may seek their own solution (sometimes violent) because they have not had to acknowledge that the solution is fair, or that they no longer need revenge 1

VII. BEHAVIORS TO AVOID WHEN INTERVIEWING OR MEDIATING A DISPUTE

- A. Error Detection: As the staff member becomes more efficient in Brief Interviewing and Mediating, he will be more sensitive to the places in which he makes errors. Many staff members are not instantly aware when they asked a closed question during interviewing.
- B. Listed below are some poor methods in an intervention. They are presented to help in detecting frequent mistakes and to help an individual "tune in" to when and where he might make errors.
1. Giving orders, directions, or commands (unrelated to control issues). Example: 'Smith, stop acting like a punk kid and accept a reasonable offer.' (Also belittling.)
 2. Warning or threatening. Example: "If you can't settle this pretty darn quick, I'll write you both up."
 3. Moralizing or preaching. Example : "Both of you have been here long enough to know better than to get into this.'
 4. Making suggestions, giving advice, or finding solutions. Example : "I think you should quit smoking. It's bad for your health."
 5. Judging or criticizing. Example : "Smith, your hygiene is disgusting."
 6. Shaming or ridiculing. Example : "Look, you should be able to take care of your personal stuff without letting the whole place-in on how messed up you are."
 7. Interrogating or probing questions (unrelated to the present issue). Example: "Jones, is it true about your room visiting?"
 8. Distracting or diverting. Example: "What did you folks think about today's ballgame?" (Useful in Defusing, a mistake in Mediation.)
 9. Lecturing or offering logic. Example: "If you did what you said you did, Doris, this couldn't have possibly happened."

- c. There is a high probability that these kinds of errors will:
1. Cut off further communication.
 2. Lead to a deteriorating situation with the disputants becoming either resentful or hostile.
 3. Practice will make the staff member aware of errors sooner. In most cases, early recognition of errors allows the staff member time to get the Mediation back on track.

INSTITUTIONAL CRISIS' INTERVENTION II

CLASS OUTLINE: REFERRAL MD

STAFF/INMATE CONFRONTATION

- I. Exam on Referral Reading Assignment

- II. Review of Reading Assignment
 - A. Need for Referral
 - B. Referral Procedure
 - c. Issues in Referral

- III. Video Tape Training Film: Referral

- IV. Demonstration of Referral

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

- v. Exam: Staff/Inmate Confrontation

- VI. Review of Reading Assignment
 - A. Another Staff in Confrontation
 - B. You Are in Confrontation
 - c. Pre-Confrontation Situations

- VII. Video Tape Training Films

- VIII. Demonstration: Staff/Inmate Confrontation

● 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz
6/87

INSTITUTIONAL CRISIS INTERVENTION II

READING ASSIGNMENT: REFERRAL

I. DEFINITION: Referral is the process of directing an inmate to a specialized service or individual within an agency for help with a specific problem.

II. When to Use Referral

- A. Referral is an option in disputes if other alternatives (such as disciplinary action) are not mandatory or are inappropriate and if a specific resource exists within the institution.
- B. Referral is also a common need in personal problem situations. For example, when an inmate is close to parole and is without housing or employment opportunities: or when an inmate's family is having problems on the outside and brings these to the inmate (via letters, visits, or phone calls).

III. Why Refer?

- A. If appropriate and available, referral for a specific problem offers the inmate a significant opportunity for help. It will lower the chance that this problem leads to a confrontation in the future.
- B. If the dispute began as a result of one inmate's personal problem, Referral may be the only option that provides a long term solution.
- c. There is one additional reason why Referral is an important tool for staff.
 - 1. Opportunities to provide security, custody and supervision to inmates are seldom lacking. In fact, they are so frequent that any other activity is often difficult to squeeze in.

● 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz

2. An appropriate opportunity for staff to demonstrate that service is a part of the job should be welcomed. Inmates very seldom see staff in such a clearly positive and helpful role as Referral provides.
3. Inmate attitudes become an important issue for staff whenever the climate is tense or a critical security issue arises. At these times, staff appreciate cooperation from inmates.
4. Referral is not a magic answer, but it is one easy way for staff to perform a job function they are assigned anyway. If it is done effectively, Referral can result in a feeling that real assistance has been given.

IV. Guidelines for Employing Referral

A. Criteria for referral as a disposition option.

1. The inmate has a relatively specific problem. For example, a dispute in the mess hall may start because an inmate is unhappy with his work assignment. A classroom dispute may revolve around which courses were approved for the inmate.
2. The inmate asks for help with a serious problem. For example, an inmate who has h-previous psychiatric problems believes the symptoms are starting again, and wants treatment.

B. Specific criteria against Referral

1. Referral is not indicated if the problem appears to be an isolated instance of behavior which is unlikely to occur again.
2. If the inmate insists that nothing is wrong or that he can work the problem out himself, Referral is not a good choice. Referral should not be forced, because the chance that an individual will follow through is very low.

V. How to Refer

A. DECISION POINT: TRANSITION TO REFERRAL

1. At the end of the Brief Interview, the staff member will decide whether or not the inmate has a specific problem and whether or not the institution can provide that kind of help. If the answer to both questions is yes, the staff member will offer the inmate a Referral.
2. Before going ahead with the Referral, it is useful to ask the inmate what he would like to do about the problem. This step is transitional.
3. Most of the time the inmate will say that he doesn't know or can't handle the problem himself.
4. This, in effect, gives the staff member an opening to ask the inmate if he would be willing to consider going to someone for help with the problem.
5. Once in a while the staff member will be surprised to find that the person does have a plan. In this case, the staff member should not proceed with Referral. Instead he should let the inmate go ahead and try his idea first. The staff member can offer to assist the inmate if his idea does not work.

B. SIX STEPS IN THE REFERRAL PROCESS

1. OBTAIN AN AGREEMENT that the individual will go somewhere for help.
 - a. This is best done by 1 selling. the Referral. There are good reasons why you have chosen to refer this inmate. Use those to convince him. Referral is a suggestion. Use your status and credibility to encourage the inmate to get the help he needs.
 - b. Do not force the Referral. Obtaining agreement is the first step in the process. If you cannot obtain a voluntary agreement do not proceed. Do sell, but don't force. (Note that step 1 is often done together with step 2, below. In order to get agreement that Referral makes sense, it is often necessary to provide the specifics of the Referral you have in mind.)

2. MAKE A SPECIFIC REFERRAL. When possible, it is very important that the staff member select the most appropriate agency or individual for the inmate. There are two reasons:
 - a. First, if you have information about a number of possibilities, you are in a much better position than the inmate to determine the best alternative.
 - b. Secondly, in terms of increasing the odds that a person will act on a Referral, it is much easier to proceed with only one Referral.
 - c. There are exceptions to this rule. If any individual is looking for a job, a number of options may be realistically necessary.
 - d. Provide all necessary information about the Referral.
 - 1) For an outside agency, write down the name, address, and phone number. For an inside Referral, provide the name, title telephone, and available hours.
 - 2) Verbally go over other pertinent facts, such as the service provided, the location of the person or agency and the fee if one is involved.
3. CHECK FOR ANXIETIES or questions about the Referral, and attempt to reassure them.
 - a. Unfortunately, the major problem in making Referrals is getting people to actually follow-through and make contact. It is therefore important to check for the kinds of obstacles which might prevent the inmate from following through.
 - b. Even the person who appears eager may have some reservations. These generally center around confidentiality, fear of being labeled, or increase in time.
 - c. Attempt to answer questions and to reassure the person when anxieties are raised. This does not mean that the staff member has to oversell or misrepresent the Referral.

4. CONSOLIDATE the Referral.
 - a. Get specific agreements on the steps that are to be taken. This is the "Who, What, Where, How," and means tie down all loose ends. For example, an inmate and his wife have an argument in the visiting room. Assuming that the staff member has decided to refer this couple to the Chaplain, and they have agreed to go, what kinds of specific agreements are needed?
 - 1) who will contact the Chaplain?
 - 2) When will the contact be made?
 - 3) What will the Chaplain be told is the need?
 - 4) When can they meet?
 - 5) HOW will the wife get back to the institution?
 - 6) What arrangements must be made at home?
 - 7) What arrangements must be made to clear the inmate for the meeting?
 - b. In other cases, the number of issues may be less, but the principle is the same. Tie down as many loose ends as possible.
5. SUMMARIZE: This summary should include all the important information about the Referral agency (from step 2) as well as all the arrangements that have been agreed to (in step 4). The summary should be done carefully to make sure the inmate has the information.
6. ENCOURAGE follow-through.
 - a. It is important that you convey a feeling of optimism about the Referral. If you act like you don't believe it will help, the individual(s) will be influenced in the direction of giving up easily.
 - b. It is important to encourage them to proceed and to praise them for the decision.

VI. REVIEW- OF THE SIX STEPS IN REFERRAL:

- A. OBTAIN AGREEMENT from the inmate.
- B. MAKE A SPECIFIC REFERRAL.
- c. CHECK FOR ANXIETIES, answer questions and reassure people.
- D. CONSOLIDATE.
- E. SUMMARIZE.
- F. ENCOURAGE.

