- Victims of domestic violence are exempt from "deeming" for at least 12 months when there is a substantial connection between the abuse and the victim's need for benefits. You can get benefits beyond those 12 months if the INS or a court has found that you were abused.

- If the welfare office decides that you will go hungry or homeless if you don't get benefits, you can get benefits without "deeming" for up to 12 months.

If you meet one of the exceptions above, only the support you actually get from your sponsor is "deemed" to you. For example, if your husband is not giving you anything, then you will not have any income "deemed" as yours.

I am a refugee who is abused. Can I get CalWORKs to support my children or me?
Yes, you are a "qualified" immigrant and are eligible for CalWORKs. However, you should tell your worker about the abuse so that you can also get domestic violence treatment services and supportive services. This information will be kept confidential. See the question above for more information.

If my children and I are "qualified" immigrants, which other public benefits can we receive?
If you meet other program requirements, you may be eligible for full scope Medi-Cal, and /or General Assistance/General Relief. You may also be eligible for food stamps, Healthy Families, and the Supplemental Security Income Program (SSI). The rules are different for each program and may depend on your immigration status, your age, when you entered the United States, whether you have a sponsor, and whether you or your husband worked in this country or served in the military. For more information, see the pamphlet, "Qualified Immigrants & Public Benefits in California."

I am undocumented and I am afraid to apply for CalWORKs for my children, even though they are citizens or eligible immigrants. What should I know about this?
You never need to tell your worker that you are undocumented. If you are applying for CalWORKs for your children but are not trying to get benefits yourself, your worker should only ask whether your immigration status makes you eligible for CalWORKs. Simply tell her that you are "not an eligible immigrant" ("ineligible" does not mean the same thing as "undocumented"). That is all the agencies need to know.

Agencies in three programs—CalWORKs, SSI, and public housing—must report you to the INS only if they know for a fact that you are in the country unlawfully (they cannot guess about your immigration status). No other agencies are required to report you. If anyone from these or other government agencies asks about your immigration status, be careful. You never need to tell anyone that you are undocumented.

My "Self Petition" under VAWA has been approved. Do I have to worry about "public charge" when I try to get my green card?
When it's time for your green card interview, you will have to meet other requirements. These include that you have not engaged in criminal activity, that you have no serious health problems, drug abuse problem, or serious mental illness, and that you are not likely to become a public charge in the future.

Public charge is a term used by the Immigration and Naturalization Service (INS) and consular officers. The term describes persons who cannot support themselves and depend on certain benefits. In deciding whether you are likely to become a public charge in the future, the INS must look at the following factors together: your age, health, income, family size, education, and skills. Although advocates have found that the INS does tend to look at adjustment petitions for battered spouses more favorably, you should be prepared to show the INS that they should look at your entire situation to decide if you are likely to become a public charge in the future.

My self-petition under VAWA has been approved. Will I be found a "public charge" if I use benefits before I get my green card?
No. VAWA self-petitioners can use all benefits, including cash welfare, without affecting the "public charge" decision.

My husband filed a visa petition for me. If I use benefits before I get my green card (and do not file a self-petition), will I be found a "public charge"?
You can use most benefits, including health care (Medi-Cal, Healthy Families, county health programs), nutrition programs (food stamps, WIC, school lunches) or other non-cash welfare benefits such as child care, transportation, or housing assistance, without affecting the "public charge" decision. However, cash programs that provide monthly income, like CalWORKs, SSI, CAPI, and General Assistance, and nursing home or other long-term care may be counted against you in the public charge decision. You should not be denied a green card just because you used cash welfare in the past. But you will need to show that you are not likely to become a public charge in the future. It will be easier to show this if you used welfare only briefly to get through a hard time, or if you used welfare a long time ago.

What if only my children get benefits?
The INS will not look at whether your children or other family members used health care or other non-cash benefits like those listed above. If your children or other family members use cash welfare (like CalWORKs or SSI), it will not count against you in a public charge decision unless it is your family's only income.

If I already have my green card, are there any risks of using benefits?
In general, using cash welfare will not be a problem for you once you already have your green card. It will not affect your ability to become a citizen. However, it could be a problem if you travel outside the U.S. for more than 6 months (see the question below). Using non-cash benefits will not cause a problem for you.

I have my green card and I get cash welfare. Can I travel outside of the United States?
If you are a lawful permanent resident who gets SSI, CAPI, CalWORKs, or other cash welfare right now, you should not travel outside the U.S. for more than 180 days (about 6 months). Any time you are gone for more than 180 days, the INS can ask you questions about whether you are likely to become a public charge, and may not let you re-enter the country. If you are outside of the U.S. for 180 days or less, in most cases the INS will not ask you questions about public charge when you re-enter the U.S. The INS will only ask you these questions if you intended to live permanently in another country, committed certain crimes, or had a pending deportation or removal case when you left the country.

Benefits for Victims of Trafficking, Domestic Violence and Other Serious Crimes

In October 2000, Congress passed the Trafficking Victims Protection Act of 2000 (TVPA) 22 USC § 7101 et seq. TVPA defines "severe forms of trafficking in persons" as follows:

• Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

• The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The TVPA created two new nonimmigrant visas:

• "T" Visa for victims of a severe form of trafficking in persons, and

• "U" Visa for victims of criminal activity

T Visa

The T visa signifies a shift in the immigration law policy, which previously resulted in many trafficking victims being deported as "illegal aliens". The TVPA authorizes up to 5,000 trafficking victims each year to receive LPR status three years after their temporary residency visas have been issued.

Eligible for Benefits Under Refugee Rules

The TVPA makes non-citizen trafficking victims eligible for public benefits and services once the Department of Health and Human Services certifies them. They are then eligible to apply for benefits to the same extent as refugees including refugee cash, medical assistance and social services. Victims under the age of 18 do not need to be certified; HHS issues children letters of eligibility.

