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AUTHOR Taylor, Steven J.: Biklen, Douglas
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ABSTRACT

This handbook, designed for advocates for disabled persons, focuses on understanding and researching the law. It is presented in seven chapters. Following the introduction (Chapter I), Chapter II provides a glossary of legal terms. The authors point out that in order for the law to serve as a tool for change, its language must be understood by those who advocate for change. Chapter III explains the system and interrelationships of laws at federal, state, and local levels. The four sources of law--constitutions, statutes, court decisions, and administrative regulations--are also discussed. Chapter IV provides an overview of the litigation process, specifically, what litigation is, who litigates, how, and where. Chapter V describes how to research the law. The intricacies of law libraries and indices and digests of laws are discussed. Chapter VI illustrates how to build a case on behalf of a client or constituency. An example based on an actual case is provided. Chapter VII addresses methods for systemic change and community organizing. Concepts discussed include power, reasons for inaction, and change strategies. The document concludes with a brief bibliography. (KC)

UNDERSTANDING THE LAW:

AN ADVOCATE'S GUIDE TO THE LAW AND DEVELOPMENTAL DISABILITIES

By: Steven J. Taylor
and
Douglas Biklen

Prepared by:

DD Rights Center of

the Mental Health Law Project

and the Center on Human Policy

216 Ostrom Avenue

Syracuse, NY 13210

(315) 423-3851

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Steven J. Taylor and Douglas Biklen
Center on Human Policy
Syracuse University

CHAPTER I: INTRODUCTION

This is a handbook on understanding and researching the law. It is not designed to enable nonlawyers to practice law or to provide legal advice -- things only attorneys may do. It is designed to help those who would work for change to advocate more effectively.

If you are advocating for the rights of people with disabilities, you should be well-versed in the current laws and court rulings which support those rights. You need to understand the language and logic of the law, for example, to testify before a local zoning board on the rights of the disabled or to cite relevant statutes and regulations during a press conference announcing an investigation of a nearby institution. This handbook will help you find what you want to know for use in situations like these.

However, as you will discover by reading this handbook, when you have very specific questions, you can often get answers more easily by consulting an attorney, rather than doing extensive research. Or if you want to learn about a specific piece of legislation or a specific administrative regulation, you might try contacting your local state legislator or congressman.

Chapter II is a glossary of legal concepts and terms. Readers may choose to skip or skim this chapter, using it simply to look up specific terms. Chapter III explains the system of laws and how they interrelate. Chapter IV describes the stages of litigation, from the filing of the initial complaint to the implementation of a court ruling. Chapters III and IV should be useful for readers who wish to acquire a basic understanding of the legal process. Chapter V explains how to conduct legal research, showing where and how to find constitutional provisions, statutes, court cases and administrative regulations. Chapter VI uses a case study to show how to build a case on behalf of your client or constituency. Chapter VII departs from the thrust of the preceding chapters and addresses systemic change and community organizing. It reflects our own approach, which has been to join legal change with a broad range of community-organizing strategies. Finally, we have included an index to facilitate the use of this handbook as a reference work.

CHAPTER II: THE LANGUAGE OF THE LAW: A GLOSSARY OF LEGAL TERMS

Language is a powerful tool in achieving social change.

The language used in connection with this nation's first institutions was relatively simple and straightforward, albeit dehumanizing. Many were designated "custodial asylums." Their inmates */ were referred to as "the feebleminded" or as "idiots," "imbeciles" and "morons." But times change and so does language. "Custodial asylum" gave way to "state school" and, in recent times, "developmental center." Similarly, buildings at some facilities have been retitled "living and learning units" and even "halfway houses." On the wards of many institutions, "milieu therapy" describes aimless wandering; "motivation training" means listening to music and crayoning in coloring books. Institutions no longer maintain punishment wards; they have "behavior-shaping units" and "special treatment areas," even when little programming actually occurs. Nor do institutions seclude residents in isolation rooms -- once referred to as being in the "dog house." Now we find "time out" rooms.

As new descriptions have replaced old in the human-services vocabulary, the language of the law has also crept in: Legal right, due process, least restrictive alternative and other legal terms are now part of daily usage.

The language of the law places control in the hands of consumers, rather than providers, of services. The concepts of right, of equal protection and of due process support individual dignity and autonomy; they call for integration rather than segregation; they require accountability, not rationalization.

For the law to serve as a tool for change, its language must be understood by those who advocate for change. Our purpose in presenting this glossary is not to train people to be attorneys. Only a legal education can do that. Rather, we wish to equip advocates with an understanding of fundamental concepts which underly the disability rights movement. A legal scholar might question some of these definitions, for in an attempt to make legal concepts understandable, some subtle points of the law have been sacrificed.

Intermixed with legal terms in the following glossary are the common names of key statutes and court cases: Section 504, Wyatt and Pennhurst, for example. We recommend that you use the references in the text to obtain a fuller understanding of these especially applicable statutes and cases.

*/ Note here the power of language. The term "inmate" carries a different definition of the situation than terms like "patient," "client" or "resident."

GLOSSARY

Abstention doctrine: The principle that federal courts will not hear a case if it can be decided by state courts on the basis of state law alone. (Also see Chapter IV.)

Act: A law passed by a legislature. Synonym for statute.

Amicus curiae (pl. amici): "Friend of the court." This term refers to a third party -- a person or organization -- who, while having no direct legal interest in the outcome of a lawsuit, submits briefs and, on occasion, evidence to a court in support of a position. In a number of landmark cases, organizations such as the National Association for Retarded Citizens, the American Association on Mental Deficiency and the United States Department of Justice have filed amicus briefs in support of the developmentally disabled plaintiffs.

Appeal: An application to a higher court to reverse, modify or change the ruling of a lower court. An appeal is usually based on the lower court's interpretation of the law or on the manner in which it conducted a case. The United States Supreme Court is the highest court of appeals in the country. (Also see Chapter III.)

Bill: A proposed statute, not yet law.

Brief: A lawyer's written summary of the law and/or facts involved in a particular case.

Capacity: The legal ability to sue or be sued based on a person's presumed ability to exercise his or her rights. For example, minors lack capacity to bring lawsuits on their own behalf. A guardian ad litem may be appointed by a court to represent a person lacking legal capacity to sue or be sued. "Capacity" also refers to legal or actual ability to make other kinds of decisions.

Cause of action: The legal damage or injury on which a lawsuit is based. There must be a cause of action, or legal "wrong," for a court to consider a case. For instance, in several landmark lawsuits, such as the Willowbrook case (NYSARC v. Carey) and Wyatt v. Stickney, denial of treatment and maintenance of harmful conditions in institutions gave rise to causes of action for violation of constitutional rights.

Class action: Most lawsuits are individual actions. A class action is a lawsuit brought by one or more named persons on their own behalf and on behalf of all persons in similar circumstances ("similarly situated"). A court's ruling in a class action suit applies to all members of the "class." For example, the court's ruling in the Willowbrook case applied to all 5,000 people who were residents of Willowbrook State School when the suit was filed, not just the few in whose names the suit was filed.

Common law: The body of law derived from historical usage, as opposed to statutory (written) law.

Complaint: A formal legal document submitted to a court by one or more persons (the plaintiffs), alleging that their rights have been violated. A complaint specifies one or more causes of action, names those who have allegedly violated the plaintiffs' rights (the defendants) and demands that the defendants take certain corrective action (relief). (Also see Chapter IV.)

Conclusions of law: A judge's application of the law to the facts in a case.

Consent (informed consent): An intelligent, knowing and voluntary agreement by someone to a given activity or procedure, such as a medical operation, a scientific experiment or a commercial contract. An informed consent requirement is a particularly important tool for safeguarding the rights of retarded people -- a group which often has difficulty understanding the implications of proposed activities or procedures -- especially if activities or procedures are proposed which involve risk, may be irreversible or have an irreversible effect, or will be physically, psychologically and socially intrusive. Three conditions must exist before informed consent can be given: (1) The person must be capable of understanding the circumstances and factors surrounding a particular consent decision; (2) information relevant to the decision must be forthrightly and intelligibly provided to the person; (3) the person must be free to give or withhold consent voluntarily. For a fuller discussion of the concept of consent, see the Consent Handbook, published by the American Association on Mental Deficiency.

Consent agreement (consent judgment or consent decree): A court-ratified and -enforced agreement between the opposing parties to a suit, resolving the contested issues. Reached after the initiation of a lawsuit, a consent agreement, because it is ratified by a court, carries the same weight as any other court order. The Willowbrook case, NYSARC v. Carey, resulted in a consent agreement. For a plaintiff, a consent agreement minimizes the cost and time of continued litigation and avoids the risk of receiving an unfavorable ruling from a court.

Constitutional right: A right guaranteed by the United States Constitution or the constitution of the state in which a person resides. For example, the rights of due process and equal protection are specified in the Fourteenth Amendment to the United States Constitution. Constitutional rights are rarely self-explanatory. They are interpreted by courts in specific cases. A federal constitutional right supersedes federal or state law. The landmark right-to-treatment and right-to-education lawsuits (like Wyatt v. Stickney and PARC v. Pennsylvania) have been based on constitutional arguments.

Cruel and unusual punishment: The prohibition contained in the Eighth Amendment to the United States Constitution. This constitutional argument has been made in lawsuits regarding institutions for the mentally retarded and mentally ill as well as prison cases and cases challenging the death penalty. In NYSARC v. Carey, for instance, the court ruled that conditions at Willowbrook represented a violation of residents' right to be free from cruel and unusual punishment, because the residents were subjected to intellectual, emotional, social and physical harm while in the custody of the state.

DD Act (Developmentally Disabled Assistance and Bill of Rights Act): A federal law (P.L. 94-103 as amended by P.L. 95-602) designed to assist states in assuring that persons with developmental disabilities receive the services necessary to maximize their potential through a system which coordinates, monitors, plans and evaluates those services and which ensures the protection of the rights of persons with developmental disabilities. The DD Act requires states receiving federal DD money to have in effect a protection and advocacy system for people with developmental disabilities. (Also see Protection and advocacy system.)

Declaratory relief: This phrase refers to a formal finding by a court of the plaintiffs' rights in a lawsuit. In effect, a court affirms the constitutional or statutory rights claimed by the plaintiffs. Declaratory relief is usually coupled with a court order granting injunctive relief.

Defendant: The party against whom a lawsuit is filed.

Developmental disabilities: This is a general, noncategorical term which subsumes terms for specific "severe, chronic" disabilities like mental retardation and cerebral palsy. The meaning of terms such as "developmental disabilities" varies from state to state, depending on particular statutes or regulations. The DD Act amendments (P.L. 95-602), passed in 1978, define developmental disability as follows:

> The term 'developmental disability' means a severe, chronic disability of a person which--
> (A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
> (B) is manifested before the person attains age twenty-two;
> (C) is likely to continue indefinitely;
> (D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
> (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Discovery: The method of obtaining information possessed by the opposing party in a lawsuit. There are several types of discovery: depositions to obtain oral testimony and interrogatories to obtain written answers to specific questions; requests for documents or materials; requests for mental or physical examinations; and requests for admissions -- that the opposing party admit the truth of certain statements or objective facts. In a right-to-education suit, for example, the plaintiffs might obtain through discovery a school district's own information on the number of children served in different types of programs and a description of these programs. Discovery occurs after the filing of a lawsuit, but prior to the trial. (Also see Chapter IV.)

Donaldson: The landmark U.S. Supreme Court case, O'Connor v. Donaldson, 422 U.S. 563 (1975). The Supreme Court ruled in this case that a state may not involuntarily institutionalize a person who is not dangerous and who is capable of surviving safely in freedom "without more" -- presumably without at least providing treatment for that person's mental condition.

Due process: A right guaranteed under the Fifth and Fourteenth Amendments to the U.S. Constitution. The concept of substantive due process refers to all citizens' fundamental rights to life, liberty and property. For example, in the Donaldson case, the Supreme Court ruled that the state of Florida had deprived Kenneth Donaldson of his rights under the Fifth and Fourteenth Amendments by involuntarily confining him in a custodial institution. Procedural due process refers to the fairness of procedures involved in any action which deprives people of their rights. Recent court rulings and legislation apply due process requirements to educational and treatment decisions. For instance, in Mills the court ruled that parents or guardians are entitled to due process regarding the school classification and placement of their children. Courts have interpreted the right of due process to require at a minimum that a person receive reasonable notice and the opportunity for a fair hearing prior to being deprived of legal rights.