VII. ISSUES IN REFERRAL WITHIN THE INSTITUTION

A. REFERRAL IS A TEAM EFFORT.

- 1. The staff member who first talks to the inmate may not be able to complete the Referral procedure without the assistance of other staff.
 - a. The staff member will identify the problem, and obtain an agreement from the inmate that Referral makes sense. At this point several different things could happen depending on the staff member's job classification and his particular institution. A housing unit officer at a maximum security facility will probably not proceed in the same way as he would if he transferred to a medium or minimum facility. The unit Sergeant might be able to proceed differently than either housing unit officer.
 - b. If the staff member who has the initial contact with the inmate makes the decision that although Referral is appropriate, he does not know the resources, then the specific referral will be provided by a specialist such as the social worker, psychiatrist or volunteer coordinator who does have knowledge of the resources.
 - c. The staff member may be certain of the specific referral needed by the inmate, but he may still have to stop the procedure in order to take that recommendation to the inmate's counselor for consideration. At times even the recommendation arrived at by the team counselor is tentative, until it is reviewed and approved by the classification committee.

2. In the end all of the steps in the Referral procedure will be covered but there may have to be some time in between steps and the Referral may be a cooperative effort of several staff.
- B. Degree of additional assistance provided by staff
1. Normal procedure
 - a. The Crisis Intervention Referral procedure was designed so that, if he had the information, a line level officer could cover all the bases in one fairly short contact with the inmate. The officer would have to follow normal procedure in notifying other staff or documenting the referral, but after that, the inmate would be on his own to follow-through on the steps that had been agreed to.
 - b. There are instances where a staff member might choose to give an inmate additional assistance to help him follow through on the referral. That might involve a little assistance or it might involve a lot of assistance depending on the problem; however, it would be the staff member's choice.
 - c. There are good reasons for the inmate to be responsible for follow-through on the referral:
 - 1) Frequently, the information is clear cut and the resources are readily available at the institution. For example, volunteers from Friends Outside may come to the institution regularly and have an established appointment procedure that most inmates know.
 - 2) Occasionally, the agency to which the inmate is being referred insists that the person make the initial contact on his own. For example, if an inmate had an alcohol problem on the street, preparation for his Parole Board appearance might include his getting involved with an alcohol treatment program. If the Referral were to Alcoholics Anonymous, the staff member would have no choice since that agency insists that the client make the contact.

- 3) Some staff members (e.g., counselors or officers with casework responsibilities) may want to use the Referral procedure as an assessment tool to evaluate an inmate's ability to follow through.
 - a) with staff time at a premium, there is no question that it is necessary to have the inmate follow-through wherever possible.
 - b) In this case, the staff would take advantage of ongoing contact with the inmate to observe how far he has gotten on his own. The staff member knows he can add his assistance later if it becomes necessary.
 - c) For example, some outside Referrals require considerable "leg work. in checking out a number of possibilities. It would be a good use of the inmate's time to have him or his family check out the possibilities.
 - d) Inside the institution, an inmate may have a problem in a school or work program. The inmate may say he is dissatisfied with the program. Before the staff member recommends any change to a counselor, he might first ask the inmate to find out if there are any other programs that he would like better. Having an opportunity to assess the inmate's commitment, the staff member might then want to assist him in getting a program change.
- 4) Additionally, there are times when the staff member will particularly want the inmate to follow through in order to increase his self-reliance. Again the opportunity to offer assistance will still be there if the inmate has a problem he cannot handle.
 - d. In summary, most of the time, a staff member will not have to provide assistance to an inmate help him follow through on the Referral. If the staff member knows institutional procedure, he should be able to

make all the arrangements the inmate needs to follow-through on his own. The goal of the Consolidation step in the Referral process is to set up the necessary passes or phone calls and to make certain that the inmate knows what he has to do, and will be successful in following through with the Referral without any additional assistance from staff.

2. Providing Additional Assistance with the Referral.

a. In some cases, a staff member might choose to assist the inmate in following through on the Referral.

b. Examples:

1) If an inmate who is about to be paroled informs you that he has a continuing health problem, you might want to write a letter to the appropriate health clinic or contact the appropriate parole officer to make sure that the problem receives continuing attention.

2) If an inmate who was soon to appear before the Parole Board asked for a drug treatment program, you might decide to assist him because you know that openings in the drug program are hard to find out about, and even harder to be accepted for.

c. It is very easy to build additional staff assistance' into the Referral procedure. The staff member will work with the inmate to:

1) Obtain some commitment to the intended Referral.

2) Give detailed information about the Referral.

3) Allow the inmate an opportunity to raise his own fears and hesitations about the Referral, and answer them where possible.

- d. In Consolidation, the staff member would take a much more active role.
 - 1) Instead of arranging a pass for the inmate to speak to the counselor, the staff member might offer to do this himself and get back to the inmate with the information.
 - 2) How much assistance the inmate needs (or the staff member is able to provide) is a judgment the staff member will have to make on a case by case basis.

c. Follow-up

1. A staff member may informally follow-up on a Referral to find out what happened. This can be done either by contacting the person referred to (i.e. the psychiatrist, the industries supervisor, etc.) or talking to the inmate himself.
 - a. If an inmate failed to follow-through, it may be useful to talk with him to see what got in the way, and possibly to deal with the problem.
 - b. When doing this, it is important that the inmate not get the idea that the Referral was mandatory. He should be clear that the Referral is still his to accept or reject.
 2. A staff member may find that an inmate has been referred to him by another staff member. In this case it is helpful to provide some type of feedback, either formal or informal, to the original staff member. This type of feedback will be appreciated and will encourage staff to continue to make use of the Referral process.
 3. The follow-up and/or feedback will often need some form of documentation. Even though the problem may have been resolved in a positive way by Referral, it is still important to document the process, at least for informational purposes.
- D. MANDATORY REFERRALS: Many "Referrals" within an institution lack the voluntary nature assumed in this Referral procedure. A *Referral to the psychologist is frequently much closer to an order to appear, than a voluntary acceptance of professional help.

1. Even so, it is in the inmate's best interest and the staff's best interest to assist the inmate in approaching these "Referrals" constructively.
 2. In the case of an actual order, where the inmate has no choice, it is still helpful for staff to use this procedure (except that step 1 should be ignored) to give the inmate good information, to relax the inmate, and to try to get the inmate to approach the service in a positive frame of mind.
 3. The time taken by a staff member to go through the Referral procedure with an inmate ordered by the Parole Board to undergo a psychiatric evaluation might make the difference between the inmate walking down to the psychiatrist's office hesitantly, but on his own, and being forcibly taken down in restraints because he firmly refused to go*
 4. This doesn't mean the staff should waste a lot of time trying to convince the inmate that he did, in fact, request to see the psychologist.
 5. It does mean that when the inmate knows that he has been assigned to a certain industries program or to the psychiatrist, the staff should then try to get the inmate to consider the possible value of the assignment and to attempt to obtain an agreement that the inmate will at least check that out rather than refusing to go.
- E. In summary, Referral in an institutional setting must be done with flexibility. It will involve teamwork, decisions about providing additional assistance, and decisions about whether or not to follow-up on the inmate's progress. The Referral procedure can be effectively applied to mandatory referrals as well as to instances where the inmate wants help with his problem,

INSTITUTIONAL CRISIS INTERVENTION-II

READING ASSIGNMENT: Staff/Inmate Confrontation

I. Definition

- A. The central element in defining confrontations between inmates and staff members is the level of anger, threat or hostility that occurs.
 - 1. The origin of the problem, and the type of problem are not particularly important (at least until the confrontation itself has been managed) 1
 - 2. What is important is that the situation is out of control, that it continues, and that it may escalate into violence.
- c. In short, these are situations that, by definition, demand immediate Defusing.
- D. Note that confrontations - at least as dealt with in this course - are more than simply:
 - 1. Disagreements
 - 2. Bad attitude
 - 3. A "flare-up" that is over quickly
 - 4. Insubordination

II. There are two different types of Staff/Inmate Confrontations:

- A. Those 'in which some other staff member is involved in the confrontation but you are in the area, or are the first additional staff member to arrive on the scene.
- B. Those in which you are the staff member involved in the confrontation.
- c. "Pre-confrontation" Situations:
 - 1. There are two other relatively common situations that involve staff/inmate conflict, but are not serious enough yet

● 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz

6/87

to be clear-cut confrontations.

- a. An inmate is refusing to obey a direct order.
 - b. An inmate is obeying but is being verbally abusive in the process of doing so.
2. Since these two Situations often grow into extremely serious confrontations, the last part of this section will review procedures to prevent escalation of each of these "pre-confrontation" situations.

III. Purpose

- A. This section of the course extends Crisis Intervention procedures to staff/inmate confrontation.
- B. Almost all of the Safety procedures already learned should be followed in gaining control of staff/inmate confrontations. However, effective Defusing is the key to controlling staff/inmate confrontations without force or violence.
- c. The procedure for managing confrontations will not go beyond Brief Interviewing. Once Defusing has been accomplished, and a Brief Interview has been conducted, there may be a range of options for disposition of the incident: however, these will most likely be disciplinary.
- D. While Safety and Defusing will both be essential in managing a confrontation, the primary focus in this section will be on Defusing.
 1. The main problem for the staff member trying to stabilize a confrontation is the inmate who is 'up in the staff member's face' trying to draw him into the conflict and away from his role as manager of the incident.
 2. To Defuse a confrontation between an inmate and a staff member, some additional Defusing techniques must be added to what has been presented so far, while other methods (which worked well for disputes between inmates) are no longer appropriate.