Certification Process

HHS Office of Refugee Resettlement (ORR) may certify a person as a victim of a severe form of trafficking who is willing to assist in every reasonable way with investigating and prosecuting human traffickers; and

• Has made a bona fide application to the Bureau of United States Citizenship Immigration Services for a T Visa by submitting Form I-914 and the application has not been denied; or

• Is a person for whom "continued presence" in the U.S. has been requested by law enforcement because s/he is assisting or willing to assist the Attorney General and/or other law enforcement agency in prosecuting human traffickers.

Continued presence, when granted, confers temporary status that delays/prevents removal.

Application for Benefits

When a victim of trafficking applies for benefits, ORR[3] advises that benefit-granting agencies should follow their normal procedures for refugees except agencies should:

(1) **Accept the original certification letter** or letter for children in place of Bureau of United States Citizenship Immigration Services documentation. Victims of severe forms of trafficking are not required to provide any documentation of their immigration status.

(2) **Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter** or letter for children

[3]Office of Refugee Resettlement State Letter #01-13 The Trafficking Victims Protection Act of 2000 http://www.acf.dhhs.gov/programs/orr/policy/sl01-13.htm

and to notify ORR of the benefits for which the individual has applied.

(3) **Note the "entry date"** for refugee benefits purposes. The individual's "entry date" is the certification date, which is in the body of the certification letter or letter for children.

(4) **Issue benefits to the same extent as a refugee**, provided the victim of a severe form of trafficking meets other program eligibility criteria (e.g., income levels).

(5) **Record the expiration date** of the certification letter or letter for children so that benefit-granting agencies will be prepared to conduct re-determinations of eligibility at that time.

U Visa

To qualify for a U visa, non-citizens must prove that they have —

• been the victim of certain criminal activity that occurred in the U.S. or violates a U.S. law

• possess information concerning this criminal activity

• been helpful, or are being helpful, or are likely to be helpful to law enforcement in investigating or prosecuting this criminal activity, and have suffered "substantial physical or mental abuse" as a result of the victimization

U visa holders must wait at least three years before applying for LPR status.

Criminal Activity

Criminal activity is broadly defined. Importantly, victims who have cooperated with law enforcement in investigating or prosecuting domestic violence may apply for a U visa.

Other criminal activity includes acts of rape, torture, trafficking, incest, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, conspiracy, solicitation or attempt to commit any of these crimes.

U Visa Interim Relief

The Department of Homeland Security did not promulgate regulations governing U Visas until October 2007, so it was not possible to apply for one. However, CIS did grant temporary legal status — "U Visa Interim Relief"— and work authorization to those who were eligible. While there was no official application form to request U Visa Interim Relief, each request had to contain certain documentation.

Not Eligible for Benefits

Unlike certified trafficking victims, noncitizens allowed to remain in the United States under U Visa Interim Relief were not eligible for most federal benefits and services.

Federal Regulations

On October 17, 2007, federal regulations governing eligibility and applications for U visas went into effect. There is now a U visa application Form I-918 and detailed instructions on who qualifies to apply. CIS no longer accepts applications for interim relief. Persons who were granted interim relief may continue to renew their work permits as long as they file their U visa applications before their current grant of interim relief expires.

More information and resources on U Visa, including eligibility requirements, are available at www.legalmomentum.org/iwp

California Program

Effective January 2007, California law provides state and local benefits to trafficking victims and victims of serious crimes before they are able to qualify for federal programs. SB 1569[4] creates a new, state-supported program to provide critical services to these victims as they await, or prepare to request approval for, federally-funded benefits.

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[4]Welfare & Institutions Code Sections 14005.2, 13282, and 18945; MPP 40-105.2 and MPP 63-404.

SB 1569 provides eligible, noncitizen trafficking victims and victims of serious crimes benefits and social services equivalent to those available to refugees, including Refugee Cash Assistance (RCA), California Food Assistance Program (CFAP), CalWORKs, CAPI, IHSS, and Employment Social Services. Recipients are also eligible for medical services (e.g., Refugee Medical Assistance, Medi-Cal, and the Healthy Families Program). These programs will be administered by the California Department of Health Services.

State-only RCA is time-limited to no more than eight months from date of application.

Department of Social Services has described eligibility and verification processes for the California program including flow charts in ACL No. 06-60 (December 21, 2006).

Formal regulations may be found at DSS Manual Letter No. SS-09-01 Sections: 30-755 and 30-770.
http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/ss0901ml.pdf

Community Education Resource

Benefits for Immigrant Victims of Trafficking, Domestic Violence and Other Serious Crimes in California (California Immigrant Policy Center) (PDF).

California SB 1569 provides state and local benefits to immigrant survivors of human trafficking, domestic violence and other serious crimes under the same rules that apply to refugees. Read here about the benefits they may receive and what they need to show in order to obtain them. (4/08)
http://nilc.org/ce/nonnilc/TraffickingReportFinal_2008-04.pdf

INS DOCUMENTS

I-551: Resident Alien Card

The I-551 card is issued to both conditional and lawful permanent resident aliens after the original I-94 card expires. The I-551, was revised in August 1989. This version was the first Alien Registration Card to contain an expiration date on every card.

Validity Period

The expiration date is given on the front of the card. The expiration date indicates when the card expires and must be renewed. It does not indicate that the alien's status has expired.

The current I-551 card is valid for:

- Ten years from issuance for lawful permanent resident aliens
- Two years from the date of admission or adjustment for conditional permanent residents aliens

Color

The I-551 card is rose-colored with a blue Department of Justice logo.