Equal protection: A right guaranteed by the Fourteenth Amendment. This clause of the U.S. Constitution states that all citizens are entitled to equal protection under the law -- that is, to be free from discrimination in the exercise of rights except where the state demonstrates a rational basis or compelling interest for apparently unequal treatment. In Brown v. Board of Education of Topeka, Kansas, the U.S. Supreme Court prohibited racial segregation in schools on the basis of the equal protection clause. The concept of equal protecton has served as the foundation for landmark right to education and right-to-treatment suits on behalf of persons with disabilities.

Evidence: Documentation or oral evidence submitted to a court in support of the position of one of the opposing parties to a suit. A complex set of rules governs the admission of evidence in a court.

Exhaustion of administrative remedies: The doctrine that a person must attempt to resolve issues administratively before filing a lawsuit. Judges may decide not to hear certain kinds of cases unless administrative remedies have been exhausted. However, in most federal civil rights cases, including right-to-education and right-to-treatment suits, exhaustion of state administrative remedies is generally not required. (Also see Chapter IV.)

Finding of fact: A determination of the facts in the case, made by a judge or jury. A finding of fact is distinct from a conclusion of law, which only a judge can make.

Guardian: An individual who has the legal authority to make decisions on behalf of another. There are many types of guardians (sometimes also called conservators or committees) and guardianship rules vary by state.

Guardian ad litem: A person appointed by the court in a lawsuit to represent the interests of a person lacking capacity. A guardian ad litem is sometimes referred to as next friend or law guardian.

Habeas corpus: An order (writ of habeas corpus) issued by a court to release a person from unlawful confinement.

Halderman v. Pennhurst State School: See Pennhurst.

Handicapped individual: Like other terms, the meaning of "handicapped individual" may vary from state to state. According to federal law, specifically the nondiscrimination provisions of the Rehabilitation Act of 1973, a "handicapped individual" is "any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such impairment, or (C) is regarded as having such an impairment."

Injunctive relief: An order from a court which requires or prohibits the performance of specific acts, in order to remedy the violation of legally protected rights. In Halderman v. Pennhurst State School, the court-ordered injunctive relief consisted of the replacement of Pennhurst, a state institution for the developmentally disabled, with community services for all of Pennhurst's residents. Injunctive relief is often accompanied by declaratory relief.

Jurisdiction: The authority of a court to hear and decide a suit.

Least restrictive alternative: The legal concept that the government must accomplish its purposes in a manner which least infringes upon the rights of its citizens. The concept of least restrictive alternative means that services for disabled persons must be provided under the least confining and most normalized and integrated circumstances consistent with their needs. In education, this concept implies a preference for "mainstreaming," or integrated education, over segregated education in a special school or class. In regard to residential services, the concept

implies a preference for community placement over institutional placement. The concept of least restrictive alternative has been incorporated not only in court cases, but also in state and federal law (for example, P.L. 94-142 and Section 504).

Mills: The name of the lead plaintiff in Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972), a landmark class action right-to-education suit on behalf of children with disabilities. The Mills case established the rights of disabled children to a suitable publicly supported education and to due process in educational and placement decisions. The basic principles of Mills and PARC v. Pennsylvania were later incorporated into P.L. 94-142.

Money damages: Court-awarded financial payment for injuries suffered by one party due to the action or inaction of another. Damages are usually paid to the plaintiff by the defendant and may be either compensatory (to reimburse the plaintiff for loss or expenses) or punitive (to punish the defendant and deter future misconduct).

Motion: A request to the court in the context of a specific case to take some action relating to the case.

NYSARC v. Carey: See Willowbrook.

Opinion: A judge's statement of the reasons for a decison.

Order: A judge's ruling.

Ordinance: A local law; that is, a city, town or county law.

P.L. (Public Law): The designation of a federal law. The numbers following "P.L." refer respectively to the session of Congress during which the law was passed and the order in which the law was passed in that session. For example, P.L. 94-142 was the 142nd law passed during the 94th Congress.

P.L. 94-142: The federal Education for All Handicapped Children Act of 1975, P.L. 94-142, requires that all handicapped children receive a free appropriate public education under the least restrictive circumstances possible. This law also mandates due process guarantees, nondiscriminatory testing procedures, individualized education plans (IEPs) and other safeguards of the educational rights of children with disabilities.

PARC: The Pennsylvania Association for Retarded Children (now Citizens), the lead plaintiff in PARC v. Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971), and 343 F. Supp. 279 (E.D. Pa. 1972), the first federal right-to-education decision.

Party: The plaintiff or the defendant in a lawsuit.

Pennhurst: The subject of Halderman v. Pennhurst State School and Hospital, 446 F. Supp. 1295 (E.D. Pa. 1977), a class action right-to-services suit on behalf of mentally retarded residents of the Pennhurst institution in Pennsylvania. In this case, the court ruled that institutionalization at Pennhurst was inconsistent with residents' legal rights under the U.S. Constitution, Section 504 and Pennsylvania state law. In essence, the court ordered the defendants to close Pennhurst and to provide for the creation of community residences and programs. As this handbook is written, the Pennhurst case is being appealed by the defendants.

Petitioner: The party appealing a court's decision to a higher court. Synonym for appellant. Also sometimes used to identify the plaintiff in certain courts or types of cases. (Also see Chapter IV.)

Plaintiff: The party who brings a lawsuit, alleging a violation of rights.

Pleadings: The documents submitted to a court in the pretrial stage of litigation. The term is used broadly to refer to the plaintiff's initial complaint, the defendant's answer and the plaintiff's reply to the answer, and is sometimes used more narrowly to refer to the plaintiff's complaint. (Also see Chapter IV.)

Precedent: A prior court decision in a relevant case, cited in the interpretation of a law or constitutional provision. A court may or may not accept a precedent as authoritative in interpreting the law in a specific case, depending on the factual similarities between the cases and the jurisdiction in which the precedent arose.

Preliminary injunction: A form of injunctive relief. A preliminary injunction is a temporary order to prevent a party from taking certain actions pending the court's final decision.

Private cause of action: An individual's ability to seek relief from a court for violation of a statutory or constitutional right (see standing). A statute is said not to create a private right of action when it provides for remedies other than individual court proceedings and when there is no apparent legislative intent to allow individuals to sue when their rights under the statute are violated.

Protection and advocacy system (P&A): A state system to protect and advocate for the rights of people with developmental disabilities, as provided for by the DD Act. The DD Act requires states receiving federal DD money to establish a P&A system and provides for federal allotments to fund this system. Under the DD Act, the P&A system must be independent of any agency which provides services to persons with developmental disabilities and must have the authority to pursue legal, administrative and other appropriate remedies. (Also see DD Act.)

Relief: The remedy to some legal wrong or violation of one's rights. Plaintiffs seek from the court certain types of relief against the defendants, such as declaratory relief, injunctive relief, writs of habeas corpus (release) or money damages.

Remand: An order by a higher court returning a case to a lower court for further action consistent with the higher court's decision.

Respondent: The winning party at the trial level in a case that has been appealed. Synonym for appellee. Also used to mean the defendant in certain courts or cases. (Also see Chapter IV.)

Review: A re-examination of a court's decision by that same court or by an appeals court.

Section 504: This refers to Section 504 of the Rehabilitation Act of 1973, as amended. Section 504 outlaws discrimination against any handicapped individual by any organization receiving federal funds. Section 504 is often discussed in conjunction with Section 503 of the Act, which obliges every employer receiving more that $2,500 in federal money to take affirmative action to hire and promote handicapped persons.

Shall/may: The term "shall" in a law, regulation or court order is mandatory, while the term "may" is discretionary. The term "may" allows flexibility in a party's actions, including the flexibility not to act at all.

Sovereign immunity: The legal doctrine which protects the state and federal governments from certain kinds of suits in certain courts, on the general theory that the government ("sovereign") should be free to exercise its authority within reasonable limits. This immunity may be lost when the government exceeds its authority or acts in an unconstitutional manner. Recent laws and court decisions have greatly narrowed the concept of governmental immunity from suit.

Special master: A person appointed by a court to monitor, implement or supervise the implementation of the court's order, or to provide reports to a court prior to a decision. The court in the Pennhurst case appointed a special master with the power and duty to plan, organize, direct, supervise and monitor the implementation of its order. Appointment of a special master is usually based on a defendant's presumed inability to implement a court's order.

Standing: The requirement that a plaintiff be an injured party or one in danger of being injured. In other words, a plaintiff must have a direct interest in a suit in addition to a cause of action. Parents or guardians have standing to sue on behalf of their children, and organizations such as a chapter of the Association for Retarded Citizens may have standing to sue on behalf of their members.

Statute: A law passed by a state or federal legislature. Synonym for act.

Statute of limitations: A statute which specifies the period of time within which a lawsuit must be brought after an alleged violation of rights. A person loses his or her right to sue after the time period has elapsed.

Stay: A court order postponing the enforcement of a court ruling pending future legal action, such as an appeal to a higher court.

Stipulation: An agreement between the parties in a lawsuit that certain facts are true.

Summary judgment: A judge's ruling on the law in a case where the judge holds that the facts are not in dispute.

Temporary restraining order: A form of emergency injunctive relief, issued (often without a hearing) to preserve the status quo for a brief period pending a full hearing before the court. A party must show that immediate and irreparable harm will result if the order is not issued. For longer-term relief before the court's final decision, a preliminary injunction is necessary.

Tort: A civil wrong for which a private individual may recover money damages. False imprisonment and invasion of privacy are examples of torts.

Verdict: A judge's or jury's decision in favor of one of the parties in a lawsuit.

Willowbrook: Willowbrook State School, the subject of NYSARC (New York State Association for Retarded Children) v. Carey, 393 F. Supp. 715 (E.D.N.Y. 1975). In this case, the court ruled that residents of Willowbrook had a right to be free from harm, including regression, based on the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment (as applied to the states by the Fourteenth Amendment). Originally filed under NYSARC v. Rockefeller, this case was resolved through a consent agreement specifying "steps, standards and procedures" for improving institutional services and requiring eventual development of community facilities and services to replace all but 250 institutional beds.

Writ of certiorari: A request to the United States Supreme Court to review a lower court's ruling. The Supreme Court usually chooses to hear only those cases it considers important.

Wyatt: The lead plaintiff in Wyatt v. Stickney, 344 F. Supp. 373 and 387 (D. Ala. 1972), the case which first established a constitutional right to treatment and habilitation for residents of state hospitals and mental retardation facilities. Among other important provisions, the court in Wyatt ruled that Alabama's Partlow State School residents were entitled to habilitation, or treatment, under the least restrictive circumstances possible, based largely on the Fourteenth Amendment to the Constitution. The case, now in the enforcement stage, is currently known as Wyatt v. Hardin, since Taylor Hardin is the present Commissioner of Mental Health in Alabama (and, as such, is the lead defendant).

The remaining chapters of this handbook provide a context for understanding the terms and concepts defined in this chapter. Chapter III gives an overview of the legal system.

CHAPTER III: THE SYSTEM OF LAWS

There are many types of laws. At each of the three levels of government (federal, state and local), there are four sources of law: constitutions ("charters" at the local level), statutes ("ordinances" at the local level), court decisions and administrative regulations. The purpose of this chapter is to explain how these various laws come into existence and how they interrelate.

Federal laws take precedence over either state or local laws. Under Article VI of the U.S. Constitution, the supremacy clause, federal law is supreme when it conflicts with state law. Similarly, state law is supreme when it conflicts with local law.

CONSTITUTIONAL LAW

Constitutions outline the basic principles of government and the rights of citizens. The U.S. Constitution is the "law of the land" in all of the United States. No federal, state or local law may be enacted which conflicts with the U.S. Constitution. State constitutions represent the "law of the land" in each of the states. No state or local law may conflict with the state constitution.

Constitutional provisions are broad and ambiguous. They are the law "writ large," with broad brush strokes. For instance, the constitutional concepts that a person cannot be deprived of liberty or property without due process of law or denied the equal protection of law are abstract until they are applied to specific factual situations. In Wyatt v. Stickney, the landmark right-to-treatment case, for example, a federal district court ruled that mentally retarded people confined in a state institution without suitable habilitation services were being unconstitutionally deprived of their liberty without due process of law.

STATUTES

Statutes and ordinances are laws passed by legislatures. Thus, federal statutes are passed by the U.S. Congress -- the Senate and the House of Representatives -- and are "the law" everywhere in the United States. They supersede inconsistent state and local laws and any conflicting administrative regulations. Statutes passed by state legislatures are binding with regard to state matters, and local ordinances -- enacted by city councils, county boards, and the like -- are similarly binding within the jurisdiction of the enacting body. Proposed statutes are called bills. Prior to being voted on by the full legislature, bills are generally debated and revised in legislative committees.