IV. When another staff member is involved in the confrontation:

A. These situations fall into two general Categories.

1. Those in which the staff member involved seems to be handling the situation adequately.
2. Those in which he does not seem to be able to control the situation.
3. In either case, you are in the area of the incident or are responding to the incident.
 - a. The question is what do you do in these cases to assist the other staff member.
 - b. Recognize that your judgment about whether or not the involved staff member is handling the situation may later turn out to be wrong, or may be disputed by the involved staff. Nevertheless, you must make your decision based on your judgment of the situation. If your actions are well thought out, they should not create problems even if your impression of the situation is based on incomplete information, or is at odds with the other staff involved.

B. General Considerations

1. Do not undermine the staff member involved.
 - a. If possible. (There are rare circumstances in which staff are so 'caught up' in a confrontation that they ignore or drive over attempts to get them out, and in which they themselves may be pushing the situation towards violence. In these rare circumstances, there may be no alternative to taking control in a way that "undercuts" that staff.)
 - b. Usually it is possible to provide assistance without causing other staff to "lose face" with the inmate population that may be watching and listening.

- 2 . Do not become part of the confrontation itself.
 - a. This is the worst possible outcome. There may now be no one taking responsibility to manage the situation and you have, become one of the disputants.
 - b. Note that inmates may try to get the staff member to react to the situation, but safety (yours and that of the first staff member involved) demands that you maintain your role; managing and resolving the problem.
- c. If the first staff member seems to be handling the situation:
 1. Provide back up
 2. Notify Make sure that other staff (in the Control Room or Security Office) know that there is an incident, or make sure that you will have a way to notify them if things become worse-
 3. Make your presence obvious to both inmates and staff (without appearing threatening).
 4. Continue to let the involved staff member handle the confrontation unless you get a clear signal that he wants direct assistance.
- D. If the incident is out of control, and/or the staff member involved is not dealing with it:
 1. Use Defusing techniques, but directed at the inmate.
 2. Escalate your own efforts to a high enough level to shut down the staff member if necessary, but still aimed at the inmate. (In order to avoid undercutting the other staff.)
- E. There are rare occasions when the person who is out of control; or assaultive, is the staff member and not the inmate.

1. In this case you must do something, and quickly.
 - a. If you do not take action, you may find yourself in a very difficult position as a witness to an assault by staff, and then - depending on how you choose to write the report and/or testify - you can find that you yourself are in major league trouble.
 - b. You owe it to the other staff member to stop things before he does something that could cost him his job.
 - c. If you do nothing, there may be serious injuries.
 2. The best solution is a strong distraction aimed at the staff, and designed to get him out of the area so that he can regain his composure. If he is upset with you for "upstaging" him, you will have to sort it out later.
- v. When you are primary person in the confrontation:
- A. Recognize that you must work against your natural emotional reactions to the insults, anger, and challenges thrown at you.
 1. Your role is staff, not participant.
 2. It is a more difficult situation to handle well (than when someone else is in the confrontation).
 - B. Have a game-plan in mind and follow your game plan, not the inmate's.
 1. Put safety first.
 - a. Assess the danger level.
 - b. Try to move the problem to a safe, private location near other staff.

Your game plan should be: Stabilize the situation; defuse the inmate; and restore order. Only then should you (or another staff member) begin to brief interview the inmate. Discipline or other staff action is the final step. Attempts to take disciplinary action earlier will create more safety problems and may make the

situation worse.

3. Remember: You want to follow your game plan one step at a time.
- c. Defusing is the key to controlling the situation. Use Defusing Techniques that will work when the inmate is angry at you.
- D. Begin with calm, direct instruction.
1. It is still the easiest, most natural defusing method.
 2. Repetition is often effective, but do not escalate as you would in a dispute between inmates.
- E. "Hear them out."
1. This defusing method is just what it sounds like. It is sometimes effective to let an angry person 'wind down', or blow off steam, or ventilate.
 2. There are, however, two important exceptions: conditions under which this method should not be used:
 - a. The confrontation continues to escalate. If the person is 'winding up rather than down, you must intervene. If the person goes on, the likelihood that he will become violent is too great to allow him to continue to ventilate.
 - b . The area is not secure. Do not continue to "hear the person out" if the area in which the confrontation occurs has not been cleared of by-standers and they are beginning to gather around, or getting involved. Additionally, if the inmate begins to yell accusations that are so damaging (for example, that you are "setting up" other inmates), then you can no longer afford to "hear him out" in that setting. You must move to a more private area as quickly as possible.
 3. When you are able to use this method, it is important to listen attentively. Do not respond to or argue with those things you disagree with. The better able you are to

absorb the specifics of the person's complaint, the easier time you will have.

F. "Agree with them."

1. This is a particularly powerful method of cooling off a confrontation, but it must be done seriously, and with a lot of verbal strength. To be effective with this technique you will need to be almost as strong in agreeing with the inmate as he is in arguing with you.
2. Usually, when someone is angry and yelling at you, you will find that 70 or 80 or even 90% of what they are saying is true and unarguable, but the other 10 or 20 or 30% are conclusions and statements that you absolutely disagree with, or that you are certain are lies.
3. For almost all people, the natural reaction is to sort through all of the non-controversial material and isolate the lies, the disagreement, the bad conclusions. Unfortunately, this has the effect of adding fuel to the fire of the confrontation.
4. To 'agree with them., you must do exactly the opposite of what is natural. The key is to ignore the areas of disagreement, the lies, etc. and to pick up instead on all the material that is factually accurate.
5. Pick out four, five or six (approximately) items that the person is yelling at you that you both know to be true and about which there is no disagreement and feed those back to the person, strongly. (For example 'You're right, George, we did work together for several years 'back East, and we did talk about assignments last weekend, and you did cover for me two weeks ago. And I agree with you there was a problem yesterday. Now . . .")
6. What you do not have to do is to agree with the elements that you think are wrong, or that need discussion. Your primary goal is to stop the escalating confrontation and it is surprising how often you will stop people in their tracks when you agree rather than resist.

7. Remember, you must be strong and serious in what you say. Sarcasm won't be effective. Neither will a weak or qualified statement.

G. Distraction and Confusion method:

1. Both of these techniques can be tried in staff/inmate confrontations, but neither will work as well as they do in disputes between inmates.
2. With distraction methods, do not use Surprise Comments as they are too likely to be seen as insults or attempts to take the other person lightly. Requests or offers (Of a cigarette, say) are still good possibilities.

H. In summary, the most effective methods when you are part of the confrontation will usually be:

1. Calm, direct instruction
2. Hear them out (when possible)
3. Agree with them
4. Distraction (without Surprise Comments)
5. Confusion
6. Last resorts
7. Get out of Dodge (HELE ON)

IV. After Defusing a Confrontation:

A. Generally, you will move to Brief Interviewing.

1. First, assure Safety; physical stability and adequate back-up.
2. Sometimes Brief Interviewing must wait because the situation remains very unstable.

B. While the inmate's behavior during the confrontation frequently calls for disciplinary procedures, it may still be very useful to get a clear idea about the incident from the viewpoint of the inmate who "Blew Up".

c. Often the staff member involved in the confrontation is not a good choice to do the Brief Interview. If possible, another staff member should get the inmate's view.

- D. Many confrontations occur over not very serious issues. The challenge is to prevent the confrontation from escalating into violence. If Safety and Defusing are well handled, then the rest of the problem is usually easy to resolve.

VII. Response to 'pre-confrontation'. situations.

- A. The obvious goal is to get past the incident without letting a serious confrontation develop.
- B. An Inmate is Refusing to Obey a Direct Order.
 - 1. Use time constructively. Do not force something to happen quickly.
 - a. This allows you to avoid issuing ultimatums.
 - b. When staff is willing to wait, the inmate is put into the position of having to provide himself with a reason to escalate.
 - c. After some delay, the staff member can repeat his initial request (in a low-key manner) thus providing the inmate with an out.
 - d. Do not resolve this kind of problem by generating peer pressure against the inmate who is giving you a problem. For example, locking down all the other inmates on the unit until this individual complies with your request.
 - (1) Even though peer pressure may work, it has the potential to lead to serious inmate-inmate violence.
 - (2) Using peer pressure is inconsistent with reasonable inmate-staff relations. (Inmate initiated assistance that is not in response to staff requests, is acceptable. For example, buddies trying to talk the inmate out of his stand.)

2. Order other inmates away if possible.
 - a. Having an audience of peers will frequently make it impossible for an inmate to give in once he has taken a stand.
 - b. Other inmates may feel obliged to provide verbal support thus strengthening his resolve or forcing him to continue long after he would have preferred to give in.
3. Avoid pressure on the inmate.
 - a. Don't threaten: don't dwell on the possible negative things that may happen because of his actions; don't try to psychologize about what is 'really' wrong.
 - b. Talk steadily to the inmate. Slowly try to get him talking also. Keep the conversation non-threatening.
4. If the inmate is angry because of a decision or action of your's, don't try to defend yourself verbally. Hear out the gripe. You can discuss it after the threat of violence gone, but a verbal argument will increase the chance that the situation will become physical.
5. Concentrate on lowering the emotional tone and moving to a safe position to resolve the

c. An Inmate Is Obeying But Being Verbally
Often an inmate who has just backed away from a confrontation with staff is being verbally abusive to staff while complying with staff's wishes. (e.g., an inmate is ordered to go to his house, but as he is going, he gives the staff member a lot of abuse.)