Sample Cards

Form I-551 (August 1989)

Continued on next page

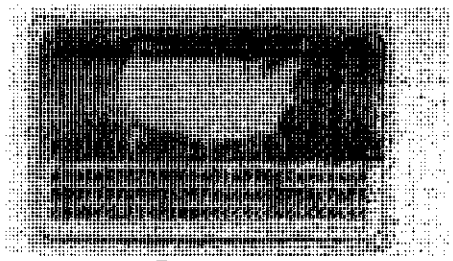
Non Citizen Reference Guide ACL-99-64

INS DOCUMENTS

Sample Cards

The I-551 card was modified in January 1992 when a white box was added behind the fingerprint. The modified version is the card currently being issued.

Form I-551 (January 1992)



Reverse

Process

The county shall establish the date status was granted by examining:

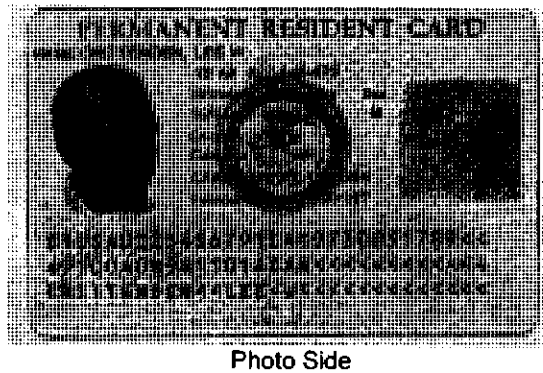
- the codes on the back of the I-551 card, or
- other evidence alien has in his possession, or
- documentation in previous case records

Explanation of Codes above

- The first three digit alpha-numeric code (P26) explains the status under which a person is residing in this country. If unsure of status, request to see original I-94 card to see the stamp on the card.
- The second three digit alpha code (WAS) explains the place of entry into the U.S.
- The next six digit numeric code (890714) explains the date the status was granted. The date is coded year, month and day.

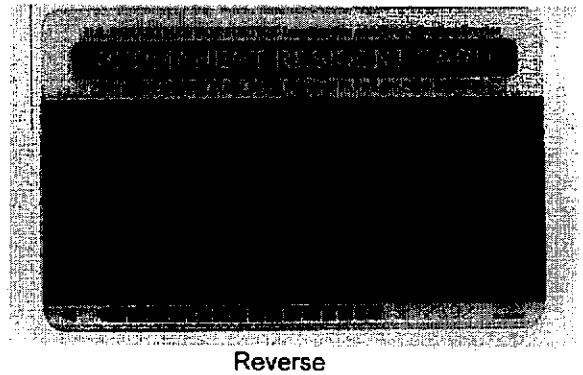
Continued on next page

INS DOCUMENTS

I-551: Permanent Resident Card	The I-551 Permanent Resident Card was introduced December 1997. Noticeable differences on the front of the card include: • Change of card title from Resident Alien Card to Permanent Resident Card • Three line machine readable zone • Hologram
Validity Period	Expiration date is on the face of the card.
Color	Off-white with hologram.
Sample Card	 Photo Side

The back of card contains an Optical Memory Stripe encoded with cardholder information as well as personalized etching of:

- Bearer's Photo
- Name, signature, date of birth
- Alien registration number, card number, expiration date



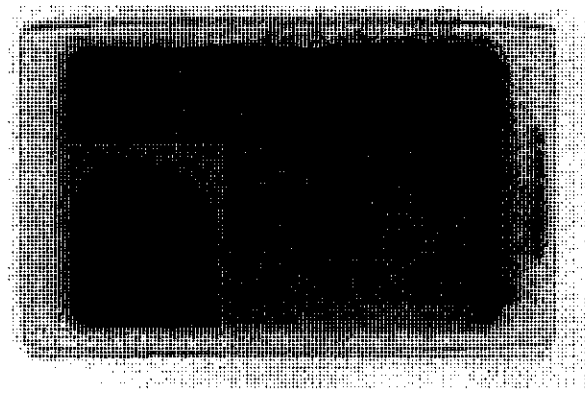
Reverse

Continued on next page

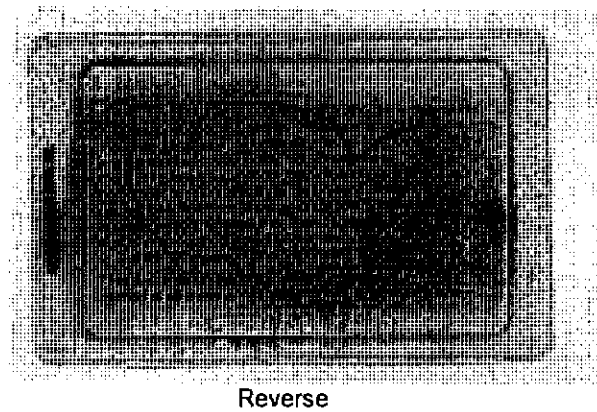
INS DOCUMENTS

I-688: Temporary Resident Card	The I-688 Temporary Resident Card was the second document issued to aliens who further qualified under the "Amnesty Program."
Validity Period	The I-688 may be extended by placing a sticker on the reverse. Multiple stickers may be used to further extensions. Once the bearer becomes a permanent resident, a larger sticker is placed on the reverse which explains the new status of the bearer. With this endorsement, the bearer has the same privileges as a permanent resident.