Statutes generally include a statement of purpose. For example, Public Law 94-142, the Education for All Handicapped Children Act, reads as follows:

> It is the purpose of this Act...to assure that all handicapped children have available to them within the time priorly specified...a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist states and localities to provide for the education of all handicapped children and to assess and assure the effectiveness of efforts to educate handicapped children.

While more specific than constitutional provisions, however, statutes are rarely self-explanatory or self-enforcing.

ADMINISTRATIVE REGULATIONS

Legislatures sometimes authorize administrative agencies (the executive branch of government) to develop specific regulations to enforce a statute. Administrative regulations usually carry the power of law. Of course, regulations may be challenged legally as exceeding the authority granted the agency by the legislature.

Federal regulations are developed by a "notice and comment rulemaking" procedure. The agency drafts a proposed regulation and publishes it in the Federal Register, with a deadline for receipt of public comments. For important regulations, the agency sometimes holds public hearings in Washington or across the nation. After receiving comments, the agency revises the proposed rules. It may even circulate a second version for additional review and comment. Final regulations are also published in the Federal Register.

COURT DECISIONS

Court decisions are judicial interpretations of constitutional provisions, statutes and regulations. The federal judicial system includes three levels of courts: U.S. district courts, U.S. circuit courts and the U.S. Supreme Court. There are 93 federal district courts serving all or part of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone and Guam. Federal circuit courts hear appeals of district court rulings as well as certain special types of cases. There are 11 circuit courts, each serving an area encompassing from 3 to 10 states. (TABLE I contains a breakdown of the U.S. judicial circuits and districts.) The U.S. Supreme Court has the authority to review all matters of federal law, including appeals from federal circuit courts and state supreme courts. Except for so-called "diversity" cases, where a citizen of one state sues a citizen of another in federal court, the federal courts do not have the authority to hear cases involving state law alone, but can consider state causes of action that arise from the same circumstances as the plaintiff's federal claims.

TABLE I

FEDERAL JUDICIAL CIRCUITS AND DISTRICTS

FEDERAL CIRCUITS	FEDERAL DISTRICTS
District of Columbia	District of Columbia
First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
Second	Connecticut, eastern New York, northern New York, southern New York, western New York, Vermont
Third	Delaware, New Jersey, eastern Pennsylvania, middle Pennsylvania, western Pennsylvania, the Virgin Islands
Fourth	Maryland, eastern North Carolina, middle North Carolina, western North Carolina, eastern South Carolina, western South Carolina, eastern Virginia, northern West Virginia, southern West Virginia
Fifth	middle Alabama, northern Alabama, southern Alabama, Canal Zone, northern Florida, southern Florida, middle Georgia, northern Georgia, southern Georgia, eastern Louisiana, western Louisiana, northern Mississippi, southern Mississippi, northern Texas, southern Texas, western Texas
Sixth	eastern Kentucky, western Kentucky, eastern Michigan, western Michigan, northern Ohio, southern Ohio, eastern Tennessee, middle Tennessee, western Tennessee
Seventh	eastern Illinois, northern Illinois, southern Illinois, northern Indiana, southern Indiana, eastern Wisconsin, western Wisconsin
Eighth	eastern Arkansas, western Arkansas, northern Iowa, southern Iowa, Minnesota, eastern Missouri, western Missouri, Nebraska, North Dakota, South Dakota
Ninth	Alaska, Arizona, northern California, southern California, Hawaii, Idaho, Montana, Nevada, Oregon, Territory of Guam, eastern Washington, western Washington
Tenth	Colorado, Kansas, New Mexico, eastern Oklahoma, western Oklahoma, northern Oklahoma, Utah, Wyoming

State courts normally hear cases involving state constitutional law, statutes and administrative regulations, as well as contract or tort cases, but most are also empowered to hear and decide federal constitutional and civil rights cases as well (for example, a suit brought under Section 504 of the Rehabilitation Act). Most states use the same structure, with two or three levels of courts, depending on the size of the state. Paralleling federal district courts are state trial-level courts, known variously as superior courts or courts of general jurisdiction. Larger states have two levels of appeals courts, generally referred to as the state court of appeals and the state supreme court; smaller states generally have only one appeals court, the state supreme court. Cities or counties normally have their own courts, whose jurisdiction is limited to matters of local law and whose decisions can be appealed to the state trial courts.

The rulings of higher courts have mandatory authority over lower courts regarding legal interpretations. U.S. Supreme Court rulings are binding on all courts in regard to interpretations of federal statutes and the federal Constitution. A U.S. circuit court's ruling is authoritative for U.S. district courts within that circuit. State supreme court rulings are binding on all lower courts as well as on federal courts concerning interpretations of that state's law.

Courts sometimes consider decisions from other jurisdictions in interpreting the law. This is called persuasive authority. For example: In deciding Welsch v. Likins, the federal district court in Minnesota cited the Alabama federal court's ruling in Wyatt v. Stickney to support the right to habilitation for residents of a mental retardation facility, and so did the Texas district court in Morales v. Turman, applying the same legal theory on behalf of juveniles confined in state reformatories. One form of persuasive authority is a dictum (pl. dicta), a statement made by a court on a matter of law not relevant in deciding the case at hand. A lower court would not be bound by a higher court's dictum, but might be guided by it nonetheless.

Bringing a case in court is a relatively complex matter. The next chapter provides an overview of the stages of litigation.

CHAPTER IV: LITIGATION

Civil litigation starts with an allegation that a person's rights have been violated. Lawsuits are governed by a complex set of rules and procedures. These may vary somewhat from state to state, but the basic stages of litigation are similar in all jurisdictions. This chapter provides an overview of the litigation process -- what litigation is, who litigates, how and where.

A lawsuit typically follows attempts to resolve contested issues through formal (e.g., fair hearings) or informal (e.g., going up through the chain of command) administrative procedures. Some government agencies have established quasi-judicial procedures to resolve conflicts administratively. Courts may not consider a case unless plaintiffs (the parties alleging their rights have been violated) have attempted to settle issues with the defendants (the parties who have allegedly violated plaintiffs' rights). This is known as the doctrine of exhaustion of administrative remedies.

In order to file a suit, one must have a cause of action (violation of legal rights), the capacity to sue (legal ability to sue based on ability to exercise one's rights) and standing (the person suing must be an injured party). Generally, parents have standing to sue on behalf of minor children; organizations sometimes have standing to sue on behalf of their members. A guardian ad litem may be appointed by a court to represent a person lacking capacity (e.g., a minor or someone legally judged incompetent). Third parties may be permitted to participate in a suit as amicus curiae (friend of the court). An amicus submits briefs in support of one of the parties or in support of its own view of the law.

A lawsuit may be filed as an individual action or a class action. An individual action concerns specific named plaintiffs. A class action involves named plaintiffs and other persons in similar circumstances as defined in the complaint. In a class action, a court's ruling applies to all members of the class.

Federal courts consider federal matters; state courts consider state matters. In other words, if one is suing on the basis of a federal constitutional provision or statute, one would usually file the suit in federal court. In the disability rights movement, most suits involve both federal and state law, and many can be brought in either forum. If a federal constitutional case can be decided on the basis of state law alone, or if the issue raised in a federal case is already pending before a state court, federal courts will often refuse to consider the case under what is known as the abstention doctrine. Because recent federal statutes (P.L. 94-142 and Section 504) go beyond state statutes in defining the rights of people with disabilities, most cases in this area are brought in federal court. All things being equal, attorneys will file suit in the court in which they have the best chance of winning (this might be based on considerations such as the reputation of a judge).

THE PRETRIAL STAGE

A lawsuit starts with the filing of a complaint by a plaintiff. The complaint states the plaintiff's allegations. It specifies causes of action and requested relief (the proposed remedy to the legal wrongs committed against the plaintiff -- e.g., injunctive relief, declaratory relief, money damages). Once the complaint is filed, the court clerk issues a summons to the defendant indicating that a suit has been brought. The plaintiff then has this summons and the complaint served on the defendant.

The defendant must respond to the summons and complaint within a specified time. The defendant's response is called an answer. Defendants may respond in a number of ways. They may raise technical or procedural defenses (e.g., that the court lacks jurisdiction); they may claim that the plaintiff lacks a cause of action; they may admit some facts and deny others. Through these and other defenses, the defendants will usually attempt to have the case dismissed.

The term pleadings is used to refer to the complaint-answer process. Through the pleadings, the parties narrow down the contested facts and points of law. Plaintiffs may revise a complaint significantly during the pretrial stage.

Assuming that the case has not been dismissed, the suit next moves to discovery. Discovery is the process of obtaining information from the other side, including that concerning the other side's case -- the identity of witnesses, for example. There are many forms of discovery. Parties may request access to documents, records, pictures and other relevant materials. They may use depositions, interrogatories or requests for admissions to obtain facts. A deposition is a formal pretrial question-and-answer session with potential witnesses, at which either or both attorneys may be present and at which the questions and answers are recorded and transcribed. Interrogatories are a set of written questions asked of the opposing party and answered in writing, under oath. A request for admissions is a document asking the other party to admit to certain facts. There are other forms of discovery, but these are the ones most commonly used.

Attorneys for either side may make various motions throughout the pretrial stage. A motion to dismiss and a motion for summary judgment are requests for the judge to decide the case prior to trial on the basis of legal arguments.

Negotiations between the opposing parties are generally held throughout the pretrial and trial stages. The parties may reach an out-of-court settlement or agreement, resulting in dismissal of the case. However, a judge must approve an out-of-court settlement in a class action suit. The parties may also sign a consent agreement or consent judgment, a court-approved and -enforced resolution of the issues.

THE TRIAL STAGE

Most disability rights cases are decided by a judge rather than a jury. This is because only a judge can grant injunctive relief -- an order requiring or prohibiting the performance of specific acts (e.g., the creation of community alternatives to institutionalization). In most cases involving a request for money damages, either party has the right to trial by jury.

The trial starts with opening statements, first by the plaintiff's attorney and then the defendant's. Both attorneys present their positions and state how they will attempt to establish those positions. The burden of proof rests with the plaintiff.

The plaintiff goes first in presenting evidence. The plaintiff's attorney may introduce evidence (e.g., records, photographs) or call witnesses for direct examination, and may attempt to put expert witnesses on the stand -- persons with recognized professional competence in a given area. The defendant's attorney has the opportunity to cross-examine the plaintiff's witnesses and the plaintiff's attorney is usually allowed to re-examine his own witnesses after cross-examination. At the conclusion of plaintiff's case, the defendant's attorney may make a motion for the case to be decided on the basis of the evidence thus far presented, arguing in effect that the plaintiff has failed to prove his case. In a jury case, this motion is called a motion for a directed verdict.

Unless the motion is granted, the defendant's attorney then presents evidence and calls witnesses, including experts, for direct examination. The plaintiff's lawyer may cross-examine these witnesses, followed by re-direct examination by the defendant. Either attorney may object to the other's introduction of evidence or line of questioning of witnesses at any time. After the defense presents its case, either attorney may ask the judge to make a directed verdict or immediate decision.

After all the evidence and testimony have been presented (and assuming the judge does not grant a motion for a directed verdict), the attorneys make their closing statements, summarizing their cases for the court. The judge may request the parties to submit written briefs, stating their positions on the major contested issues. In a jury trial, the judge issues instructions to the jury after the closing statements.

The trial ends with the court's judgment, deciding the case for one side or the other and specifying the relief to be granted to the winning side.

THE APPEALS STAGE

The losing side in a suit has the right to appeal a court's decision to a higher court (recall the judicial levels discussed in Chapter III). After receiving a court's judgment, the losing party can request a stay, delaying implementation until the case can be appealed. Appeals must be made within a specified period of time fixed by law.

The party appealing a decision is called the petitioner or appellant; the other party is called the respondent or appellee. Ordinarily, appeals must be based on issues of law (i.e., the judge's interpretation of the law or procedural errors in conducting the case) rather than fact. The petitioner cannot raise legal arguments on appeal that were not raised during the trial. For example, the petitioner must have objected to the admissibility of evidence at the trial to object to it on appeal.

In the appeal, both sides submit written briefs outlining their positions (the appellant also may file a reply brief after receiving the appellee's brief). No new evidence or testimony is presented; the appeals court bases its decision on the trial record. After the briefs are filed, the appeals court hears oral arguments from the attorneys for both sides.

An appeals court may affirm or reverse the lower court's decision or send the case back (remand) to the lower court with specific instructions for a retrial on all or some issues. The loser at this stage may appeal this decision to a higher appeals court, all the way up to the U.S. Supreme Court if a federal question is involved. However, the Supreme Court hears few cases by direct appeal. It hears most cases through a writ of certiorari (a request for the court to use its discretionary powers to hear a case) and grants a very small percentage of the "cert" petitions it receives.