1. Pick the behavior that you wish to respond to:
 - a. It would be a high risk - high gain proposition for staff to choose to respond to the verbal noncompliance instead of the physical compliance.
 - b. If staff fails to respond to the verbal behavior, it becomes wasted effort for the inmate and usually stops.

86

2. Allow the inmate to have the last word:
 - a. Much of the inmate's verbal abuse is simply a method of saving face.
 - b. Every time the staff member responds to the inmate's taunts and insults, he provides ammunition to escalate the conflict. He may also lower himself to the level of the inmate's verbal abuse.

STAFF/INMATE CONFRONTATION

Inmate is in Confrontation with Another Staff

General Principles

1. Don't undermine
2. Don't become part of Confrontation.

STAFF IS HANDLING

1. Notify
2. Make presence known
3. Let staff handle
4. Provide safety and back-up

STAFF NOT IN CONTROL

1. Direct Defusing at inmate
2. Escalate as needed
3. Act as if first staff is in charge
4. Work to separate
- s. If staff is over-reacting use distraction.



Inmate is in Confrontation with You

1. HAVE A GAME PLAN
2. SAFETY FIRST
 - a. Assess danger level
 - b. Try to move to a safe area
3. USE DEFUSING TECHNIQUES
 - a. Calm, direct instruction
 - b . Hear them out
 - c. Agree with them
 - d. Distraction/Request
 - e. Confusion
 - f. Last resorts - (not physical)
 - g. Get out of Dodge (HELE ON)

INSTITUTIONAL CRISIS INTERVENTION II
CLASS OUTLINE: CONSOLIDATION (24 Hours)

I. Course Review

A. SAFETY

1. Requires: Planning, Communication, Teamwork
2. Three Principles:
 - a. Assess
 - b. Stabilize
 - c. Maintain Stability

B. DEFUSING

1. Goal: Control
2. Force
3. General Principles
 - a. Order Your Techniques
 - b. Appropriate Level of Control
 - c. Avoid High-risk / High-gain
4. Approach Determines Response
5. Separation
6. Specific Techniques
 - a. Calm, Direct Instruction
 - b. Distraction: Surprise Comments, Requests
 - c. Confusion: Columbo
 - d. Last Resorts
7. Methods to Avoid
 - a. Belittling
 - b. Threatening Detention
 - c. Use other inmates

● 1987 THIRD EDITION: Jeffrey A. Schwartz and Cynthia B. Schwartz

c. BRIEF INTERVIEWING

1. General Principles

- a. Rapport
- b. Don't Talk Too Much
- c. Maintain Control
- d. Don't Argue
- e. Stay Impartial
- f. Hear All Involved Parties
- g. Don't Make Suggestions
- h. Don't Allow Yourself To Be Interviewed
- i. Avoid Leading Questions and Jumping To Conclusions
- j. Be Specific
- k. Listen and Clarify

2. Specific Techniques

- a. Listening Responses (echoes)
- b. Paraphrase
- c. Perception Check
- d. Open Questions
- e. Silence
- f. Summaries

3. End Point - Summaries and Agreement

D. MEDIATION

1. Steps of Mediation
 - a. Elicit Suggestions
 - b. Check Out the Idea With All Parties
 - c. Arrive at Specific Agreement
 - d. Summarize
 - e. Encourage
2. Principles
 - a. Don't Make Suggestions
 - b. Control
 - c. Stay Neutral

E. REFERRAL

1. Steps in Referral
 - a. Obtain Agreement to Refer
 - b. Give a Specific Referral
 - c. Check for Anxieties and Questions
 - d. Consolidate
 - e. Summarize
 - f. Encourage

F. STAFF/INMATE CONFRONTATION

1. Another Staff Member is Involved
 - a. Don't Undermine
 - b. Don't be Drawn In
2. When You Are in Confrontation
 - a. Follow Your Game-Plan
 - b. Safety First
 - c. Use Defusing Techniques that Work

II. Final Exam

III. Wrap Up

APPENDIX

LEGAL ISSUES: CRISIS INTERVENTION

I. RECENT SUPREME COURT DECISIONS

A. Generally, the U.S. Supreme Court has become more supportive of correctional workers and administrators.

B. Supreme Court Decisions Favorable to Prison and Jail Administrators.

1. Daniels v. Williams 106 S.Ct. 662 (1986)

Davidson v. O'Connor 106 S.Ct. 668 (1986)

a. Prison worker negligence that results in injuries to inmates is not a violation of the "Due Process" clause of the Fourteenth Amendment. Prisoners can no longer use civil rights actions as a way to get damage awards that should be obtained in a state court. This decision overturned Parrat v. Taylor (1981). The Court stated:

"Where a government official's act causing injury to life, liberty, or property is merely negligent, no procedure for compensation is constitutionally required." (See "Daniels" above)

2. Remember that Hawaii inmates have access to an

effective state tort claims process. If you are negligent and this causes inmate injury or property loss, you can be sued in state court.

3. In a riot situation. courts must give prison workers and officials Actions taken which result in injury to inmates must be deliberately cruel or malicious before an Eighth Amendment violation can be sustained. Negligence or indifference alone does not constitute an Eighth Amendment violation in a riot situation (Whitley v. Albers 106 S. Ct. 1078 (1986)).

4. TEST OF REASONABLENESS

1. Turner v. Safley 107 S. Ct. 2254 (1987)

O'Lone v. Estate of Shabazz 107 S. Ct. 2400 (1987)

2. Summary of the "Safley" and "O'Lone" decisions:

a. When prison regulations limit or interfere with an inmate's constitutional rights, these may be valid if there is some reasonable connection between the regulations and a legitimate, prison interest.

b. Legitimate prison interests can include order and security, rehabilitation, and impacts on staff and other inmates.

FOR A COMPLETE REVIEW OF THESE DECISIONS, TURN TO THE LEGAL ISSUES SECTION. MEANWHILE. REMEMBER THAT THE COURT GAVE INCREASED DISCRETION TO PRISON ADMINISTRATORS. ONLY THEY CAN RISK LIMITING A CONSTITUTIONAL RIGHT. OBVIOUSLY, THEY WILL NOT DO SO WITHOUT THE DIRECTOR'S APPROVAL.'

INSTITUTIONAL CRISIS INTERVENTION-I
READING ASSIGNMENT: LEGAL ISSUES (FORM C)

I. WHY STUDY LEGAL ISSUES

- A. To familiarize the staff member with the scope and variety of legal questions he or she may encounter in conflicts and other crisis situations.
- B. NOT to encourage the dispensing of legal advice in a quasi-lawyer fashion. Giving legal advice is illegal (unless you are a lawyer who is a member of the Bar).
- c. To avoid errors which might result in a criminal or civil litigation with the staff member as the defendant.
- D. Many inmates come into correctional institutions bringing with them numerous legal problems (in addition to their conviction). These legal problems are usually in the civil area and may range from child custody to dissolution (divorce) to bankruptcy. Also, inmates about to be released frequently face similar issues as well as employment licensing, driving license, bonding and the like. Line staff should have a general understanding of these issues that are day-to-day concerns of many inmates.
- E. Legal guidelines vs. policy guidelines: It should be recognized that Departmental policy or individual institutional policy may be more demanding of staff than the actual legal boundaries. The law is the bottom line standard only, and the administration may choose to provide additional policies to those required by law. This reading assignment is designed to acquaint you with case law and statutory law pertaining to corrections. To establish more precise behavioral guidelines, the staff member must be thoroughly familiar with administrative policy as well as the law.
- F. Disclaimer: This paper may be used as a reference document, but it must be remembered that it is a summary of very broad areas of law intended to give general background and that it is not a complete, detailed discussion of anyone area. Also, part of this paper may not be sensible when taken out of the context of the rest of the crisis intervention curriculum.

II. STEPS TO FOLLOW WHEN DISCUSSING LEGAL ISSUES

- A. Encourage other courses of action rather than legalistic ones if possible.

● 1976: Jeffrey A. Schwartz, John W. Silk, Cynthia B. Schwartz, and Donald A. Liebman Reproduced 3/81

- B. Check carefully to be sure that the individuals know what to do if they have a legal problem. This will often mean that they should consult an attorney knowledgeable in the specific area.

III. THINGS TO AVOID

- A. Avoid beginning any intervention by reviewing the list of legal options available.
- B. Avoid giving specific legal information and avoid attempting to provide step-by-step legal procedure. This latter would constitute giving legal advice.

IV. LEGAL COUNSEL

- A. If informal methods of resolving a civil dispute fail, and if the problem remains serious, it may well end up in court. All parties will be well advised to at least briefly consult a qualified attorney.
- B. If other disputants are or already have hired attorneys, suggest to the inmate that he or she consider being represented by counsel.
 - 1. Don't act as an "informal" lawyer. It could have grave consequences for the person you are trying to advise.
 - 2. Any inmate should be able to obtain consultation with a lawyer specializing in the problem area, for very little money.
 - 3. Realistically, an inmate will often have great difficulty getting an attorney, particularly for civil problems;

V. THE ROLE OF THE COURTS

- A. Prior to the 1960's, the judicial system had a deep and abiding reluctance to review the conduct of prison officials. The "Hands Off" Doctrine was the name given to the often stated judicial position that prison officials are more qualified to deal with correctional problems by virtue of experience and expertise in the field than are the courts.
- B. The "Hands Off" Doctrine applied to issues of conditions of confinement, court actions against agencies or individual staff members, civil rights issues and other constitutional questions. Notice that the "Hands Off"

Doctrine never applied to criminal litigation within corrections. That is, historically, the area of post-conviction relief has been a source of a huge number of legal proceedings **year** after year after year.