Sample Card



Form I-688



Reverse

Continued on next page

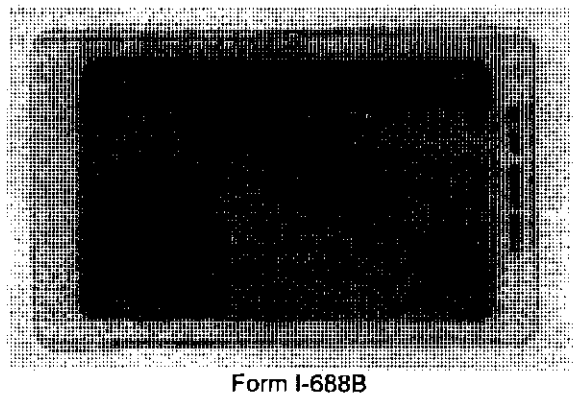
INS DOCUMENTS

I-688B: Employment Authorization Document

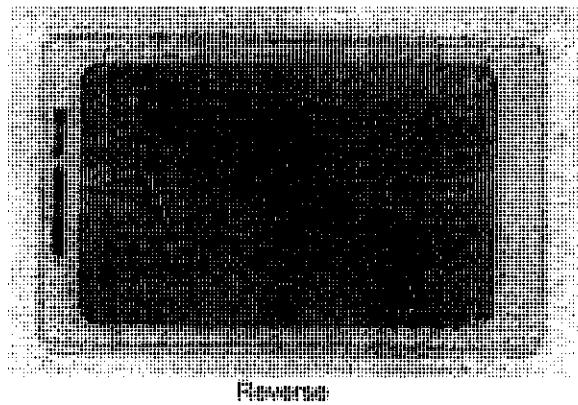
The I-688B Employment Authorization Document is issued to aliens who are not permanent residents but have been granted permission to be employed in the U.S. for a specific period of time.

The card originally was produced with a Polaroid process similar to the I-688 and I-688A, but has the added feature of interlocking gold lines across the front.

Sample Card



Form I-688B



Reverse

Continued on next page

I-688B: Employment Authorization Card

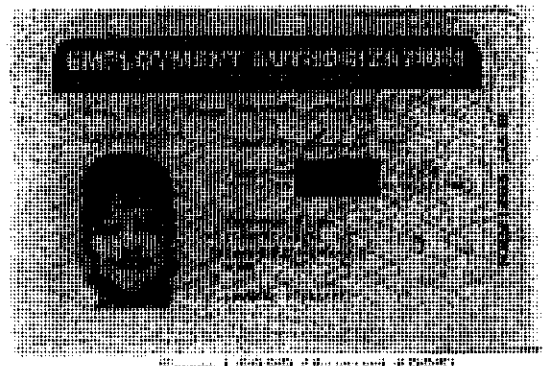
The I-688B card was modified in May 1995. Some INS offices began issuing the modified I-688B. The most significant change was to the card stock which was changed from the Polaroid process to a synthetic material called Teslin on which the biometric and biographic data of the bearer are printed.

Note that on this version, the name is printed on two lines.

Sample Card

Form I-688B (May 1995)

In August 1995 changes were made to the software which prints the I-688Bs and the name reverted to the one line format similar to the original card.



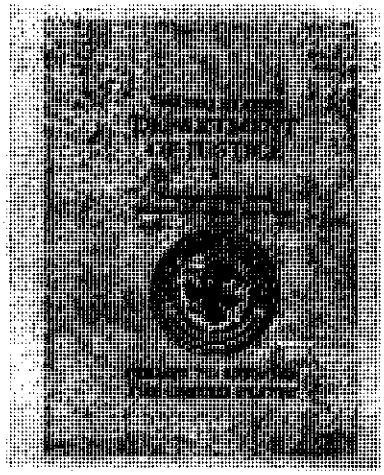
Form I-688B (August 1995)

Continued on next page

INS DOCUMENTS

I-327: Reentry Permit	The I-327 Reentry Permit is issued to a permanent resident alien in lieu of a passport. The reentry permit guarantees his/her permission to reenter the U.S. The reentry permit contains a digitized photograph and many of the security features of the passport. Visas and entry/exit stamps may be applied to the blank pages.
Validity Period	Valid for a period of 2 years and is not renewable.

Sample



Form I-327

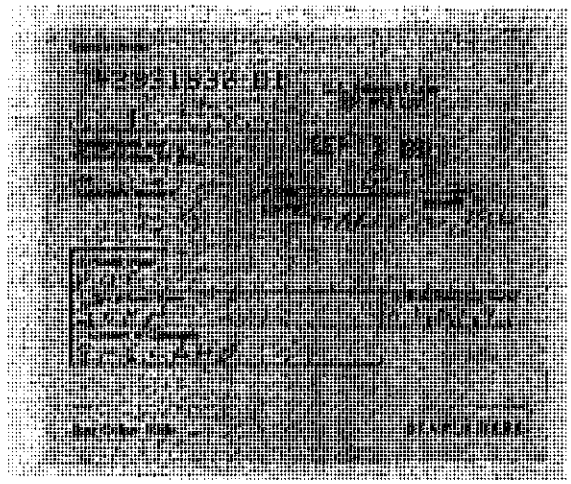
Continued on next page

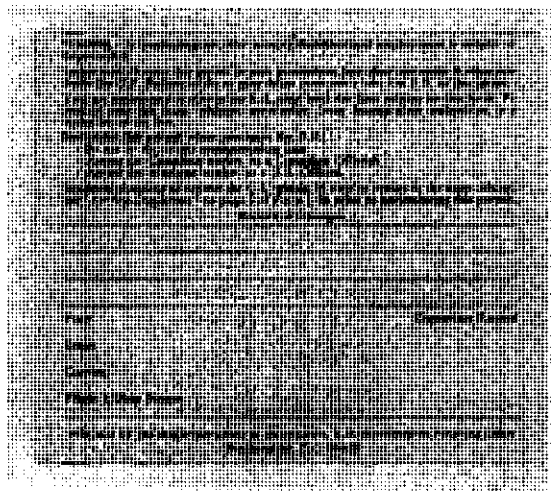
INS DOCUMENTS

I-94: Arrival/ Departure Record

The I-94 Arrival/Departure Record is issued when an alien has been granted admission into the U.S. by an Immigration Inspector at an authorized Port of Entry. The I-94 is stapled to a page in the passport. This document will explain how long the bearer may remain and the terms of admission.