IMPLEMENTATION

It is one thing to win a favorable court decision; it is quite another to have it implemented. The major educational and institutional lawsuits have been difficult to implement. In the Wyatt case, for example, the plaintiffs recently returned to court to enforce implementation of a court order issued in 1972.

Courts may establish various mechanisms to insure compliance with their orders. They may require the losing party to submit periodic progress reports to the court on efforts to implement the decision; they may appoint a special master to supervise and monitor the order, as in the Pennhurst suit. The Willowbrook consent agreement provided for a review panel to oversee the state's implementation of the provisions of that agreement. Generally, the parties may return to a court at any time to attempt to have an order enforced or revised. A judge may hold a party in contempt for failure to abide by its order, imposing fines or even jail sentences.

This chapter has dealt with the process of litigation -- the process by which contested legal issues are brought to court and resolved through court orders. Chapter V explains how you can locate relevant court decisions and other elements of law to support your advocacy efforts.

CHAPTER V: RESEARCHING THE LAW

A parent comes to you for help in obtaining transportation to a preschool program for her four-year-old child. You have agreed to help her, but you are not quite sure what her legal rights are and what remedies you can claim for her. This chapter tells where to find the legal information you will need and what to look for. While far from the kind of comprehensive legal-research training available in law school, it offers basic information essential to effective advocacy.

LAW LIBRARIES

Practically every county has a courthouse containing a law library. A law school library is another excellent resource. If these are too distant, ask the local bar association or local attorneys if you could use their law library. As a last resort, ask your legislative representatives and governmental officials for copies of the specific laws in which you are interested.

Law libraries are different, both in the number and types of sources of legal information they have and in the degree of cooperation you can expect from the library staff. You should enter a law library well equipped with pencils, pads of paper, coins for the copying machines and much patience and perseverance. Patience is essential, for beginning legal research can be a trying experience. The library staff may be unwilling or unable to answer your questions, and fellow patrons may be unhelpful or even discouraging to your self-help strategy. That's when you need to persevere.

SOURCES OF LEGAL INFORMATION

Conducting legal research is like researching any other information, whether the library is very small or very large. There are four basic types of law books: constitutional and statutory law; administrative regulations; cases; reviews, digests and encyclopedias; and a combination of the above. Some law books contain only the law -- that is, statutes, cases or regulations; others also provide commentary.

Constitutional Law and Statutes

Federal and state constitutions and statutes are systematically compiled in publications sometimes referred to as code books. Constitutions are usually found in the beginning volumes of these books. The U.S. Code (U.S.C.) and U.S. Code Annotated (U.S.C.A.) present current federal law, statute by statute. U.S. Code Annotated contains a brief commentary on points of law within specific statutes ("annotated" means that cases interpreting each statute are referenced). U.S. Statutes at Large (Stat.) is another publication which presents federal statutes in the order in which they were passed, even though they may have been repealed or amended by later legislation.

The names of law books containing state statutes vary from jurisdiction to jurisdiction. For instance, Georgia's statutes appear in a publication called Georgia Code Annotated, New York's are in McKinney Consolidated Laws of New York and Puerto Rico's in Laws of Puerto Rico Annotated; California's statutes may be found in a number of publications, including Deering's California Codes Annotated, West's Annotated California Codes and Larmac Index to California Codes. Ask your librarian for the name of the publications containing statutes in your state. The annotated statutes can occupy from a few to well over 100 volumes, depending on the state.

Regulations

Federal regulations are first published in the Federal Register (Fed. Reg.) and most are later systematically compiled in the Code of Federal Regulations (C.F.R). Some states publish administrative regulations in the same manner as the federal government; others do not.

Cases

Court cases are published in law books titled either reports or reporters. Almost every appellate court publishes a report, but some do not include every case heard by the court. U.S. Reports (U.S.) is the official publication containing Supreme Court decisions. U.S. Supreme Court Reports--Lawyers Edition Annotated (L.Ed., L.Ed.2d) contains decisions as well as annotations and other information; United States Law Week (U.S.L.W.) contains recent Supreme Court decisions (as well as much other legal information) and is published weekly in loose-leaf format.

Reporters are unofficial publications put out by commerial publishers. West's National Reporter is a series containin~ both federal and state decisions; almost every law library has at least some of West's series. West's Supreme Court Reporter (S. Ct.) contains U.S. Supreme Court decisions; West's Federal Reporter (F., F.2d) covers federal circuit court decisions; and West's Federal Supplement (F. Supp.) reports on federal district court decisions.

West's also publishes state reporters for California (West's California Reporter) and New York (West's New York Supplement) and regional reporters for all of the states. These contain the decisions of the appellate courts (and some others) in each state. West's has six regional reporters covering rulings in every state within the region: Southern Reporter (So., So.2d), Southeastern Reporter (S.E., S.E.2d), Northwestern Reporter (N.W., N.W.2d), Northeastern Reporter (N.E., N.E.2d), Atlantic Reporter (A., A.2d) and Pacific Reporter (P., P.2d). In the first few pages of the regional reporters, you will find listed the states in each region. West's and most other reporters publish "advance sheets" -- paper-bound reprints of recently decided cases -- on a regular basis several weeks before the cloth-bound final volume is printed.

Reviews, Digests, Encyclopedias

Another broad category includes law reviews, digests, encyclopedias and other legal publications. Among the most helpful are the following:

West's Decennial Digest This series of books covers case law over 10-year periods. Arranged by topics (e.g., asylums, schools and school districts), the Digest is annotated with federal court, state supreme court and some state appeals court decisions. West's General Digest updates the Decennial Digest.

West's Modern Federal Practice Digest covers federal courts only.

Black's Law Dictionary defines key legal words, citing cases to clarify definitions.

American Law Reports Annotated (A.L.R., A.L.R.2d, A.L.R. 3d) reports and discusses federal and state court cases on selected topics.

American Law Reports, Federal (A.L.R. Fed.) discusses federal cases on a subject-by-subject basis.

American Jurisprudence (Am. Jur.) This legal encyclopedia contains a commentary on state laws on a subject-by-subject basis.

Words and Phrases This is a series of volumes containing courts' definitions of frequently used legal and nonlegal terms. Words and Phrases is organized in alphabetical order and contains the citations of court rulings in which such terms as, for example, "least restrictive alternative," are defined.

Corpus Juris Secundum (C.J.S.) This is a general legal encyclopedia containing a discussion of all case law. Organized by topics, it includes citations to all relevant reported cases, has a five-volume subject index and is updated by "pocket parts." Corpus Juris Secundum is published by West and contains cross-references to the West system.

Shepard's Citator is a set of regularly updated booklets listing the instances in which reported cases have been affirmed, reversed, cited or discussed by other courts. There are sets of Shepard's for U.S. Supreme Court, circuit court and district court cases, for the regional reporters and for state courts, as well as sets reporting references to and interpretations of federal and state statutes --thus the question often heard by young lawyers: "Have you 'Shepardized' the case?"

In addition to these digests, there are several publications which report federal and state statutes and court decisions as well as commentaries relevant to the rights of people with developmental disabilities. The Mental Disability

Law Reporter, published by the American Bar Association Commission on the Mentally Disabled, and Amicus, published by the National Center on Law and the Handicapped, cover recent developments in the area of law and the disabled. Rights of Mentally Retarded Persons, by Paul R. Friedman, is a handbook providing a good overview of developmental disability law.

Law reviews, published by students at the major law schools, often contain long and very detailed analyses of cases and issues affecting disabled individuals. The leading law reviews can be found in most law libraries and in some general-circulation libraries as well. There are also textbooks on law and disability, such as Professor Alexander D. Brooks' Law, Psychiatry and the Mental Health System. These books can be found in law school bookstores and libraries and in some other law libraries.

RESEARCHING THE LAW

Sometimes you may only need information about a specific law or ruling which covers a case. But when trying to obtain a full understanding of a legal issue, you should research all of the various forms of law. Otherwise you run the risk of obtaining an incomplete or even misleading picture of the law.

The first task in legal research is to learn how the law is organized. Start with the card catalogue, the tables of contents of law books and the indices to code books, digests and encyclopedias. You might also check Black's Law Dictionary and Words and Phrases. You should find listings under subjects like "Handicapped Children," "Students," "Education," "Mental Health," "Public Health," "Constitutional Law," "Civil Rights," "Mental Capacity" and "Competency."

Citations

You will need to know how to read citations. Citations or cites are a shorthand way of referencing statutes and court decisions, by noting where they can be found.

Federal statutes are cited in a uniform manner: numbered title of the law (federal statutes are divided into 50 titles, e.g., Education, Hospitals, Asylums and Cemeteries); the abbreviation of the code book (usually U.S.C. or U.S.C.A.); the section of the statute and sometimes subsections, paragraphs and the edition or date of the code. For instance, the notation "42 U.S.C. § 6011(b)(4)" refers to a federal statute contained in United States Code, title 42, section 6011, subsection b, paragraph 4 (a provision of the DD Act relating to habilitation plans).

State statutes are usually organized around sections or titles. Familiarize yourself with the organization of statutes in your state. A good place to start is with the table of contents. For example, Ohio's statutes are organized by titles, much like the federal statutes. Each title covers a particular subject area: Title 21 relates to juvenile courts; Title 31 deals with children/domestic relations.

For court cases, the cite identifies the volume and page number of the court report or reporter where the case may be found as well as the date when the case was decided. Recall the reports and reporters discussed in the preceding section of this chapter: U.S. Reports (U.S.), United States Law Week (U.S.L.W.), West's Supreme Court Reporter (S. Ct.), West's Federal Reporter (F., F.2d), West's Federal Supplement (F. Supp.) and others.

Court cases are cited as follows: the name of the case (plaintiff versus defendant); volume number of the report or reporter; title of the report or reporter (e.g., U.S.); page number of the volume; and in parentheses the court and date. For example, the citation O'Connor v. Donaldson, 422 U.S. 563 (1975) means that the Donaldson case was decided by the U.S. Supreme Court in 1975 and may be found at volume 422, page 563 of U.S. Reports. Or take, for instance, the citation Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974). The case was decided by the federal Fifth Circuit Court of Appeals in 1974 and was reported at volume 503, page 1305 of the second series ("2d") of West's Federal Reporter. Note that the court is usually listed before the date but is omitted when the case was decided by the highest court in the jurisdiction (U.S. or state supreme courts).

A cite sometimes includes references to more than one publication. When the date is the same, the first cite refers to the official report of the case and the second to where the case appears in unofficial reporters. Other cites may include different decisions by various courts on different dates -- generally the result of appeals and remands. For instance, the Wyatt case might be cited as Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971), enforced, 344 F. Supp. 1341 (M.D. Ala. 1972), orders entered, 344 .F. Supp. 373 and 387 (M.D. Ala. 1974), aff'd in part, rev'd and remanded in part sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974). This means the case was initially decided by the U.S. District Court for the Middle District of Alabama ("M.D. Ala.") in 1971; an enforcement order was entered by the same court in 1972 and final orders enforced later that year; then the district court's decisions were affirmed in part and reversed and remanded in part by the Fifth Circuit Court of Appeals in 1974, when the case was listed under the name of ("sub nom.") Wyatt v. Aderholt.

Where to Start

There is no right or wrong way of doing legal research. There are only more or less efficient approaches. Where you start depends on what you want to learn and on the information already in hand.

Starting with a constitutional provision, case or statute: If you already know something about it, your task will be relatively simple. Any statute will be easy to find if you have its title and/or section. Just go to the appropriate code book. For instance, if you live in North Carolina, you may have heard something about G.S. § 115-17 pertaining to education. To find that statute you would look up "General statutes, Section 115-17" in North Carolina Laws Annotated.

To obtain a thorough understanding of a particular constitutional provision or statute, look it up in an annotated law book. Annotated code books explain how laws have been interpreted in court rulings. Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 794), for example, protects certain handicapped individuals from discrimination in federally funded programs. If you wanted to know whether mentally retarded persons came under this statute, you would refer to the citations listed after the statute in the United States Code Annotated (U.S.C.A.). You would find among them the following: "Retarded are 'handicapped individuals' within meaning of this section....Halderman v. Pennhurst State School and Hospital, D.C. Pa. 1978, 446 F. Supp. 1295." After reading the annotated summary in a code book, research a constitutional provision or statute or the interpretative decisions cited in Shepard's to learn about their current status. (Shepard's is discussed in a later section of this chapter.)

You can often find the title or section of a statute if you know its "popular" name (e.g., the Education for All Handicapped Children Act). Many federal and state statutory code books contain a popular-name index at the beginning or end of the volume, or in a separate index volume. Legal encyclopedias also usually list the popular names of legislation.