- C. In the 1960's and early 1970's, the courts moved sharply away from the "Hands Off" Doctrine. The most dramatic event was the finding by a federal court that an entire state department of corrections, with its operations, facilities, and staff considered as a whole, constituted cruel and unusual punishment. A court order was issued that was extremely specific with regard to some areas of correctional management and the ground work was thus laid for judicial review of correctional management.
- D. In 1974 and 1976 there were U.S. Supreme Court decisions that appeared to signal (to many legal observers) a desire on the part of the courts to move back in the direction **of** the "Hands Off" Doctrine. However, this retreat did not materialize, and most observers feel that the court will never again take the position that they have no appropriate role with respect to correctional issues.
- E. The Courts have taken a number of clear positions on issues, and these are worth distinguishing:
 - 1. The Federal courts **are** most likely to grant review with cases alleging civil rights deprivation under Section 1983 of the Civil Rights Act.
 - 2. The Federal courts seem less likely than they were in the early 1970's to grant review based on Eight Amendment guarantees against cruel and unusual punishment.
 - 3. The specific rights of pretrial detainees (as distinguished from convicted prisoners) have been all but eliminated by a recent Supreme Court decision. Bell v. Wolfish, 99 S. Ct. 1861 (1979).
 - 4. The governmental immunity of state and local departments of corrections from potential liability under Section 1983 has been absolutely eliminated.
- F. Trends in the 1980's: Direction of the Court in the 1980's
 - 1. The old notion that the courts should keep their "hands off" corrections is all but dead in Federal Courts.

2. However, the notion that courts must not only rule on constitutional questions but also remedies has been curtailed by the decision in Bell v. Wolfish (1979).
3. In Bell v. Wolfish, the court set a new standard, and provided a clear distinction: First, that it is properly the role of the court to rule on constitutional and statutory requirements. Secondly, it is not the role of the courts to tell corrections how to meet these requirements. In other words, corrections should figure out the remedies in line with their expertise and responsibility for the management of correctional facilities.
4. At the same time, the courts have become more conservative on specific substantive issues, e.g., visiting, eavesdropping, and single-celling. That is, the Federal courts are far more likely to accept jurisdiction and judicially review your operations today than they were five to ten years ago: however, they are less likely now than they were in previous years to grant extensive inmate rights in some controversial areas.
5. The discussion above refers to Federal courts primarily, and also is an accurate description of the situation in a few state court systems. Most state courts (but certainly not all) have been and remain much more conservative than the Federal judiciary on correctional issues. There are many state courts in which the "Hands Off" Doctrine remains the implicit, if not the explicit, guiding philosophy on correctional law cases.

VI. ACCESS TO THE COURTS

A. Communication

1. The ability to seek a writ of habeus corpus may not be impaired and any practices inhibiting access are rejected by most courts.
2. Appointment of counsel
 - a. Courts have broad discretionary power for cases involving post-conviction relief.
 - b. Ross v. Martin, 415 U.S. 909 (1974) held that the Fourteenth Amendment does not require counsel for indigents in state or federal discretionary appeals. Since appeal procedures are usually very technical, this decision effectively blocks many potential appeals convictions.

3. Legal correspondence

- a. There is an absolute privilege of confidentiality.
- b. However, prison authorities may open and inspect the incoming mail to search for contraband.
 - (1) Wolff V. McDonnell held that opening the mail in the presence of the inmate was allowed and the burden was on the inmate to show hardship.
 - (2) In general legal mail should not be read unless probable cause exists in such areas as escape plans or other threats to security. In all cases the inmates should be present when legal mail is opened.
 - (3) Insitutions may enact reasonable restrictions regarding legal correspondence, i.e., attorney of record, official stationery and specific address of record.
- c. There can be no discipline for suing the prison administration.
- d. There can be no unreasonable delay in communication with the courts.

4. Attorney visitation

- a.** Meeting with his attorney is part of the inmate's right to access to the courts without interference.
- b. Case law is strongly in favor of attorney-prisoner confidentiality.
 - (1) Note that if a third person, who is not required to be present for the interest of the inmate, is present with the inmate and the attorney and the information has been knowingly disclosed, the information is not considered "confidential."
- c. Reasonable restrictions which do not infringe upon the inmate's rights are not prohibited by law. For example, restrictions that insure the inmate will not escape, or harm the attorney, would be legal if reasonable.
- d. Paraprofessionals and law students working for attorneys may conduct confidential attorney-inmate interview. Procunier v. Martinez, 94 S. Ct. 1800 (1974.)

B. Jailhouse Lawyers

1. A Supreme Court decision in Johnson v. Avery, 393 U.S. 483 (1969) established the right of inmates to mutual prisoner assistance, i.e., advice from lay prisoners regarding post-conviction relief. If no other reasonable alternative is available. Reasonable alternative would include appointed counsel or legal aid.
 - a. The right concerns assistance, not representation by another inmate.
 - (1) There is no right to assistance from a particular inmate.
 - (2) Correspondence with an inmate from another institution may be prevented.
 - (3) A jailhouse lawyer maybe prohibited from interviewing one in isolation.
 - b. Restricting- mutual legal assistance among prisoners is justified when the-gravity of the situation outweighs the availability of other measures. However, the state may not bar assistance without making available reasonable alternatives. In evaluating the validity of rules restricting legal assistance, several factors are considered:
 - (1) The actual effect of the restriction.
 - (2) The undesirability of the conduct in regard to custodial objectives.
 - (3) The availability of reasonable alternatives.
 2. Wolff v. McDonnell stated that in assessing the need for legal services and the adequacy of alternatives available, attention must be paid not only to habeus corpus writs contemplated by inmates, but also to civil rights actions (for conditions of confinement).
 3. It was out of the same consideration of inadequacy of alternatives and the needs of indigents that the U.S. Supreme Court decided Procunier v. Martinez, cited above, which allows lay students to conduct attorney-prisoner interviews.
- c. Legal Libraries and Legal Materials
1. Johnson v. Avery: There is an affirmative duty to provide inmates with sufficient legal materials. The U.S. Supreme Court subsequently affirmed this

principle and expanded the required law materials to include annotated codes and state and federal reports (Gilmore v. Lynch, affirmed, Younger v. Gilmore, 404 U.S. 515 (1971)).

2. Regulations regarding library use have been declared valid when found reasonable.
3. Prohibitions from keeping books in cells maybe valid if there is a library available.
 - a. If an inmate owns more than the allowed number of books, he may be required to limit them by donating them to the prison library, sending them home, or destroying them, at his choice.
 - b. The state of an inmate's personal library is insignificant if there are other resources available.
4. An inmate maybe restricted from use of the library i.e., because of unauthorized conduct or discipline by solitary confinement, as long as he has access to other resources such as communication with one who does have access or his own books.
5. It is an invalid restriction to require that all legal papers remain in the possession of the one to whom they pertain. The jailhouse lawyer may keep them in his possession and all the materials pertaining to a document seeking legal relief must be respected, although storage maybe required to be somewhere other than a cell.

VII. PRISONERS' RIGHTS

A. First and Fourteenth Amendments

1. Mail Inspection
 - a. There is no absolute right of inspection -- total ban of incoming or outgoing mail would not be accepted by the courts.
 - b. Courts have upheld the right of prison officials to read and inspect incoming mail **for** contraband.
 - c. Regulations regarding approved mailing lists and the number of letters a prisoner may posses at one time have both been upheld.
 - d. The courts have failed to set a uniform policy regarding inspection of incoming and outgoing mail.

- e. Federal district courts have held conflicting views.
- (1) Prewitt v. Ariz., 315 F. Supp 793 (D Ariz. 1969, 418 F2d 572 affirmed on appeal) held that mail censorship is universally accepted as long as it does not interfere with access to the courts.
 - (2) Other courts (Palmigiano V. Travisono, 317 F. Supp. 776 [DRI 1970]) have found that although some inspection may be necessary, the means must be the least restrictive, i.e.:
 - (a) Reading outgoing mail violates the First Amendment unless pursuant to a duly authorized search warrant.
 - (b) Incoming legal mail may be opened and inspected for contraband, but not read if the mail comes from an attorney on an approved list.
 - (c) Mail coming from a party not on the approved list may be read and inspected to detect inflammatory writings, or other materials which might jeopardize security.
- f. Federal Circuit Courts of Appeal have established no clear, uniform test, but the tendency is to require that prison officials have a justifiable purpose for restricting the free expression of inmates.
- g. There is an increasing unwillingness to allow inspection of outgoing mail since contraband smuggles out does not directly affect prison security. Some courts have, however, recently upheld the right to inspect and read outgoing mail.
- h. The U.S. Supreme Court
- (1) In Procunier v. Martinez 416 U.S. 396 (1974):
 - (a) The court struck down prison regulations which provided that letters which unduly magnified grievances, expressed inflammatory political, racial, religious, or other views, referred to criminal activity were lewd, obscene or defamatory, included foreign matter, or were otherwise inappropriate, were to be

censored. The principle stated was that some government interest must be served by censorship. Therefore, it would appear that because a letter is written in a foreign language, it would not be censored for that reason alone, unless it can be shown that security, control, or some other legitimate risk to government interest exists.