Sample





Form I-94

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Immigration Resources

Catholic Charities of California
http://www.catholiccharitiesca.org/services_location.asp

Serves all regions of California for Immigration and Naturalization cases. Sliding fee scale, depending upon income and case type. All inquiries and consultations are confidential and cannot be obtained by the INS.

National Immigration Law Center (NILC) http://www.nilc.org/

Since 1979, the National Immigration Law Center (NILC) has been dedicated to protecting and promoting the rights of low income immigrants and their family members. In the past 20 years, NILC has earned a national reputation as a leading expert on immigration, public benefits, and employment laws affecting immigrants and refugees. Our extensive knowledge of the complex interplay between immigrants' legal status and their rights under U.S. laws is an essential resource for legal aid programs, community groups, and social service agencies across the country

- Immigrants and Public Benefits: Major Issues

- Overview: Immigrant Eligibility for Federal Programs

- Federal Poverty Guidelines

- Benefits for Immigrants in California
http://www.nilc.org/ce/ceindex.htm#calbens

- Facts about Immigrants

- Disaster Assistance

California Immigrant Policy Center (CIPC) http://www.caimmigrant.org/

CIPC is a collaboration among NILC, the Asian Pacific American Legal Center (APALC), the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), and Services, Immigrant Rights Network, and Education (SIREN).

Here you will find information, advocacy tools, education and research materials regarding California's immigrants and their economic, social, and demographic impact on our state and nation. CIPC now has a web log that provides up-to-date news from Sacramento.

Interviewing

Contents

INTERVIEWING SKILLS: AN OVERVIEW

Interviewing skills come into play in all SNAP outreach encounters— whether explaining the SNAP Program, how to apply, eligibility rules and procedures, applicant and recipient rights,. Exchanging clear, relevant information in a limited amount of time is the hallmark of an effective outreach worker.

Reading this overview should help you acquire *knowledge* of interviewing skills — the ability to get and give appropriate information. Training and sustained practice will help you *master* them.

In actual interviews, skills do not come into play in a linear sequence. We've isolated, linked and described skills in a step-by-step procedure to speed up the learning process. In real-life, skilled interviewers integrate these skills in different patterns, using judgment, making choices, and improvising to meet unique situations, requirements, and conditions. Regardless of how they are sequenced and the relative weight they carry in different interviews, the behaviors described here are always present to some degree regardless of interviewee, interviewer, or interview conditions.

The skills and strategies described here take limited interview time into account. They are intended to help you obtain optimum results within severe time limits. Compensating for inadequate interviewing skills wastes time. *Correcting inaccurate information, adjusting unrealistic expectations or explaining away confusion takes more time than incorporating these behaviors into your skills repertoire.*

Learning these skills takes time, but once mastered, you will be able to interview more efficiently in a limited amount of time.

The Outreach Interview

The Food Stamp outreach interview's purpose — like the legal, medical, or the social services interview — is to gather and exchange information. Although it seems simple, pursuing this purpose in the outreach interview can become complex. Not only are different kinds of information exchanged, but the needs of the interviewee and interviewer may differ as well.

***Interviewees* need to:**

- Gain understanding about your organization and how it can help them get or keep SNAP benefits.
- Get answers to their questions about SNAP benefits.
- Present their situation in their own way.

***As the interviewer, you* need to:**

- Inform people of the kind and extent of help that they can expect from you, your organization and others
- Get accurate, complete information about the presented problem
- Further their understanding of possible solutions
- Enlist their participation in resolving the problem.

The interviewer's role and responsibilities flow directly from what is required to meet these needs and the interview's purpose.

Interviewer's Responsibilities

Your overall responsibility as an interviewer is to *create the conditions that promote an effective interview or one-on-one contact.* Interviewees experience these conditions as a climate of support, trust, and competence. The interviewer's knowledge and skill is the base from which these conditions must be built. The

skills with which the interviewer creates these conditions are the subject of this overview.

Support and Trust
Conditions of support and trust are highly related to the purpose of exchanging clear, relevant information. Anything that contributes to feelings of insecurity or threat reduces the interview's effectiveness by causing interviewees to protect and defend themselves.

Providing emotional support enhances feelings of importance and self-worth. Emotional support leads to trust and tends to reduce the general discomfort one may feel about talking to an outreach worker and about specific problems such as those which arise from memory lapses and communication difficulties. With a sense of support and trust the person interviewed is likely to become more cooperative, speak more freely and openly, and respond more positively to interviewer limits and to requests for assistance.

A climate of support and trust includes, but is not limited to, simple demonstrations of respect. Showing respect is sometimes equated with good manners, such as being courteous, being on time, being careful to keep commitments, etc. These "manners" are important but peripheral to the interview itself. Your behavior in conducting the interview has a more profound impact on interviewee's sense that they are respected than do common courtesies. The critical behaviors in creating conditions of support and trust are explored later in this narrative as specific skills.

Content and Process
Interviewer responsibilities are related to two aspects of the interview: *content* (what the interview is about, what is said, the information exchanged) and *process* (how the interview proceeds, how it is guided and managed to achieve specific objectives).

Your responsibility for interview content and process varies according to interview objectives. For example, in an initial outreach encounter, you are responsible for providing content like information about SNAP eligibility requirements and explanations about how SNAP works. In helping people complete application forms, their situation, however, is the primary interview content.

You are always responsible for the interview *process*. How you respond to the interviewee, focus the interview, and question the interviewee will affect its content. You must listen carefully to the interviewee's statements, mark off areas of inquiry that are relevant, and elicit the information needed in those areas. The process — including the sequencing of questions, pacing, and tone of the interview — is mostly within your control. With specific objectives in mind, you are responsible for guiding the interview in ways designed to promote an open exchange and to get the information needed.