When researching statutes, check for a statutory-history table in the law book. Sometimes legislatures change the titles, sections and names of legislation. Unless you are aware of these changes, you could become confused. The statutory-history table will explain the new title or sections of the law and will indicate which parts have been changed, added or repealed.

Finding a specific court ruling is also simple once you have its citation. Look up the case in the appropriate report or reporter. Then you should use Shepard's to examine the history and treatment of the case. West's "Key Number Digest System" (explained later in this chapter) provides another way to learn more about the issues considered in a particular case. If you don't know the citation for a case, legal encyclopedias and digests sometimes include a volume listing the names of cases along with their citations. In a table of cases you will be able to find citations for cases. For instance, you may have heard something about Donaldson v. O'Connor and want to learn more about it. The Decennial Digest contains a table of cases organized alphabetically. Turning to the table of cases of the Eighth Decennial (the most recent series), you would find Donaldson v. O'Connor listed along with its citation to West's Federal Reporter, 493 F.2d 507. You would look up the case on page 507 of volume 493 of the second series of the Federal Reporter. The Decennial will also indicate places in the digest where Donaldson and related cases may be found. You would see a reference to "App & E 233(2)," among others. This means that Donaldson and related cases are discussed under the topic "Appeals and Errors." The numbers "233(2)" refer to West's key number for this topic.

Starting with a subject or topic: Usually you will begin your research with little if any idea of what legal information might apply to the particular problem in question. Start by listing the facts of the problem. Try to identify key words (e.g., transportation, education, suspension, institutions)

which apply to the situation. Reorganize these words into broader categories and topics. You are now ready to turn to law books.

One place to start is with books containing statutory codes and constitutions. Recall that annotated code books contain references to important cases. Take your list of key words or topics and check the table of contents (at the beginning of the volume) and the index (at the end of the volume). For example, if you lived in Florida and wanted to know about state laws covering transportation for children with disabilities, you would go to the publication, Florida Statutes Annotated. You might look under "Handicapped Persons" and find nothing. Search on. Looking under "Children," you would come across a subtitle, "Transportation," and a reference to "Social S. 195." This means that Florida law on transportation for children is covered under "Social Service Law, Section 195." Find the law, read it, and note the referenced cases; turn to the referenced cases and read them; then "Shepardize" the statute and court cases.

Another place to start your research is with digests. West publishes several useful digests: The Decennial Digest contains federal and state case law; the Supreme Court Digest contains Supreme Court decisions; the Modern Federal Practice Digest covers all federal court decisions; state and regional digests cover court decisions in specific geographical areas. West's "Key Number Digest System" provides an extremely helpful way of finding relevant law. West organizes all case law under 424 main topics (e.g., Civil Rights, Mental Health, Guardian and Ward). Each topic is assigned a key number. Remember that West also publishes reporters containing state and federal court decisions. All the cases reported in this series are accompanied by summary paragraphs called "headnotes," with a key number corresponding to one of the 424 topics. These paragraphs summarize the points of law discussed in the decision. West's digests contain the headnotes from the cases in its reporters, with a listing of cases which have dealt with the points at issue.

To use West's digest system, start as before by listing the words and topics relevant to your issue or problem. Each digest has a "descriptive word index" containing words, definitions and principles taken from court cases. Listed under each descriptive word is a topic and key number. By checking the digest, you will find headnotes from all of the cases dealing with the point of law relating to the descriptive word. Go to the cases in the respective West reporters. These should contain references to the constitutional provisions and statutes on which the decisions were based. Shepardize the cases, constitutional law and statutes.

Say your office is in North Dakota and a parent comes to you for assistance in challenging his son's suspension from school. You want to help, but lack legal information. You locate a law library and find the digest for your jurisdiction, the Dakota Digest. Looking through the descriptive word index, you search for words that may provide the key to your questions about suspension. You find nothing under "Suspension." You look under "Pupils" and are advised to look under "Schools." There you find "Suspension, see Schools 177." In the Dakota Digest volume containing "Schools," Section 177

gives the following reference: "See Cameron v. Whirlwindhorse, 494 F.2d 110 (8th Cir. 1974)." You have learned how to read cites and know to go to West's Federal Reporter to find the case. You read the case, noting references to other cases as well as to constitutional and statutory law. You look up these cases and laws. Finally, you "Shepardize" all important laws and court decisions.

Still another place to begin legal research is to read law review articles, commentaries, encyclopedias and other secondary sources. These sources usually state the law more clearly than the primary sources (e.g., case decisions, statutes). A good law review article should bring together many hours of research which you would otherwise have to undertake yourself. Remember, however, that secondary sources are not authoritative statements of the law; they are guides to finding relevant law.

Check the card catalogue and the Index to Legal Periodicals to aid in finding law review articles relating to your issue. Reading secondary sources, you will find citations of court rulings and laws in addition to commentary.

Encyclopedias are useful tools in legal research. Corpus Juris Secundum (C.J.S.) and American Jurisprudence (Am. Jur.) are the most widely used. Other encyclopedias cover local and state law; consult the card catalogue or the librarian.

Both Corpus Juris Secundum and American Jurisprudence are written in narrative form and arranged alphabetically by subject. C.J.S. uses the West's key number system and should be used in conjunction with the Decennial Digest; Am. Jur. is published by the same company that puts out American Law Reports and should be used in conjunction with that series of volumes. C.J.S. cites all cases on the relevant point of law. Am. Jur. cites fewer cases, but covers subjects in greater depth than C.J.S. Both publications have a general index which includes subjects such as "Mentally Deficient and Mentally Ill Persons."

One final note: All laws must be read carefully to be fully understandable. Though it may seem tedious, you should read the law word by word so as not to overlook any subtle but important points.

Advance Sheets and Pocket Parts

Remember that the law changes rapidly. With new laws and decisions being issued every day, legal publications are often outdated by the time they are printed. Publishers of law books print "advance sheets" and "pocket parts" to supplement their publications. An advance sheet is a pamphlet containing recent court decisions, to be published later in a bound volume. "Pocket parts" are pamphlets issued to update a law book (case reporters do not have pocket parts) and are found in a pocket at the back of the book. The pocket part will specify the date through which it is current. Any time you are reading a legal publication (except for case reporters), check the back pocket for recent developments in the law. Otherwise you might end up researching outdated law.

"Shepardizing"

"Shepardizing" is shorthand for tracing how courts have interpreted or treated a constitutional provision, statute or judicial decision. The legal series, Shepard's Citators, reviews the current status of federal and state laws and decisions. For instance, Shepard's will tell you whether a decision has been overturned or whether a statute has been ruled unconstitutional.

Shepard's publishes separate series for the regional reporters, for the highest court in every state, for federal statutes, for U.S. Supreme Court decisions and for U.S. district and circuit court decisions. Shepard's Citator is published in three forms: white pamphlets containing the most recent citations; red pamphlets containing sets of these white pamphlets; and red-bound volumes containing sets of these red pamphlets. There are also some interim, paper-bound volumes for some parts of the Shepard's system, such as the yellow semi-annual supplements for federal district and circuit court decisions.

All law libraries have copies of Shepard's. To use Shepard's, you must first learn the abbreviations contained in the front of every volume. There will be separate sets of abbreviations for pamphlets and volumes on cases, as opposed to those on statutes. For instance, in a case edition, the letter "a" before the citation means that the case was affirmed on appeal. In a statute edition, "A" means a statute has been amended.

Shepard's pamphlets and volumes are organized according to publications containing cases and statutes. For example, titles, sections and subsections of United States Codes are followed in numerical order; similarly, U.S. Reports are followed in order according to volume and page number.

To "Shepardize," find the red-bound volume containing the statute or case in which you are interested. Turning to the appropriate page, you will find rows of citations under each case or statute. In case editions, you will see one or more citations enclosed in parentheses immediately after the case. These are parallel citations (that is, they indicate where else the same case was reported). Knowing the abbreviation system, you will be able to follow the history of a statute (e.g., amended, repealed, ruled unconstitutional, cited in court cases, cited in law-review articles) or case (e.g., affirmed, overturned, followed or cited in other cases, cited in law-review articles). After tracing the history of a statute or case in the red-bound volume, you will need to follow the same process in the appropriate red, white and other pamphlets. This will bring you up to date on the subsequent history of the law.

Suppose you want to learn about the history and treatment of the Wyatt case, 325 F. Supp. 781 (1971). Look at the Shepard's volume for the Federal Supplement. Find the page for volume 325 (the volume number will be listed at the top of the page, the way guide words are listed in a dictionary) and the subdivision corresponding to page 781 under volume 325. You will see a long list of citations, which will tell you what has happened to the case and whether it has been followed or cited by other courts. Under 325 F. Supp.

781 in Shepard's, you would find the following notations, among others: "s 334 FS 1341" (the "s" means "same case as case cited"; this is a citation for a later opinion in Wyatt); "j 486 F.2d 1/ 1246" ("j" means that Wyatt was cited in a dissenting opinion in the case reported at 486 F.2d 1246; the footnote "1" means that the dissent referred to the principle of law discussed in the first West headnote accompanying the report of Wyatt at 325 F. Supp. 781).

Another illustration: To find out about the current status of the Donaldson case, you would turn to the Shepard's volume for page 507 of volume 493 of the second series of the Federal Reporter (the citation for Donaldson is 493 F.2d 507). You would find a list of notations telling you the later decisions in Donaldson, the citations of federal and state cases in which Donaldson is discussed, the citations for law-review articles dealing with Donaldson and other facets of its history and treatment. Specifically, you would come across citations like the following: "s 419 US 1119"; "e 393 FS 4/ 718" (the principle of law contained in the fourth West headnote to Donaldson was explained in this case); "f 503 F.2d 2/ 1312" (the principle of law in headnote 2 of Donaldson was cited as controlling or authoritative in this case).

Until you have used it a few times, Shepard's looks extremely confusing. Do not be intimidated. Once you have studied -- and referred back to -- the first few pages of the volume to understand Shepard's format and abbreviations, you will find it most helpful. You must use Shepard's to avoid citing cases or laws that are no longer binding or valid.

Additional Aids in Interpreting the Law

The process of applying laws to actual situations requires interpretation, even creativity. The law is not always clearly defined in statutes and rulings. Therefore, we use legal research to explore how the law can support our position (without ignoring interpretations unfavorable to our side).

Reading or analyzing a law is called looking at the "plain meaning" of a statute. However, some statutes do not have an obvious meaning or, when they do, courts and administrative bodies may interpret the meaning differently than you do. In the preceding section, we discussed how you can study courts' interpretations of laws (i.e., by using annotated code books, by Shepardizing and by consulting digests, encyclopedias and commentaries).

To go beyond the plain meaning of a statute, you also can examine its legislative history to determine the legislature's purpose in passing the law. Courts pay special attention to legislative intent in interpreting a statute. You may want to build a case around a new statute which has not yet been fully scrutinized by the courts. In Halderman v. Pennhurst State School and Hospital, the plaintiffs based their case largely on Section 504 of the Rehabilitation Act of 1973 and in their brief before the federal circuit court devoted considerable attention to legislators' statements about the law at the time of its passage. Various legislative committees, representatives, executive officials and interest groups may have commented on the purpose of a statute. Often the President or a governor issues a written memorandum describing the purpose of a statute when it is signed into law. The Congressional Rec-

ord and U.S Code Congressional and Administrative News contain good background information on the legislative history of federal statutes. Most states have some kind of publication which c ntains materials on the history of state legislation. Newspaper articles covering legislative debate are another source of this kind of information, although they would not be of much use as legal authority.

Technically, judicial rulings are made regarding a specific factual situation considered by the court. This means that it may be difficult to know whether a court's decision may be applied to your case. Law-review articles may provide additional information on how to interpret a decision. (Check the Index to Legal Periodicals.) Sometimes judges' "concurring" opinions (a judge may agree with other judges on a panel's decision, but not on the reasons for the decision) and "dissenting" opinions (a judge may disagree with the decision of the majority) may help in interpreting the law.

Understanding Regulations

Legislatures often authorize administrative agencies -- e.g., a state department of education -- to issue regulations to accompany statutes. Federal regulations first appear in the Federal Register and are later codified in the Code of Federal Regulations. State administrative regulations may or may not be codified in systematic fashion. The best way to obtain current regulations is to write to the appropriate administrative agency.

As with statutes, you examine regulations for their plain meaning. You should study the statutory base and administrative history of regulations to obtain a clearer understanding of how they may be interpreted. The Federal Register usually contains an "index of proposed rule making" and a discussion of comments and changes, in addition to the final text of federal regulations. Federal regulations are cited in a manner similar to statutes and cases. For instance, the citations "25 CFR § 35.11" and "20 Fed. Reg. 56345" should be read "Volume 25 Code of Federal Regulations, Section 35.11" and "Volume 20 Federal Register, Page 56345," respectively.