- (b) Withholding mail is justified when the correspondence concerns escape plans, proposed criminal activity, or messages written in code if:
- (c) The regulation furthers an important or substantial government interest such as security, order, or rehabilitation.
- (d) No censorship to eliminate unflattering, unwelcome opinions or factually inaccurate statements.
- (e) The government interest must be unrelated to suppression of expression.
- (f) The sweep of the restriction may not extend beyond the protection of the interest.

(2) Note the narrow scope of the decision above:

- (a) The Supreme Court refused to decide if prisoners had First Amendment rights.
- (b) The decision was based on the rights of outside correspondents.

(3) Procedural safeguards: The author must be notified of withholding and be given a reasonable opportunity to protest. The complaint should be referred to one other than the original staff member.

2. Publications: The courts tend to weigh and balance the interests of the inmate in receiving certain publications and the interests of the institution in security and rehabilitation. Concerns of prison officials about potential inflammatory effect have been given great weight.

- a. Courts are reluctant to put too heavy a burden on prison officials to prove imminent danger.

- b. Yet, far more justification is required today than in the past before censorship is allowed, rejection by the courts.
3. Manuscripts
 - a. Sostre v. McGinnis 442 F 2d. 178 (2d Circuit 1971): The court held that an inmate may not be punished for his beliefs or mere expression of these beliefs, but writings may be confiscated if they pose a threat to security.
 - b. The institution has no property interest in the creative works of an inmate.
4. Freedom of Speech
 - a. An inmate may not be punished for his beliefs, nor for mere expression of those beliefs.
 - b. Any restriction must be justified by the advancement of some purpose of imprisonment or create a present danger of a disruptive effect. Public order is the top priority and institutional security is adequate justification for restrictions of freedom of speech.
 - c. There are no definitive decisions on political activities, but it appears that there must also danger of disruptive effect if such activities are to be legitimately restricted.
5. The right to unionize: The U.S. Supreme Court (June, 1977) has ruled that inmates have no inherent right to unionize or to form prisoner's groups.
 - a. It is not yet clear how broadly this decision has been interpreted or applied, but it may well mean that many of the inmate organizations and activities that have previously been allowed as "rights: may now be regulated as "privileges," or may be stopped entirely (at the discretion of prison officials).
 - b. While the specific case before the Supreme Court involved the right to organize a prisoner's union, this decision may be applied to partisan political groups and cultural groups.
6. Visits
 - a. Staff has broad discretion in regulating visits. Limiting the time and number of personal visits

is generally justified if reasonable. However, unreasonable or unjustified restrictions may be banned. For example, the Kentucky System limitations on the number of visitors and child visitations were held invalid. (Tate v. Kasulke, 409 F. Supp. 651 (W.D.K.Y. 1976)).

- b. The rights of officials to prohibit or restrict visits from attorneys, religious ministers, or other public officials, including the press, are quite limited. The burden to show that the restrictions imposed are, in fact, reasonable is usually on the prison officials.
- c. The right to see family or business acquaintances has been dealt with only rarely by the courts. However, under certain circumstances, such as a family emergency, the refusal to allow convicted inmates to communicate with family may be considered cruel and unusual punishment.
- d. Transferring an inmate to a facility that happens to be far away from the inmate's family is not a violation of the inmate's rights. That is, an inmate has no inherent right to be placed or kept within convenient visiting distance of relatives.
- e. Recent cases suggest the courts are likely to view contact visits as a privilege, and not a right.

7. Press

- a. Ban on media interviews with specific inmates does not violate inmates' free speech rights or the media's free press rights (if it is justified by security considerations). Adequate rights are secured by family, clergy, attorney, and friends of prior acquaintance through which there is unrestricted communication with the press (Pell v. Procunier).
- b. There is no duty by the state to make new sources (records, access to staff for interviews, etc.) accessible to journalists that are not available to the general public.

8. Religion

- a. Regulation of practices may be enforced and it is usually justified by institutional security or because the inmates abused the right to gather to worship.

- b. One may not be punished or given or denied privileges because of religious beliefs.
- c. Within a correctional system, there must be a reasonable application to all sects. Correctional systems may not arbitrarily deny services to some religions while tolerating others of preferred choice.
- d. To bring a First Amendment suit for religious freedom, it must be shown that:
 - (1) There was deliberate discrimination, or
 - (2) There was evenhanded application of an inherently discriminatory rule.
- e. Most suits which have reached the courts have been brought by asserting unreasonable restrictive measures on the freedom to exercise religious practices. One such case is Walker v. Blackwell. 411 F. 2d 23, 5th Cir. (1969). In this case the court decided against the inmates who brought the suit when they claimed a right to receive special meals during the religious month of Ramaden. The court also said that there was no right of of the sect to listen to a radio broadcast directed at Black Muslims on one of two radio stations within the prison. The court decided for the inmates on the issue of circulation of a Black Muslim newspaper because the court found no inflammatory content.
- f. Although there is no requirement, in general, to provide special diets to accommodate religious beliefs, the inmate may refuse certain kinds of foods on a religious basis and the remaining food must meet the sustenance requirements, usually 2,500 calories per day.

B. Fourth and Fourteenth Amendments

1. Search and Seizure of physical evidence

- a. Most courts grant the institution broad powers to search an offender or cell in accordance with regulations. Searches are not unreasonable so long as they are not for the purpose of harassing or humiliating the inmate or performed in a cruel or unusual manner. (See Moore v. People 171 Col. 388,467 P 2d. 50 [1970]).

- b. In the recent case of Bell v. Wolfish the right to strip search and body cavity searches of pre-trial detainees after visiting was upheld.

2. Conversations

- a. Seizure of conversations has not been found to amount to a constitutional violation in state cases, or in the Supreme Court decision (Katz v. U.S. 389 U.S. 347). The Supreme Court has found violations of the Fourth Amendment where the speaker has had a reasonable expectation of privacy. This has not yet been applied in a prison context. An expectation of privacy may be created if inmates are not put on notice by the jail administrator that all non-privileged communication will be monitored. California inmates are protected from monitoring via the privacy guarantee in the California Constitution. (Delancie v. Superior Court 159 Cal Rptr 20 (1979)).

3. Privacy

- a. An inmate does not have the right to privacy enjoyed by those in free society.
- b. Constitutional claims have been considered only when the facts were shocking and outrageous to the community's sense of decency.

c. Fifth, Sixth, and Fourteenth Amendments

- 1. Miranda v. Arizona, 384 U.S. 436 (1966): interrogation of person in custody requires what has become to be know as the "Miranda warnings." The decision has been most applicable in the area of police interrogation.
- 2. Prison context:
 - a. Miranda does not apply in prison disciplinary hearings (Rodrigues v. McGinnis, 451 F 2d. 730 2d. Cir. [1971]).
 - b. Failure to "mirandize" can, however, ruin the chance to prosecute in state courts for the new offense that is the basis of the disciplinary action.
- 3. Double jeopardy: The Tenth Circuit in U.S. v. Smith, (1972) held that an administrative punishment does not preclude judicial prosecution. (Rusher v. Arnold, 550 F 2d. 896 [3rd Cir. 1977]).

4. Refer to the following Section VII for discussion of the right to an attorney at disciplinary proceedings.
- c. Eighth and Fourteenth Amendments: Prohibition against Cruel and Unusual Punishment/Bail
1. A range of tests is employed when dealing with alleged violations of the Eighth Amendment.
 - a. Does the conduct or condition shock the conscience or is it intolerable to fundamental fairness? The courts deal here with the underlying concept of the dignity of man and the evolving standards of decency.
 - b. Is the treatment of the inmate greatly disproportionate to the offense?
 - c. Is the treatment far beyond that necessary to achieve legitimate purposes of the institution?
 2. More and more litigation and legislation is moving towards a mandatory own recognizance release program to avoid the Eighth Amendment violation of excessive bail.
 3. Isolation
 - a. Punishment for infraction of prison rules is so closely related to prison discipline that the courts are reluctant to interfere except in the most outrageous cases.
 - b. The courts will look at whether the seriousness of the punishment bears a reasonable relationship to the seriousness of the offense committed.
 - c. Isolation, solitary confinement, or punitive segregation is not alone unconstitutional and unconstitutionality is difficult to prove. Expert witnesses are almost a necessity.
 - d. In an uprising or disturbance, the staff clearly has a right to isolate the troublemakers without a prior hearing. Most courts go along with the institution's concern for protection of the general prison population, personnel, the prisoner himself, discipline or prevention of escape.
 - e. There are no uniform standards regarding the length of segregation.

- f. Whether isolation is cruel and unusual punishment has been determined by the following criteria:
- (1) The conditions themselves may constitute cruel and unusual punishment.
 - (2) The purpose may be cruel, as well as penologically unsound.
 - (3) The punishment may be excessive for the infraction.
 - (4) Consideration is given to hygiene, length of segregation, diet, and cell considerations.
 - (5) It must be considered "shocking or barbarous" before it is unconstitutional.
- g. Application of the Eighth Amendment protection from cruel and unusual punishment only applies to convicted inmates. Pre-trial detainees who are victims of assaults would have to file under the Fourteenth Amendment "due process" clause or some other violation of 1983.