You as the outreach worker maintain responsibility for an interview's process regardless of how much responsibility interviewees take for its content. Responsibility for the content and process of the interview — like responsibility for creating conditions of support and trust — is carried out through mastery of certain skills.

Interviewing Skills
Creating the conditions that promote an effective interview is largely a matter of increased awareness and mastery of these five foundation skills:

1. *Attending the interviewee*

2. *Focusing the interview and questioning the interviewee*

3. *Reflecting the interviewee's statements and feelings*

4. *Expressing facts, opinions, and feelings*

5. *Interpreting the interviewee's situation*

These skills are woven in different patterns and take on more or less importance in different interviews, but they are always present to some degree in good interviewing.

Attending the Interviewee
Attending the speaker is the most basic skill in interviewing. *Attending consists of all*

behaviors, verbal and non-verbal, which demonstrate that the worker is paying attention and cares about hearing the speaker's message. Attending puts interviewees at ease and encourages them to tell their story.

Good attending is important throughout the interview, but essential in the initial phases. People react immediately to an interviewer's behavior. Based on that reaction, they then decide how open they will be. Attending assumes great importance in the outreach interview because people always bring more than a factual account of their problem.

The behaviors involved in attending include:

Good eye contact
Looking directly at interviewees lets them know that you are interested in and following what they are saying. It also serves a monitoring function when you are speaking. By looking at the interviewee you get nonverbal signals that tell you whether they are listening and understanding what is being said.

Attentive body posture
Facing the interviewee and leaning forward slightly in a relaxed, open posture connotes interest and involvement. Facing away from the interviewee or leaning away may connote distance or disinterest. Crossed arms and other closed body postures may connote defensiveness. Moving toward the interviewee too much or too abruptly, however, can be felt as pressure or invasion.

Encouragements to talk
Direct verbal and nonverbal responses to something the interviewee has said can convey that you would like to know more. Verbal encouragements are "..tell me more about that...." or "....and after that?" Other invitations to talk include nodding one's head, supportive voice tone and tentative voice inflections. Ending sentences in a higher inflection, as in a question, invites more talk while ending them in a lower inflection suggests that this is the last word, cutting off discussion.

Relevant note-taking
Jotting down information that is important shows that you are not only listening but are also recording relevant information. Too much note-taking, on the other hand, can distract the interviewee and reduce the information flow.

Intentional silence
Allowing people to proceed at their own pace with you listening silently is important because it gives them time to sort out feelings, to think, and to decide whether to continue. Silence on your part communicates that you're listening and giving folks time to tell their story in their own way. Excessive talking by an interviewer is usually a sign of insecurity and affects the interview adversely.

Focusing the Interview and Questioning the Interviewee

Skilled interviewers actively guide and direct the interviewee to give needed information through focusing and questioning behaviors. These skills help you get and clarify information, make implicit information explicit, and help stimulate the interviewee's memory.

Responding to relevant statements and paying less attention to what is not relevant allows you to guide the person to useful information *indirectly*. For example, the events that have led up to the situation of needing SNAP benefits are of equal importance in people's subjective experience. They are not all of equal importance for a successful SNAP application, however. The interviewee must be directed to those areas that yield useful information and away from those areas that do not.

You can provide unobtrusive guidance by responding verbally and non-verbally to statements that are useful and by withholding responses to irrelevant information. This allows interviewees to direct and focus themselves in relation to your expressed interest. This kind of guidance tends to be indirect and permissive.

Some interviewees, however, require clearer, more explicit direction.

Tactful interrupting is called for when the interviewee wanders from the subject, is inclined to describe events in too much detail, or begins to dwell on aspects of her situation which are not relevant. In cases where self-direction, facilitated by your responses, is not sufficient, you must firmly guide by interrupting and re-directing the interview. Interrupting directs the interviewee's attention away from something that is important to the interviewee and toward something that is important to you. Because the information is important to the interviewee, before interrupting, acknowledge what he is trying to express and then move on to what you want to know.

For example, when a person is caught up in re-telling the personal hurts which led her to get a divorce and need food assistance, "...and then he...and then he...and then he...," you might tactfully interrupt by saying, "I know from what you say that your relationship with your husband has been very difficult, and I think you were justified in seeking a divorce. To apply for Food Stamps, however, I need to know about...Can you tell me about that?

Focusing and directing the interview is carried out by skillfully using questions. Questions are the most direct devices for getting and clarifying information, making implicit information explicit, and stimulating the interviewee's memory.

Asking open-ended questions allows interviewees to direct their own response. They are appropriate when you are uncertain what specific information you need, when you want the person to elaborate a point, or when you want the interviewee to talk freely. Open-ended questions impose no limits on the interviewee's response: "How has it been since I saw you last?" or "What do you think about applying for Food Stamps today?" or "Could you tell me about....?"

Open-ended questions yield a great deal of varied information and can give you a better understanding of the interviewee's motivation, feelings, attitudes, and experiences. They also lay the groundwork for more directive and pointed questions.

Asking closed-ended questions limits the response. They can usually be answered with a "yes" or "no" or in a few words. The closed-ended question is most often used to get concrete facts. Examples are: "Do you receive Social Security benefits?" or "Are you married?" or "How old are your children?"

Interviews are commonly thought of as nothing more than questioning someone, the hidden assumption being that if interviewers ask the right questions they will get the information needed.

If people were simple, rational creatures programmed like computers to give correct answers to appropriate questions, this view would be justified. Few interviews, however, proceed effectively on questions alone. When you rely heavily or exclusively on questions, people may feel they are being interrogated, become defensive, and limit their responses to information needed to satisfy you. Many people will withhold cooperation if you do nothing more than question them.