CONCLUSION

Legal-research skills are acquired only through long hours of trial and error. In other words, the only way to learn to research legal information is to do it. Even the most skillful legal researcher at one time saw the law library as a mystifying and incomprehensible collection of disconnected information. We hope the background information and suggestions in this chapter will minimize your frustration and enhance your effectiveness.

CHAPTER VI: BUILDING A CASE

You have acquired a basic understanding of the law. You have mastered key legal terms and concepts. You know how various laws interrelate. You understand the judicial system. You are aware of the stages of litigation. And you have developed some legal-research skills. Now you want to apply your knowledge of the law to advocacy issues, to represent disabled people.

You must be able to build a case to support your position, with legal as well as practical and professional arguments. Like an attorney, you need to know how to apply abstract principles and concepts to a specific set of facts.

This chapter shows how to build a case on behalf of your client or constituency. We illustrate this process with a case handled by the Center on Human Policy involving a young man named Joshua Murphy. */

Joshua Murphy is a 17-year-old high-school sophomore. He has cerebral palsy and uses a wheelchair.

Joshua attends Ellington High School, a new facility consisting of three interconnected buildings. Because the terrain is hilly, one of the buildings, which contains the school auditorium and music classrooms, is about 10 feet above the other two. This building is connected to the other two by a flight of stairs. It has no elevators.

Throughout the school year, Joshua and other students with physical disabilities were excluded from many extracurricular activities because the third Ellington building was inaccessible to them. They missed the orientation for incoming students, movies, plays, concerts, athletic rallies, assemblies and student government activities.

Joshua and his parents were dissatisfied with his exclusion from regular school activities. At a teacher's suggestion, his parents contacted the Center on Human Policy for assistance.

The first step in building a case is to identify all of the facts.

After a detailed interview with Joshua's parents, we went to the school. We interviewed the school principal, the guidance counselor, teachers and the physical and speech therapists and examined Joshua's records. We confirmed Joshua's initial complaints and identified other issues in addition to architectural inaccessibility. These other issues included:

Segregation: All high-school-age students with mobility impairments were assigned to Ellington High School and were transported there in wheelchair vans, whether or not they could use regular school buses.

*/ This name is a pseudonym. This example is based on an actual case, but some of the specific facts have been altered to protect the confidentiality of the persons involved and to highlight certain points.

Inappropriate placement: Joshua had been assigned to classes for the mentally retarded for 12 years. Despite a rather severe speech impediment, there was no conclusive evidence that he was mentally retarded.

Discrimination: The students' wheelchair vans used a separate driveway marked, "No Admittance. Service Vehicles Only." The students were let off at a loading dock and were manhandled up a narrow set of concrete steps. They entered the building through a storage room filled with mops, brooms, solvents, cleaning fluids and floor buffers.

Forced dependency: The elevators in two buildings were locked. None of the students was provided with keys. The students could only use the elevator when accompanied by an aide who unlocked the door and pushed the elevator buttons. The aide often did not show up on time between school periods; as a result, Joshua was often late for his classes.

Step two is to apply the law (as well as practical and professional arguments) to the specific factual situation.

Recall that you should research the various types of law (federal and state constitutions, statutes, court decisions and administrative regulations) to understand fully any legal issue. You should identify both binding laws and nonbinding precedents which tell you what arguments might be made in support of your position. Sometimes you will have to "read into" the law, drawing analogies between decided cases and the situation at hand. This research is not to enable you to represent someone in court or otherwise do things only a lawyer can do, but rather to arm you with arguments and answers when you confront officials.

The inequities of Joshua's situation were glaring. Violations of federal and state constitutional rights immediately sprang to mind. The U.S. Constitution does not guarantee a right to an appropriate education, but the Fourteenth Amendment guarantees due process of law and equal protection under the law. This means that states (and other units of government) cannot apply their laws in an arbitrary or discriminatory fashion. Further, states must provide their citizens with appropriate procedures (like a hearing or trial) before they deprive them of a life, liberty or property interest. Similarly, the New York State Constitution guarantees equal protection to all of its citizens. It also mandates the legislature to provide for a system of free common schools in which all children in the state may be educated.

How would these provisions apply to Joshua's case? Because of his disability, Joshua was receiving a significantly different and less valuable educational experience than his nondisabled classmates. He was arbitrarily excluded from activities; he was relegated to segregated transportation and classes; he was forced to come into the building through a service entrance; he was treated as incapable -- all because of his disability. He was afforded no opportunity to challenge these decisions in an impartial hearing.

Thus Ellington High School was arguably acting in an arbitrary and discriminatory manner, denying due process and equal protection of the law

to the students with mobility impairments and preventing them from full access to the "common" school system. But these concepts are so broad that it would be difficult to convince school officials by a constitutional argument alone that they should change their policies and practices.

However, courts have filled in the legal picture, with decisions about the public schools based on the concepts of due process and equal protection. By researching this case law, we may find some which are nearly "on point" -- that is, cases nearly identical to ours or whose factual situations are analogous. We can thereby hone lofty constitutional abstractions into useful tools to be used in negotiations or litigation on behalf of real human beings.

There have been scores of lawsuits across the nation involving the educational rights of children with disabilities. Many have been based on constitutional arguments. For example, in Mills v. Board of Education, 348 F. Supp. 866 (D.D.C. 1972), a federal district court judge ruled that the children with disabilities who were excluded from public schools without hearing were denied due process and that these children were entitled to an equal educational opportunity. The same kind of ruling was made in PARC v. Pennsylvania, 344 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972). These cases are generally helpful to Joshua, but do not address the specific issues of his case.

Recently, however, some extremely important federal statutes have been passed, which can be very useful to eliminate the kinds of discrimination faced by people like Joshua Murphy. The Congress passed P.L. 93-112, the Rehabilitation Act, in September 1973. A key facet of this statute is the much-discussed Section 504:

> No otherwise qualified handicapped individual in the United States, as defined in Section 706(6) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

This act and its amendments apply to "any program or activity receiving federal financial assistance." How do they apply to Joshua Murphy's situation? Public education in New York State receives federal assistance, but other questions remain. Is Joshua a "handicapped individual" under the act? Is he "otherwise qualified" to attend music classes and auditorium activities? Is he being discriminated against "solely by reason of his handicap"? These are all questions of statutory interpretation, an important source of which are the implementing regulations.

Federal regulations implementing Section 504 were promulgated by HEW in 1977. These may be found in Volume 45 of the Code of Federal Regulations, Part 84 and also in the May 4, 1977 Federal Register at pp. 22676-22702, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving and Benefiting from Federal Financial Assistance." These regulations deal with employment practices, architectural accessibility, ele-

mentary, secondary and college education and health, welfare and social services. Other federal agencies have gradually issued similar regulations implementing Section 504 in the context of programs they fund.

Under the Rehabilitation Act, a "handicapped individual" is: "Any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such impairment, or (C) is regarded as having such an impairment." 45 C.F.R. § 84.3(j). Clearly, Joshua's rights are covered under Section 504, since he has cerebral palsy and is at least "regarded" by the school district as being mentally retarded.

Under the wording of Section 504 alone we could not be sure whether Joshua was "otherwise qualified." However, the HEW regulations state that to be qualified for elementary and secondary educational services, a handicapped person need only be of the age when nonhandicapped persons are provided with such services or when compulsory attendance is required. 45 C.F.R. § 84.3(j)(2). Obviously, then, Joshua is "otherwise qualified."

What does the law say about Joshua's complaints? The Section 504 regulations specify that services for people with disabilities must be provided "in the most integrated setting appropriate to the person's needs." 45 C.F.R. § 84.4(b)(2). They may not be separate from services provided to nonhandicapped persons unless this is necessary for the services to be as effective as those provided to others. 45 C.F.R. § 84.4(b)(1)(iv). The commentary to the regulations makes short work of segregated educational settings: "While a public school district need not make each of its buildings completely accessible, it may not make one facility or part of a facility accessible, if the result is to segregate handicapped students in a single setting." 42 Fed. Reg. at 22689. And the regulations clearly apply to extracurricular as well as academic activities. 45 C.F.R. §§ 84.34(b), 84.37(a)(2). These provisions offer strong arguments against excluding Joshua and other mobility-impaired students from extracurricular activities held in an inaccessible building, assigning all of them to a single school, making them ride separate vans when they are capable of using regular school buses and forcing them to enter the school by a service entrance.

P.L. 94-142, the federal Education for All Handicapped Children Act of 1975, also applies directly to Joshua's situation. HEW has issued two sets of regulations to accompany P.L. 94-142 -- 45 C.F.R. Part 121a or 42 Fed. Reg. 42474-42518 (August 23, 1977); and 42 Fed. Reg. 65082-65085 (December 29, 1977). Joshua fits the definition of "handicapped children" under 94-142 (the definition includes the "mentally retarded" and "orthopedically impaired"). 45 C.F.R. § 121a.5(b).

Like Section 504, P.L. 94-142 contains a strong integration imperative. Congress mandates that children with disabilities be educated in the least restrictive setting appropriate:

> [T]o the maximum extent appropriate, handicapped children, including children in public or private institutions

> and other care facilities, are [to be] educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(5)(B); 45 C.F.R. § 121a.550.

Under P.L. 94-142, schools must develop an individualized education plan (IEP) for every child. The IEP must be prepared with the participation of the parents and must include a statement of the present levels of educational performance, a statement of annual goals, a statement of the educational services to be provided to the child, dates for the initiation and duration of these services and standards for determining whether objectives are being achieved. 45 C.F.R. §§ 121a.345, 121a.346.

P.L. 94-142 provides due process procedures for parents or guardians to challenge educational decisions regarding their children. Parents may request an impartial due process hearing if the school district refuses to provide special education services, insists upon such services against their objections, fails to develop an IEP or develops an IEP to which they object. 45 C.F.R. § 121a.506(a).

Under the regulations implementing P.L. 94-142, parents have the right to request an independent educational evaluation of their child. School districts are obligated to pay for this evaluation unless they ask for an impartial hearing to demonstrate why it is unnecessary (school districts seldom request such a hearing, for the hearing is more expensive than the independent evaluation). Parents have the right to present the results of independent evaluations and other relevant evidence at due process hearings. 45 C.F.R. § 121a.503.

New York State has statutes and administrative regulations relating to education. However, these either duplicate federal law or fall short of the requirements contained in Section 504 and P.L. 94-142 (recall that under the supremacy clause, federal law takes precedence over state law).

P.L. 94-142 and the corresponding provisions of state law would be most useful in challenging the classification of Joshua as mentally retarded. They could also be used to seek access to extracurricular activities for Joshua and others, to require their transportation on regular buses when appropriate and to attack other segregated aspects of their education.

Step three is to decide on a concrete course of action.

Depending on the situation, you may choose or recommend one or more alternative forms of action, including letter-writing, negotiation, publicity, litigation and others.

In Joshua's case, the five areas of infringement identified earlier had to be addressed: (1) architectural inaccessibility -- the inability to use the auditorium or music rooms; (2) segregation -- serving all high school students with mobility impairments in special wheelchair vans and excluding them from certain school activities; (3) inappropriate placement -- placement of children with cerebral palsy in classes for the mentally retarded; (4) discrimination -- the separate building entrance for students with physical disabilities; and (5) forced dependency -- reliance on an aide to use the elevators. After brainstorming the possibilities, we chose four different strategies directed at specific issues.

Since the discrimination and forced-dependency issues reflected a thoughtless policy of just one school, they were the simplest issues to resolve. We sent the principal a certified letter, return receipt requested. We outlined Joshua's complaint about the elevator keys and being late for class. We objected to the implicit assumption that he was unable to operate an elevator and offered to challenge that assumption through a demonstration. We also indicated that the use of the service entrance for students in wheelchairs was not only demeaning, but potentially dangerous. We pointed out that the school district might be subject to tort liability for personal injuries resulting from maneuvering wheelchairs up the concrete steps. Our letter prompted an immediate response -- a phone call followed by written confirmation -- indicating that Joshua and his fellow students would receive elevator keys and that the wheelchair vans would use the main entrance of the building.

To challenge Joshua's inappropriate placement, we requested an independent educational evaluation (we submitted a list of outside experts). The school district agreed to pay for one. The expert recommended that Joshua be placed in a resource program rather than in a class for the mentally retarded. After successful negotiations, the school agreed to incorporate this recommendation into Joshua's IEP and made arrangements to place him in a resource program.