4. Use of Force

a. Discipline and Punishment

- (1) Corporal punishment is strictly forbidden.
- (2) Jackson v. Bishop, 404 F 2d 571 (Eighth Cir. 1968): The Circuit Court found whipping to be cruel and unusual punishment. Also unprovoked assaults by staff are actionable (Stanley v. Henderson) 597 F. 2d. 651 (1979).
- (3) Courts have extended this ruling to Civil Rights cases involving alleged assaults by prison officials on individuals. Johnson v. Glick, 481 F 2d. 1973. Numerous examples of both denials and affirmations exist. Most often a simple assault will not suffice. Most findings against officers have been a result of combined negligence and unprovoked attacks. However, 1983 violations alleging cruel and unusual punishment are more difficult to win than other rights violations.
- (4) In Johnson v. Glick the court set out guidelines to determine Eighth Amendment violations:

- (a) Need for application of force.
 - (b) Relationship between the need and the force used.
 - (c) Extent of the injury.
 - (d) Whether the punishment was rendered in good faith or with malicious intent.
- b. Unreasonable use of force: Physical Abuse
- (1) Inmates have rarely met with success on this issue.
 - (2) The inmate must prove one of three things:
 - (a) The use of force was for discipline (since corporal punishment is strictly forbidden).
 - (b) The use for force was not related to control or security, or, if it was, that it went so far beyond the amount of force necessary as to be cruel and unusual.
 - (c) The officer was acting in a malicious and sadistic manner in order to cause the inmate bodily harm.
- c. Allowable Use of Force: Control of Prison Security
- (1) Reasonable use of force may be used to enforce proper prison regulations.
 - (2) Reasonable force is allowed in self-defense by a staff member or in defense of another staff member.
 - (3) Force may be used to stop a disturbance.
 - (4) The test to determine whether use of force is appropriate is: Are property or lives in danger?
 - (5) Use of tear gas to prevent riots or subdue unruly inmates has been allowed if the force used was reasonable. However, tear gas should be used as a last resort and preference should be given to less drastic means when available Green v. Loving, 538 F 2d. 578 (1976).

- (6) It has been held that use of force to suppress a threatened' riot or prevent an inmate from doing bodily harm to an officer or other inmate was justifiable.
 - (7) The use of force to keep order does not fall under constitutional prohibition and such things as the use of a baton or other weapon to suppress a threatened riot or prevent impending bodily harm to an inmate or another officer is to be distinguished from corporal punishment.
 - (8) The distinction between control and punishment is uniformly made by the courts. However, were such things as a baton to be used unnecessarily, as when a violent potentially violent situation has been quieted, use of force (as punishment) could be found to be unconstitutional.
5. Deprivation of "Good Time"
- a. Forfeiture of good time as a disciplinary measure is allowed with the usual requirement of due process in the disciplinary proceedings.
 - b. Alleged abuse (of the deprivation process) is grounds for judicial review.
6. Staff Liability for Injury to an Inmate by a Third Person
- a. In the case of Muniz v. U.S., 380 F. Supp. 542, N.Y. Dist. Ct. (1968), where the inmate bringing suit was homosexually attacked, there was no liability on the part of the prison officials who were not negligent and who had no reason to know about the impending attack.
 - b. There is a common law duty of reasonable care by staff members to those confined to their care, but the officials are not guarantors of safety.
 - c. Holt v. Sarver, 309 F. Supp. 362, ED Ark. (1970) Eighth Cir. established that there was a constitutional right of an inmate to be protected, but the right has been difficult to enforce. The court in Penn v. Oliver, 351 F. Supp. 1292 (1972) applied the following test to determine constitutional violation:

- (1) Negligent failure of correctional officer to prevent violence:
 - (2) Showing a pattern of undisputed and unchecked violence: or
 - (3) Egregious failure to provide security.
7. Prison Conditions and the Eighth Amendment Prohibition Against Cruel and Unusual Punishment:
- a. Prison conditions became a major issue when the Arkansas prison system was, as a whole, declared unconstitutional by a federal court and reform was forced. A single bad condition will in most cases not be enough to bring successful suit. (See Holt v. Sarver, cited above.)
 - b. Lack of funds is no defense to a charge of prison conditions being so poor as to be unconstitutional.
 - c. Good faith efforts are, similarly, no defense.
 - d. It is the combined effect of aspects of prison/or jail conditions which can cause conditions to be considered inhumane. According to the handbook published by the American Bar Association and American Correctional Association, conditions break down as following when under judicial scrutiny:
 - e. Major Conditions:
 - (1) Extremes of temperatures in cells.
 - (2) Deprivation of sanitary needs: toilet paper, soap, change of clothes, towels, toothbrushes, etc.
 - (3) Denial or severe limitation of food.
 - (4) Denial of medical care.
 - (5) Unsanitary conditions: noventilation, lack of cleanliness, inadequate toilet facilities, vermin, unclean food preparation or service, etc.
 - f. Factors of increasing importance:
 - (1) Less than severe limitation of food.
 - (2) Denial or limitation of clothing.
 - (3) Denial or limitation on bedding, mattresses, etc.

(4) Denial or limitation on exercise.

(5) Overcrowding (size of cell and number of persons).

(6) Limitation on correspondence.

g. Relevant but not controlling factors:

(1) Denial of programs (educational, work, etc.).

(2) Enforced idleness.

(3) Denial of visits.

(4) Limitation on religious observance.

h. Additional factors:

(1) Inadequate staffing with staff who are inadequately trained and where there are too few specialists such as psychiatrists, psychologists, and counselors.

(2) Barracks where there is no protection against homosexual attacks.

(3) Maltreatment or seriously unwholesome conditions will not serve as a defense to a prisoner who escapes.

8. Rehabilitation and Work Programs

a. There is no general constitutional right to rehabilitation by an individual. However, the absence of any programs may indicate that practices and conditions exist which militate against reform and rehabilitation and that may be found to be unconstitutional. Note that there is no statutory right to treatment for adults corresponding to the expressed right to treatment that does exist for juveniles.

b. Work Programs

(1) There is no right to payment at the free market rate.

(2) There is no right to challenge a work assignment, refuse to work, or to refuse to participate in rehabilitative programs.

(3) "Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

shall exist..."This excerpt from the Thirteenth Amendment makes it constitutional to punish an inmate who refuses to perform his work assignment.

9. Medical Treatment

- a. Medical personnel may be liable for improper non-medical treatment or unjustifiable refusal to provide medical care or obviously inadequate urgently needed care.
- b. It used to be that the opinion of the institution physician was enough to determine whether the care was adequate. Recently, the courts have allowed inmates to bring outside physicians into the courtroom as expert witnesses. This is a distinct advantage for the inmate who brings suit.
- c. For specialized needs, courts will generally require treatment regardless of expense (if it is ordered by a doctor).
- d. Generally correctional officers are given wide discretion.
- e. There is no directly applicable constitutional right to medical treatment by an adult inmate.
- f. However, lack of adequate medical care may bring up constitutional issues. The level of medical care is a condition of a prison that may constitute cruel and unusual punishment. The constitutional issue is not raised unless:
 - (1) The prisoner is denied needed medical care for some improper reason.
 - (2) The inmate is forced to work by staff members who know he is ill.
 - (3) The inmate has a very serious and obvious injury or illness that is deliberately overlooked.
- g. Most courts say that simple negligence or malpractice do not give rise to constitutional issues.
- h. Liability may be incurred under the 1964 Civil Rights Act (42 U.S.C.A. 1983).

(1) If deliberate indifference caused an easier and less efficacious treatment to be consciously chosen. Intentional deprivation of medical care is a civil rights violation, but the federal courts are split as to whether inadequate medical care is actionable. The Ninth Circuit requires exceptional circumstances to make a medical care suit one which a federal court will entertain.

(2) U.S.C.A. 1983 offers no relief unless there is a total failure or omission to provide care or the medical care is so inadequate as to surpass mere negligence and shock the conscience.

10. Right not to be treated

a. In most states, forced medical treatment is not permissible by policy (although it is legally allowable).

b. A U.S. Circuit Court in Indiana in 1974 declared that the misuse of tranquilizing drugs in a state facility may constitute cruel and unusual punishment in some cases. The case (Nelson v. Heyne 491 F. 2d 352.) involved the Indiana Boy's School and the use of intramuscular use of the drugs Sparine and Thorazine, not as part of an ongoing psychotherapeutic program, but for the purpose of controlling excited behavior. In the Boy's School a registered nurse or licensed practical nurse prescribed intramuscular dosages upon recommendation of custodial staff. The court prescribed the following minimum safeguards in the use of tranquilizing drugs:

(1) The individual administered the drug should be observed, during the duration of the drug's effect, by a qualified medical doctor, child psychiatrist, psychologist or physician.

(2) The person receiving an IM (intra-muscular) injection of a major tranquilizing drug should first receive a diagnosis or prescription authorizing the use of said drug by a qualified medical doctor, child psychiatrist, psychologist or physician.

(3) IM injections should only be administered by a physician or intern and only after all attempts have failed to get the individual to take the drug orally.