Questions, if they are to elicit information, must be accompanied by other behaviors that acknowledge the interviewee as a person. By doing so, you demonstrate that the interviewee has thoughts and feelings that are important to understanding the problem and pursuing a resolution.

Reflecting the Interviewee's Thoughts and Feelings

Reflecting thoughts and feelings involves demonstrating verbally and explicitly that the interviewee's message, concerns, and feelings have been heard and understood. All speakers want assurance that the person to whom they are speaking is listening. If you do not comment on what the interviewee has said and simply move to another question, the interviewee does not know whether his statements are heard or valued. With no acknowledgement, people may be discouraged from giving more information or,

conversely, repeat themselves unnecessarily to insure that they are heard.

You can assure people that they are heard by reflecting — restating or summarizing — their statements. In an effective interview two kinds of statements should be reflected: content and feelings.

Reflecting content is repeating the information the person has given by restating, paraphrasing, or summarizing their message. The objective is to reflect the essence of what is said. Reflecting content reassures people that they have been heard and reassures you that you are interpreting what has been said accurately. Reflecting content allows for correcting error and clarifying confusing aspects of the message. It may also highlight and emphasize important information.

In reflecting by restating, the interviewer repeats the interviewee's ideas and words:

Interviewee: They've stopped my checks. I don't have any money except what I get from them. I don't know what I'm going to do.

Interviewer: They've stopped your checks. You don't have any money, and you don't know what you're going to do....

In reflecting by paraphrasing, the worker uses her own words to express the interviewee's idea:

Interviewee: I don't like to tell people about that.

Interviewer: It's hard for you to talk about it.

In reflecting the message by summarizing, the interviewer expresses the person's idea in fewer words.

Interviewee: You have to understand. Billy isn't like Mike. Mike's got a temper, but Billy, he'll kill me and the kids. And even if he didn't, I'd be scared all the time he was going to.

Interviewer: You're not afraid of Mike, but you think Billy is really dangerous.

Reflecting content is most effective when stated tentatively or as a question and has the same objective and is expressed in the same ways the interviewer reflects content. *What* is reflected, however, is different. Here you are reflecting what you perceive to be the interviewee's *feelings* about what he is describing.

Reflecting feelings is important in an interview because it acknowledges the interviewee as a whole person. Rather than a fact and information reporter, you are treating the interviewee as personally involved in the problem with strong feelings about it.

People may express feelings verbally. More likely, they will reveal feelings non-verbally. Even with careful attention to what they say and how they say it, you can only guess what other people are feeling. Strive to convey in words and manner that your thoughts are tentative guesses that the interviewee must confirm or correct.

Interviewee: It's all too much. It's been six months since he died, but when I try to think about what I am going to do or even try to sort out his things, I just start crying.

Interviewer: I imagine that you're still grieving deeply over your husband's death and feel overwhelmed and in great distress when you try to make plans or go through his things.

Acknowledging a person's feelings is one way of conveying your concern for the person and can increase the person's trust and cooperation.

Reflecting feelings may cause the interviewee to explain them, revealing more useful information.

Interviewee: Food is so expensive. And my landlord keeps raising the rent. Those apartments aren't worth what we are paying now. He's trying to make it so expensive we can't stay there. Then he can change the building to condos or something.

Interviewer: Your landlord is increasing your rent again, and you think he may be trying to get

rid of you. I imagine that makes you very angry — and scared.

Interviewee: Yeah, it makes me angry, but I'm scared that if I don't pay he'll evict me. I'm already a month behind, and he's threatening to kick me out. But I really need food first. That's why I came here, because I was told that you could help me get more food.

Reflecting the feelings suggested by nonverbal clues of "quiet" people can help them begin talking. For example, when people move restlessly in their chairs and speak only to answer questions in a few words, you may say, "I imagine that you find it uncomfortable being here and it is hard for you to talk about what's going on right now."

When reflecting *negative* statements, you should express the negative feelings which have been expressed explicitly and the implicit need or want which underlies the feelings.

Interviewee: Will this thing ever be over? I can't stand it if it goes on much longer. It takes too long. Doing what you are saying will take forever.

Interviewer: I know from what you have said that this problem is very troubling to you and you don't want it to drag on. You want things to get settle quickly.

When reflecting *negative* statements, expressing the negative feelings along with the implicit need or want which underlies the feelings is a powerful strategy.

The other side is what people need or want. Expressing what they need or want shifts attention from a complaint about the way things are to a desire for how people want things to be. It allows the possibility of a psychological shift from feelings of helplessness and powerlessness in the face of the conditions they are complaining about to feelings of personal power in pursuing what they want. If the dialogue above continues the worker can describe some of the constraints in the situation and some of the things the interviewee can do to bring a speedier resolution.

Reflecting feelings can help people see, acknowledge, and manage their feelings better. Reflecting feelings primary purpose, however, is to affirm people. It's like saying, "I am with you. I can sense and I *think* I understand your feelings about this."

Expressing Facts and Feelings

In addition to being responsible for the interview *process*, you are also responsible for some of its *content*: giving information about the organization, eligibility for services, and how the rules impacts on the interviewee's situation.

Skills of expression come into play when you inform the person about the nature and extent of services provided, eligibility requirements and procedures. Skills of expression are also used when you explain the regulations, define terms, and describe alternatives for resolving a problem. You also must develop the ability to express your feelings and opinions.

Expressing facts Giving information involves making clear, simple statements which the interviewee can easily understand and pacing the information flow in relation to how quickly or slowly the interviewee grasps what has been said.

Sometimes you may not know whether you are being understood or not. Some people will say they understand when they don't for fear of appearing stupid. Try to reduce potential embarrassment by asking people to let you know whenever you aren't being clear or are talking too fast. This tells people directly that it's all right to interrupt, to ask questions, to ask for a clearer explanation, or to ask for a slower pace.