Because the inaccessibility of the school building was beyond the control of the building principal, we decided to raise this issue with the superintendent of the school district. We sent him a certified letter, with a copy to the regional associate of the state education department, outlining the problem. The superintendent's office replied immediately, acknowledging our letter and describing problems the school district had had obtaining the cooperation of the city engineer in contracting for the installment of an elevator at Ellington High School. Our attention turned to the city engineer. We sent a letter explaining the problem and the mandates of Section 504. A series of phone calls followed. We were assured that contract specifications would be out for bids within a week. Within several weeks, three bids had been submitted. A contractor was selected and a contract signed. The elevator was scheduled to be installed the following summer.

The segregation issue was the most difficult to resolve. The school district was adamant in maintaining all of its mobility-impaired students at Ellington High School. Complicating the matter was the fact that Joshua lived within the area served by Ellington. Therefore, his was not the case through

which to attack segregation. At the present time, a local coalition of parents and advocates are making a concerted effort to revise school-district policies segregating students with mobility impairments. They may eventually decide to seek legal assistance and attack this policy in a lawsuit based upon Section 504 and P.L. 94-142. Or they may decide to complain to the federal agencies responsible for enforcement of these laws (HEW's Office for Civil Rights and Bureau of Education for the Handicapped).

Often, to achieve social change, we must confront issues such as discrimination, segregation and architectural inaccessibility on a systemic level. We must elevate the private problems of individuals into public issues of the society. We must mobilize consumers and potential allies. Community organizing is therefore the subject of the concluding chapter of this handbook.

CHAPTER VII: ACTION

One of the first rules of advocacy is to define issues clearly. Of course, virtually every issue has many sides; the truth or the "correct" viewpoint will usually not stand out as self-evident. Yet that is precisely what must happen in order to mobilize action around an issue. An organizer's role, in part, includes making complex and ambiguous issues seem simple and clear-cut. As Saul Alinsky once counseled, we must transform the percentage of our rightness versus the other side's from 51-49 and make the ratio instead 100 to 0.

The point is simple. If we want to promote change, the reasons for change must be clear and compelling. People do not give their time, energy and skills and take risks for something that is fuzzy or confusing. The issues must be starkly drawn. The best analogy is that of the lawyer representing a client in a damages action. The attorney spares nothing in painting a "blood and guts" portrait of the damaged client. Advocates must make the strongest case possible within the limits of honesty.

So we begin with the task of finding or, more accurately, creating clear-cut issues. Social problems or causes do not exist, they must be created. Let us explain. For years America's institutions for the retarded were snakepits (and most still are). They were bleak, disease-ridden, disability-causing, dehumanizing. But there was little recognition that these institutions constituted a social problem. It was not until Robert F. Kennedy toured the Willowbrook and Rome State Schools in New York State and decried their barbaric conditions, not until Burton Blatt and Fred Kaplan produced their shocking and awsome pictorial expose of institutional abuse, Christmas in Purgatory (1966), and not until the Willowbrook exposes of Geraldo Rivera, Mike Wilkins, M.D., William Bronston, M.D., Elizabeth Lee, M.S.W., Diana McCourt and other parents, that America's consciousness changed. Overnight, institutions for the retarded became a serious national problem. Through exposes, litigation (Wyatt, Willowbrook, Pennhurst) and discussion, the issue of institutional abuse became so clear that advocates would soon call, in the Pennhurst case, for nothing less than a total shut-down of the institution.

Take another example of how awareness of a problem is created. In 1969 a Boston-based research action group called the Task Force on Children Out of School produced a meticulously researched accounting of children out of school in Boston. It found 10,000 such children. Using a similar research model, the Washington Research Project's Children's Defense Fund produced a national survey which cited 2,000,000 children barred from school, some for reasons of their disabilities, some out of poverty, some for being unable to speak English and others for acting out in school. A problem previously represented only by isolated individual cases became a social cause.

One last example of "the making of a problem" concerns the role of charity in the provision of basic services such as education and medical care to children with disabilities. For decades -- at least since the early 1900's -- a major source of funding for disablity-related human services was charity.

Now, consumers of charity -- for example, the parents of disabled children -- have begun to reject the practice of funding basic services on charity monies. Their argument is simple and unequivocal: Basic services should be offered as a matter of right, not as a privilege. Parents should not have to beg for assistance to have their children educated or made healthy. People with disabilities should not have to rely on services which exist only when charity drives are successful.

Once explained, once fashioned into slogans and catch phrases -- "institutional abuse," "deinstitutionalization," "least restrictive alternative," "mainstreaming," "school exclusion," "rights, not charity," are but a few of them -- the newly defined issues seem as if they have always been with us. Yet, in point of fact, such insights are relatively new. Each decade has its own vital issues as we define and redefine our perspective on the world and our place in it, even develop words to characterize these revised perspectives.

That brings us to the next stage. In order for organizers to clarify issues, they need a systematic way of viewing events. Not everyone would interpret a child out of school as exclusion; for some it is a sign that schools "have certain standards to maintain." Not everyone would regard a scene of nude retarded adults wandering aimlessly in an institutional dayroom as evidence of institutional abuse; for some it is an expected result of retardation. One's outlook, one's ideology dictates how one shapes the issues.

In advocacy circles, the dominant ideologies have been normalization (for an excellent review of this perspective, see Wolf Wolfensberger's book, The Principle of Normalization in the Human Services) and constitutional rights (particularly the rights of due process, equal protection, liberty and privacy). A third perspective which has enabled people to examine disablity issues systematically is captured in the term "handicapism." Handicapism is a shorthand term used to encompass all forms of discrimination, prejudice and stereotyping practices toward people who have disabilities.

If all this talk about perspectives, systematic analysis and ideologies sounds far removed from real, practical, everyday advocacy, do not be fooled. It is eminently practical. We know of no effective long-lasting advocacy group that has not had a visible ideology or viewpoint. Even at the expense of being called doctrinaire, one must have a way of assessing events and accomplishments, of arriving at objectives. A strong focus on the goal is hard to maintain without a point of view.

POWER

In 1971, a friend shared a manuscript of what was later to become the most massive book about nonviolent action ever written. It was authored by Gene Sharp, a professor of international studies and, for 20 years, the personal secretary of A. J. Muste, a lifetime Quaker peace activist. That manuscript began with a chapter on power. It contains some basic principles about power. Those principles give a clear path for translating information

-- for example, information about legal rights, normalization and handicapism -- into practical strategies for advocacy.

Sharp defined power in a way that made it accessible to all. Power, he explained, exists wherever people cooperate and obey. In other words, everyone has power and, just as important, everyone, to one degree or another, is a part of the source of power. The power of any single individual or group of people, even if they occupy positions of prestige and authority, depends on the continuous support and cooperation of people around them. Take, for example, the school-exclusion policies which gave rise to right-to-education lawsuits. As long as consumers, advocates and disapproving school personnel said nothing -- in effect complying or obeying -- then the power to exclude existed, usually resting with principals and superintendents. But when silence and acquiescence were replaced by active resistance, by public debate, by litigation and demonstrations and by the most carefully documented action-research projects, the power to exclude began to shrink. In Sharp's scheme of things, it is possible to shut power off at its source by consciously withdrawing cooperation and obedience. It is equally feasible to create power by lending support -- that is, cooperation and obedience -- to people and policies or practices that you uphold.

Sharp's definition of power is exciting because it admits to the fragile, diffuse, highly interactional nature of power. It suggests that everyone can become a participant in its use. But to proceed to make the concept a working tool, we need to know why people who know how power operates are often slow to act, to seize power and use it. Or to put it in a slightly different frame, why do we so often put up with policies and practices which we do not support? The answers to these questions suggest some specific directions for advocacy.

The reasons for inaction are many:

Habit, custom, standard operating procedure. One reason for going along with unpleasant and objectionable policies or practices is that we've grown accustomed to them. In a nutshell, "That's the way it's always been done." Consequently, in order to create change it is necessary to have a vision of alternatives. That is why, for example, when implementation of the right to the least restrictive residential or educational service is being sought, lawyers and advocates look all over the country for the most progressive and innovative examples of integrated services. They are simply trying to demonstrate conclusively that there are alternatives to current policies and practices.

Recently, we were involved in advocating for a severely retarded boy's right to receive his special education program in a regular school setting where he might have some opportunities for interaction with nondisabled students. We felt -- and his parents concurred -- that shared experiences in the halls, in homeroom, in the lunchroom, at recess and in the auditorium were important. In preparation for a due process hearing, we visited lots of programs in several school districts. We found numerous examples where

children with equally severe retardation were educated in regular schools. Our argument was clear. If one child with severe disabilities can be educated in a regular school setting, then all such children can be educated in such integrated settings. The strategy of comparing district programs worked. We won the case.

Lack of resources. Advocacy costs money. Litigation requires skilled and expensive legal talent. Newsletters, advocacy manuals and training materials all cost money to produce. Expert witnesses or consultants often require a fee or at least travel expenses. Phone bills, postage, office...it adds up quickly. Without resources, there can be no action. So fundraising, while seemingly as unrelated to social change and human suffering as selling cars or cosmetics, becomes an integral part of empowerment. The strategies for garnering resources are familiar ones: applying for grants and contracts, soliciting donations (door to door, by mailings, by events, by establishing defense funds), seeking dues-paying members, charging fees for service.

Fear of sanctions. "I feel like I'm walking on ice. If I complain now, even though I know I'm right, I'm afraid we might lose the few gains we've made." That's what one parent told us when she asked for advice on how to make her son's special class a more integral part of his school setting. It's the same issue that faced a group of advocates who recently sought to have a group home for mentally retarded persons established in a suburban neighborhood. More than 30 newspaper articles appeared in local newspapers in a three-week period. The proposed home was controversial. Prospective neighbors charged that the prevailing traffic patterns would prove too dangerous for retarded persons. Other neighbors feared for their "normal" children's safety. To the advocates, these were merely signs of prejudice. Yet it was essential that the battle be won, not by denigrating the opposition, but by presenting an overwhelming case for the home. The organizers feared that an early all-out confrontation would cause the town officials to vote against the home, thus throwing the case into protracted litigation. That was one sanction the advocates wanted to avoid.

Few people know the reality of sanctions better than whistle-blowers, people who advocate from within a service organization. Fear of losing one's job, fear of being ostracized by fellow workers, fear of being blacklisted and losing prospects for promotion and other forms of advancement all weigh heavily on those who would speak out from within.

Needless to say, there are no strategies which will perfectly protect against sanctions, though litigation, public exposure and alliances with famous or important people sometimes buffer the activist from retribution.

In the now-famous Willowbrook protection-from-harm case, sanctions were imposed from the start. Staff members at Willowbrook, after months of trying to secure changes from within, blew the whistle on Willowbrook's abuses; they were reprimanded and two of them were fired. Dr. Mike Wilkins and social worker Elizabeth Lee had already been fired from Willowbrook when they appeared on the ABC-TV Dick Cavett Show to reveal the horrors of their workplace. A third employee, Dr. William Bronston, was a tenured employee

and was not fired. But he was the first such tenured doctor in the history of the institution to be given negative reviews by his supervisors. Even as he was working with attorneys of the Mental Health Law Project to design the Willowbrook lawsuit, he received a registered letter containing a negative evaluation of him by a Willowbrook review group. It was particularly ironic in view of his widely recognized reputation among national leaders in the retardation field for being on the wards, for working exceptionally long hours and for providing high quality medical care in the midst of an impossible system. However, Dr. Bronston's ties to an active parent association, to a tireless labor lawyer and to leading professionals across the country gave him leverage to keep advocating in an atmosphere of hostility and vindictiveness.

Need for skills. Do you know how to research a law? (We hope you've begun to master that skill through using this handbook.) Do you know when and how to hold a press conference? How to write and distribute a press release? Have you learned the basic principles of effective negotiating, of public speaking, of letter writing, of lobbying or even demonstrating? Each is a skill. Each is perfected through practice. (We have catalogued the basic elements of advocacy work in the book Let Our Children Go, 1974.)

One skill which we have found invaluable is the ability to use the public media, including newspapers, television and radio. Local TV talk shows are effective places to stage confrontations with local human services officials over advocacy issues. When you have something newsworthy to say, press conferences are useful in bringing issues before the public. And well-thought-out feature stories about advocacy successes and the new programs that result can raise a kind of halo of respectability and success over a group of advocates who might otherwise be regarded as a fringe special-interest group. It's not difficult to compose a press release if you pretend you're a reporter covering the story. Include the who, what, when, why and where in the first few lines. Use short sentences and two- or at most three-sentence paragraphs. Put the most important information first and trail off with less important matters which could be cut from the bottom up by the editors. Keep to one topic per press release -- in short, provide a self-contained story so that the lay person could understand it without any previous background on the issue. Before you sit down to write it, try reading today's front page with those rules in mind; you'll see how they work in the news stories. In the spotlight of televised press conferences and TV interviews, we've learned the value of saying the same thing ten different ways, so that whatever happens back in the editing room, our message survives. And we have learned how not to answer questions which lead away from our point by saying, "Well, that's really not the key question, our concern is..." or, "The fundamental issue is...."