- (4) Major tranquilizing drugs, such as Thorazine and Sparine, should not be administered IM, unless given in a hospital where there is an intensive care unit and emergency facilities which could deal with possible adverse effects from the use of said drugs.
- (5) Major tranquilizing drugs should only be used to control psychotic or pre-psychotic breakdowns or as a follow-up in assisting a schizophrenic patient from having a recurrence of a psychotic breakdown.

c.

Adversive Conditioning, Experimentation or Behavior Modifications: The 8th Circuit (1973) Knecht v. Gillman 488 F 2d 1136) required for either treatment or punishment:

- (1) Written consent indicating full knowledge.
- (2) Ability to-revoke this consent at any time.
- (3) Authorization by a doctor only after personal observation of misconduct by personnel.

E. Fourteenth Amendment Equal Protection Clause

1. Without a showing of a compelling state interest, segregated facilities violate this section of the constitution.
2. A vague fear on the part of the institution that violence may result is insufficient: a present danger is required.

VIII. PROCEDURAL RIGHTS

A. Disciplinary Hearings

1. Minimum procedural safeguards have been established.
2. Wolff v. McDonnell, 418 U.S. 539 (1974) is the principle case. In it the court:
 - a. Rejected extensive due process as required in proceedings with parolees and probationers
 - b. Required a minimum of 24-hour advance written notice of a claimed violation
 - c. Found a written statement of a fact-finder concerning the evidence relied on and the reasons for the disciplinary action sufficient.

- d. Found that there is a right of the inmate to call witnesses and present documentary evidence unless the prison officials find it would be unduly hazardous to institutional safety or correctional goals.
 - e. Found that confrontation and cross-examination and appointment of counsel present serious hazards to valid correctional goals.
3. Right to Counsel
- a. In a very recent development, the U.S. Supreme Court ruled on Enomoto v. Clutchette (decided along with Baxter v. Palmigiano, 96 S. Ct. 1551, (1976) and overturned the Ninth Circuit Court of appeals decisions. The U.S. Supreme Court held that inmates do not have right to counsel at disciplinary hearings, and that an inmate's silence at disciplinary hearings may be used to draw adverse inferences about him even though the possibility of indictment for the same incident may exist. Further, the court held that there is no general right to confrontation or cross-examination of adverse witnesses at disciplinary hearings.
 - b. This is a dramatic change from previous decisions that had-been moving in the direction of more and more quasi-due process guarantees in institutional administrative hearings for discipline.

B. Transfer and Classification

- 1. In this area, also, minimum due process is required.
- 2. The standards established in Wolff v. McDonnell cited above also apply to punitive interstate transfers as well.
- 3. Interstate transfers are also treated by the Western Interstate Corrections Compact, which is in effect in the Western part of the United States, including the states of Arizona, California and Colorado (96 S. Ct. 2532, intrastate, Fano v. Meachum).
- 4. The U.S. Supreme Court recently ruled on a case with profound implications for inmate transfers and reclassifications. (Montayne v. Haynes, 96 S. Ct. 2543 [1976]).
 - a. An inmate has no general right to remain in the prison facility where he is or where he was originally sent, unless:

- (1) State law provides such a right.
 - (2) He has been told he may remain where he is unless he is found guilty of misconduct.
- b. This means that, except for the two conditions above, there is no need by law to furnish an inmate with a hearing prior to transferring him. It also means that inmates may be transferred for administrative purposes from one institution to another even if the latter institution represents a higher degree of security (and is a more restrictive prison).
 - c. The court's language made clear their conclusion that an inmate may be reclassified or transferred without hearing for reasons having to do with misconduct or for other valid administrative reasons as long as conditions of confinement are within the sentence imposed in court and do not violate constitutional safeguards.

IX. REMEDIES-FEDERAL COURTS

- A. In federal courts, post-conviction procedure offers the inmate an alternative opportunity for relief. Federal courts offer primarily two remedies to inmates: Civil rights Act 42 USC 1983 and Writ of Habeus Corpus. In both cases inmates have a higher record of success than in state courts.
- B. Civil Rights Act 42 USC 1983
 1. This is the most effective device for an inmate.
 2. It can be brought-in a state or federal court, but the chances of success has been, historically, greater in the federal courts. 3. The purpose of the statute is to provide a federal remedy for violations of federally protected rights by persons acting under the color of state law.
 - a. "Person" has been defined to include municipalities or public entities. If the alleged conduct is the result of a governing bodies' policy statement, rule, regulation, or customary practice. (Monell v. New York City, Dept. of Social Services, 430 U.S. 658, 690-691 (1978))
 - b. "Under color" means that the person is clothed with the authority of the state and purports to act under that authority even if the conduct:

- (1) Is not authorized
 - (2) Is prescribed by state law
- c. "Federally protected right" means that the inmate must suffer deprivation of federal statutory right or a constitutional right guaranteed by the Fourteenth Amendment under color of state law. For example, an inmate who claims to have been beaten unjustifiably by a staff member may use this section because the Eighth Amendment of the Constitution prohibits any cruel and unusual punishment.
4. The complaint allegations must be specific and a clear violation of a federally protected right must be stated.
5. Relief
- a. A successful suit may result in damages compensating the inmate for physical and mental suffering.
 - b. A suit may also result in an injunction to prevent further violations.
 - c. Note that suits seeking equitable relief (orders from the court directing a party to do or not to do something) are more frequent than suits seeking money damages.
6. Trends in 1983 Litigation
- a. The federal courts are equally as wary as state courts of "frivolous" lawsuits. Thus, only a very serious deprivation of a civil right will be heard. A simple assault and battery, or negligence suit may not stand up in court as a Civil Rights Case under Eighth Amendment claim.
 - b. The federal court will hear inmate suits (alleging cruel and unusual punishment under 1983) if the inmate can meet the burden of proving that the conduct he complains of is "shocking" or "brutal." In Davidson v. Dixon, 386 F. Suff 482 (1974), the court found the prison guard and the captain of the prison's guard force liable for all the injuries sustained by the inmate when he was beaten by them when being transferred to an isolation unit after a disturbance had been quieted and order restored. The court found that the force used was completely unnecessary for control purposes and the beating was a severe infringement of the inmate's civil rights.

- c. Courts are more likely to act when the violation is widespread, or shocking, or the pattern is longlasting or repeating.
- d. Courts are reluctant to interfere when the action occurred in response to emergencies (e.g., riots, assaultive behavior).
- e. Courts are more likely to strike a regulation or statutory provision than to grant relief from the individual act of a correctional officer.
- f. The state will have to meet higher standards or burdens in order to prevail when the suit is based on "preferred rights" such as:
 - (1) Racial discrimination
 - (2) Freedom of religion
 - (3) Inferior general prison conditions
 - (4) Mail censorship
 - (5) Denial of disciplinary due process
- g. There are lower standards to be met for suits dealing with:
 - (1) Expression
 - (2) Individual acts of brutality
 - (3) Medical care
 - (4) Search and seizure

7. Defenses

- a. Immunity: The April 16, 1980, decision of the U.S. Supreme Court Owen v. City of Independence, Missouri 100 S. Ct. 1398 (1980) seems to have wiped out all forms of government immunity in regards-to 1983 litigation. The court stated "By its terms, Section 1983 creates a species of tort liability that on its face admits no immunities. Its language is absolute and unqualified and no mention is made of any privileges, immunities, or defenses that may be asserted." The decision rendered was a 5-4 decision. It would appear that other forms of specific immunity may continue, i.e., judicial immunity, however, the total ramifications of the Owen case are not yet clear.

8. Several factors exist which limit the effectiveness of the federal remedy.
 - a. A constitutional right must be violated.
 - b. There is an inordinate delay of civil suits in federal courts. (This is also true in most state courts.)
 - c. Federal judges are reluctant to administer to state institutions.
 - d. Federal suits are time consuming, expensive, inefficient and thus, a federal lawsuit is generally unavailable to the average inmate grievance (Again, this too applies to state courts.)
9. Relationship between 1983 and federal habeus corpus
 - a. There is no requirement for 1983 relief that state judicial remedies be exhausted. However, federal courts in general will not intervene in ongoing state judicial proceedings.
 - b. It is unclear if inmates must exhaust state administrative remedies prior to filing a 1983 action.
 - c. Suits dealing with immediate or speedy release are required to proceed under federal habeus corpus procedures, not 1983.

c. Federal Habeus Corpus

1. This remedy is specifically for those who are kept in confinement: thus, many inmates use this method of seeking relief through the courts. The inmate petitions a court to issue a writ (which is an order for those who are confining the inmate to produce him in court). Before 1944, habeus corpus was used exclusively by an inmate to challenge his original conviction by appearing before a judge and presenting evidence that his confinement was illegal and he was entitled to be released. Since then, however, the courts began to allow writs to be issued so that an inmate could appear in court to challenge the conditions of his confinement. Challenging conditions does not result in ultimate release.
2. A writ of habeus corpus may be sought in a federal court only if a constitutional issue is the basis of the petition, e.g., cruel and unusual punishment, lack of due process (22 USCA 2254).

3. Inmate success rates in federal and in state courts are very low and it is difficult to speculate on which avenue is best. (In fact, many inmates try both routes.) In general, there has been some indication that writs for post-conviction relief may fare better in state courts and writs about conditions of confinement may fare better in federal courts.