We have sometimes used gimmicks. Once, when a parent wanted her deaf child educated in a local school where there were no other deaf students, we announced to the media that the mother and her child would be registering at the neighborhood school on the following day. Even as the news photographer took it all in, the medium-sized school district announced it would have a special education teacher create a program for the child.

In a similar effort to capitalize on public opinion, the energy crisis gave us a way to force creation of local programs. A group of parents sought special programs for children who had been sent over 100 miles to a residential school each week. An enterprising reporter computed the cost of gasoline and charter buses and pointed out that the money being spent for transportation would have bought the year-long services of four teachers. The issue thus became why educators and policy-makers should go on spending money for transportation instead of putting it into local school programs. Once again, skill in using the media and time spent developing good relationships with reporters paid off.

Influence of official authority. In the early 1950's a Yale University professor, Stanley Milgram, did a series of experiments in which he asked his subjects -- people recruited through newspaper ads -- to press buttons releasing increasingly higher-voltage shocks on a person in an adjoining room whenever the person responded erroneously on a memory test. In reality, the button released no shocks and the person in the next room was an actor. But the people recruited as subjects did not know that. Milgram found that most people were willing, upon his orders and upon observing his white coat (a sign of authority), to shock the person whom they heard screaming in the next room. It was a chilling experiment -- actually a series of experiments in which Milgram changed variables -- and is reported in his book, Obedience and Authority (1969).

While few of us would admit that we could be so easily cowed by apparent authority, none of us can claim total freedom from its influences. Our hearts seem to flutter if we are the defendants in traffic court. Our adrenalin surges when we have an audience with a person acknowledged to wield great authority.

Not surprisingly, advocates frequently come into conflict with those in positions of authority. After all, among the major factors leading to the need for advocacy are institutional insensitivity and the seeming intransigence of many people in positions of authority, or at the very least, the competition among various interests for attention or action by those in authority. Almost inevitably, therefore, advocacy must question authority, through such strategies as litigation, media exposes and public forums.

The "expert knows best" syndrome. An increasingly powerful ideology is that of professionalism. In a special education negotiation session recently, a member of the Center on Human Policy's advocacy staff was accused of unprofessional conduct. The parents she represented wanted the school officials to do two things: One was to establish long-range goals or expectations for their daughter -- they wanted to know what they could expect of their daughter in five years, when she would be completing high school -- and the other was to allow their daughter one class period per day of mainstreaming. The response of the school's educational specialist was as follows:

> What shocked and concerned us most was the advocating ...of unsound, unethical, theoretically incorrect and impractical educational statements of goals in the I.E.P.

> [individualized education program]. She [the CHP advocate] also chose to advocate methodology and management strategies in the area of deaf education and communicative disorders which she, admittedly and obviously, has a layman's knowledge of.

The statement was signed by six professionals, with all their multiple degrees and types of certification indicated.

The Center advocate's response to these charges is as follows:

> I do see my role as advocating for parents....I think parents are in a difficult position in meetings like these where the content is often technical and expressed in professional language, and where they are outnumbered by the program staff. I think professionals are sometimes unaware that what is dear to them may not be to people outside their field. And there are, of course, real disagreements about appropriate educational programming, since this is often a matter of opinion and not fact. The point of meetings such as these, from my point of view, is to develop a common understanding of the child's needs and to reach a consensus between parents and staff on how best to meet those needs.

This booklet on how to research and present legal issues is one attempt to demystify another profession -- the legal profession. As our cases show, it is important to have knowledge about legal issues and clinical concepts, but it is also important to realize that very few issues are clear-cut. True, we try to make them seem incontrovertible, though more often than not we are using so-called "expert" or "professional" information to make a strong case. It is valuable to remember that those who, to win, must rely on the phrase "the expert knows best" may in fact fear that full disclosure of the substance of their arguments would be less than 100 percent persuasive. A good deal of advocacy work involves translating so-called professional information into language and form that is readily useful to consumers and other advocates.

Lack of confidence. Sometimes people feel unable to act. It takes confidence and an almost unending supply of optimism to keep battling injustice -- hence the popularity of assertiveness training. It takes confidence to call a press conference, to insist that an official answer a tough question or to demand services that have never before been available. Since we are all in the business of building confidence in ourselves and in newly initiated consumers, we need to engage in activities that effect individual growth. These might include: (1) role-playing of difficult confrontations and negotiations; (2) assertiveness training; (3) making opportunities for potential advocates to observe seasoned, assertive organizers in action; (4) engaging in regular critiques of each other's performance as advocates; and (5) finding opportunities for new advocates to use their skills in actual advocacy situations.

Isolation. Parents of developmentally disabled children and developmentally disabled adults, like anyone else, often feel that they are alone, that their problems and circumstances are unique -- their own special burden. Such isolation supports powerlessness. As long as the troubles of one family in locating quality, integrated schooling are seen as an isolated case, advocacy will fail to address the systemic causes of the family's difficulties. Open forums, parent-information groups, parent-power conferences, gripe sessions, ad hoc task forces, informal phone networks, television talk shows and similar vehicles allow people who thought they had private troubles to realize that their needs and difficulties are in fact major social issues. In one case in which the Center on Human Policy was involved, parents wanted their school district to create public school programs for deaf students, including multiply handicapped deaf students. It was 13 months before four families -- of a total group of 108 -- were ready to sign their names to a lawsuit. It took that long for members of the group to begin to believe that there could be a collective solution to their difficulties, and that the problems we have dissussed could be overcome.

CHOOSING STRATEGIES

Recall the case of Joshua Murphy, a high-school student who has cerebral palsy. His is a good case around which to strategize. It raises so many issues: architectural accessibility; handicapism (being forced to enter the school via the loading dock, being denied keys to use the elevators unassisted); segregation of physically disabled students into one school and on special vans; and potentially incorrect diagnosis and placement in a special class for mentally retarded students.

As soon as we heard the circumstances, we knew we were dealing with social issues, not just private troubles. Far from being unique, Joshua's situation was typical. Issues of segregation, accessibility, enforced second-class status and forced dependence were all elements of what we had come to regard as handicapism. Each was a barrier to fulfillment of the principles of normalization. And each issue was in some way an arguable violation of federal or state law.

Yet, if it was all so obvious, why had Joshua's problem persisted? Who was forcing him to endure the circumstances? And who was putting up with (cooperating with and obeying) such unjust policies? More important, why? These were not new issues. Joshua was not experiencing them for the first time. And even if he were, other students had experienced them before him. The answers to these questions suggest avenues for action:

1. Even though Joshua was not the first to encouter these types of inequalities, he was the one person raising his voice. Consequently, many people, however wrongly, viewed him as an individual case. In the terms we used earlier in this chapter, he was viewed as isolated. It is important, therefore, that the strategies chosen would help to show people that Joshua's situation was typical, not unique. This might be accomplished by forming a coalition of dis-

abled high-school students ("youth-disabled-in-action") or by holding a press conference to review for the press a number of cases that present the same issues. It might also be useful to hold a public forum in which disabled high-school youth are invited to give testimony about their experiences. If this seems like a premature step, it may be useful to create a consciousness-raising group of disabled high-school youth. We have also found it extremely useful to invite disabled activists in our community and others who are nationally known to serve as consultants to us, to school districts, if they will listen, and to youth or parent organizations, advising about the types of solutions that might be sought to the problems at hand. Most importantly, advocacy groups openly defending and supporting issues raised by individuals demonstrate that the individuals have allies.

2. An argument used by school officials was that money had not been appropriated for an elevator. For a long time -- at least until we had researched Joshua's case -- most people involved seemed to think this a legitimate escape for the officials. We had to develop our skills -- in this case, legal information -- to bring an effective challenge and to counter this argument. Knowledge of state law, constitutional concepts of due process and equal protection and, most of all, Section 504 of the Rehabilitation Act and P.L. 94-142 was a critically important factor. These legal authorities refuted the lack-of-funds defense and pointed to some obvious strategies. Among those used was a letter by the consumer (Joshua or his parent) to the superintendent of schools, outlining his request as well as the legal basis for it, with a copy sent to an advocacy organization (for example, the state Protection and Advocacy Office, the Center on Human Policy or the DD Rights Center). As the situation required, this would be followed by negotiation sessions with school officials, an appearance before the school board, a possible Section 504 appeal to the federal government, a possible due process hearing in the school district and a possible appeal of the hearing to the state's commissioner of education.

   Having information about one's legal rights opens up a host of additional possibilities. These might include press conferences; action bulletins to sympathetic community organizations alerting them to the injustice; workshops or teach-ins on legal rights for both disabled and nondisabled high school students, so that they can become advocates; formulation of a legal rights booklet or newspaper; involvement of lawyers on television and radio talk shows to explain the legal issues involved, and so forth.

3. The years of inaction prior to Joshua's raising his concerns might have been simply the result of ignorance -- not just ignorance of the law but of normalization, handicapism and the changes that have been occurring elsewhere on behalf of disabled people. Consequently, a case like Joshua's presented an excellent opportunity for a community-education campaign about handicapism or about archi-

tectural accessibility. One strategy that has been very effective in educating key people about accessibility issues is publicly to invite officials (school principals, superintendents, special education directors, teachers, school board members, city officials, state legislators) to spend a day simulating one or more disabilities -- deafness or paraplegia, for example. A day in a wheelchair does wonders in sensitizing an official to the real issues. Another effective strategy has been to identify schools where a high degree of accessibility has been achieved and where disabled students are encouraged and supported in becoming independent and highly integrated. Pointing out the existence of such programs overcomes the barrier created by habit and ignorance. If officials do not accept invitations to learn from the experiences of other programs, it is sometimes helpful to wage public campaigns in which you openly compare aspects of different programs.

4. In Joshua's case educational experts did not challenge his demands. A re-evaluation was necessary to facilitate placement change, so we sought our own independent evaluation at the school's expense. But we were never seriously challenged on that issue. Had the school been more tenacious in its effort to prove the rightness of his current placement, it might have been necessary to challenge the very concept of special classes for so-called educable students. We were never faced with an "expert knows best" argument.

5. Other factors that could have maintained the status quo were lack of self-confidence on the part of the consumer or advocate, fear of official sanctions and the influence of authority. Again, none of these factors seemed terribly imposing in Joshua's case. True, it always takes gumption to challenge official policies and practices, but there was really little to be lost. After all, what could happen to Joshua that had not already happened to him? Conceivably, school personnel might have viewed him and his family as overly emotional, pushy and unable to accept Joshua's disability -- charges that most families of disabled children hear at one time or another -- but in this case that did not occur. The teachers seemed pleased that Joshua had enlisted the help of an advocacy group, because it meant that the district's central office would have to produce funds for needed changes. As it turned out, in this case we had friendly adversaries -- a not uncommon situation.

Thus far, we have discussed choosing strategies as a function of power. That is, strategies should be chosen for their ability to overcome inaction and unconscious obedience. A central goal of advocacy is that consumers become empowered. Through the processes of examining issues and exploring the reasons for past inaction, we can come to new stages of action. By using advocacy techniques we can consciously give and withhold our support for particular policies and practices.

Of course, a working knowledge of power and of the range of advocacy strategies alone cannot guarantee the successful practice of advocacy. In the

end, advocacy demands a measure of spontaneity, of creativity. The successful strategy cannot be repeated in every succeeding situation; strategies must always be suited to the circumstances, to the goal and to the individuals involved.

Advocacy also requires a sense of humor and an actual desire for challenging confrontations, as well as delicate negotiating skills. It calls for a great familiarity with social decorum, for much of the successful advocate's work hinges on a sense of when to show "proper" decorum and when to ignore expected formalities.

Advocacy requires judgment to know what issue is winnable and what issue must wait for another day, and it depends on a view of both the long term and the short range. It demands a consistency in the advocate's values but an endless variability in the actions chosen to promote those values. If advocacy seems at times the making of extraordinary disorder, it must be kept in mind that the goal of advocacy is a new order -- and that change is best effected out of the most careful plans, with one action leading to the next.

Finally, no advocacy can occur without active and self-interested consumers. Just as there can be no litigation without a damaged party, there can be no advocacy in the absence of consumers who have real issues.

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