Expressing feelings Sometimes you need to express your feelings: "I am very happy to tell you...." or "I felt angry and frustrated when I couldn't get the information from your caseworker, but I don't intend to let my feelings jeopardize your relationship with her or stall your hearing." or "It saddens me to see what this has caused you."

Simple expressions of feeling enhance the climate of openness and trust and serve as a model.

Expressing feelings increases trust and cooperation by reassuring the person that you are relating to this situation as a full human being, not as a robot devoid of feelings. Such expressions should be limited, however, to those that achieve this purpose. It is counterproductive for you to use people to ventilate your negative feelings and frustrations.

Sometimes expressing feelings serves another purpose. Over time people may learn how better to express and handle their own feelings. When you acknowledge your feelings simply, directly, and objectively, you're modeling how to handle feelings effectively. By showing that feelings will not adversely affect your performance, interviewees may begin imitating your behavior.

Interpreting the Interviewee's Situation

Interpreting is a complex skill that involves some of the skills described above, particularly attending,, reflecting, and expressing.

Interpreting consists of listening to and reflecting what interviewees are saying and expressing ideas or a frame of reference to help them see their situation more clearly or see it differently. The function of interpreting another's situation is to increase their understanding of it and prepare them to deal with it more effectively.

Interpreting involves taking the essence of what the interviewee has said, confirming what is useful to a resolution, correcting or recasting what is not, and adding new information and perspective. It may include describing options available to the person for resolving the problem. In some cases interpreting involves connecting events or ideas that lead to a conclusion or a path of action. For example,

Interviewer: O.K., let's see if I got this right. You lost your job two months ago and have been looking non-stop for this whole time. You've gone through all your savings. You have $100 cash on hand. You own your car free and clear, it's worth about $7,500 give or take $1000. You pay $780 a month rent. You have two kids, one 6 and one 10. Did I leave anything out?

Interviewee: No.

Interviewer: Assuming we can show the SNAP office that these numbers are firm, I'd say you're eligible for SNAP benefits. And you may be able to get some benefits in the next few days. In any event, let's get the paperwork filled out and figure out how to get back up documents for your figures.

Difficult vs. Easy Interviews

When the conditions of the interview are "good," when the interviewer and the interviewee are comfortable with each other and no obstacles block the information flow, the interview is likely to go smoothly. All the information needed may be obtained through the relatively uncomplicated use of the five basic interviewing skills:

1. Attending the Interviewee

2. Focusing the Interview and Questioning the Interviewee

3. Reflecting the Interviewee's Statements and Feelings

4. Expressing Facts, Opinions and Feelings

5. Interpreting the Interviewee's Situation.

More often than not, however, "good" conditions do not exist. Outreach workers frequently interview in uncomfortable places, with too little time, with people of limited knowledge of their rights and responsibilities. They talk to "stuck" people who cannot make decisions, to "talkers" who cannot listen, to "silent types" who won't talk, and to people whose differences in race, ethnicity, sex, age, class, language, physical or mental abilities, sexual orientation or gender creates communication problems. They may also be expected to do things they cannot do.

These conditions lead to problems between interviewer and interviewee which complicate the interview and increase the demands on your interviewing skills.

When the conditions under which the interview is conducted become more difficult, your response patterns, the judgments you must make, and the process of guiding the interview become more complex. *Difficult conditions do not require new and different skills: they require a higher level of sensitivity and understanding, higher standards of performance and judgment in using the basic skills.* They also require knowledge and facility in using strategies designed to deal with problems that threaten the interview.

Common Communication Blocking Events

These three events, occurring in outreach interviews and representing increasing levels of difficulty and demand on interviewer skills, are

1. *People have a problem such as fear, hesitancy, guilt, hostility which prevents their cooperation or blocks the information flow*

2. *You have a problem with something the person is doing or failing to do and your reaction reduces your effectiveness.*

3. *You and the person are in conflict.*

Each of these events tends to block the information flow and threaten interview effectiveness to some degree. Strategies built on the five basic skills can help you deal with these situations and minimize their adverse consequences.

Strategies for Dealing With Communication Blocking Events

Block 1: Interviewee has a Problem.

You may be gathering relevant information routinely when you notice that the interviewee's emotional intensity has risen sharply. The cue could be a change in voice quality, facial expression, gestures, body movement or orientation. These cues signal that the person's feelings are coming into play. If the feelings are negative, the person's participation in information exchange may be distorted or diverted.

Strategy: This five-step strategy is designed to reduce any negative effects the client's problem may have on the interview.

Step 1
Listen to Words & Body Language.
Listen closely to *what* people say and *how* they say it, observing facial expression, voice quality, gestures, body movements and posture.

Concentrate on getting the total message. This kind of listening differs from what you would do in getting information routinely. When relevant information is coming easily, you concentrate on *what* the person is saying. But when you sense a problem, attention to non-verbal messages becomes conscious, deliberate, and takes priority over content.

Step 2
Determine the Meaning & Feeling.
Decode the person's full message, mentally asking two questions: "What are they feeling?" and "What is the feeling about?"

Examples —
• Fear about loss of income or becoming homeless

• Shame about having to apply for government benefits

• Disappointment about a child's behavior

• Resentment about a spouse's behavior.

After decoding, *label* what you tentatively understand the person's feelings to be, in a few, simple, concrete words.

Step 3
Reflect the Person's Meaning & Feeling.
Tell them what you tentatively think their feelings and situations are, avoiding long statements and expressing yourself in the fewest, simplest, and most concrete language.

Demonstrate by voice tone and manner that you are imagining and guessing what they are feeling, asking them to confirm or correct their reflection.

Please avoid lecturing, advising, or expressing approval or disapproval.

Step 4
Listen Again to their Total Response.
Despite your best efforts in imagining their meanings and feelings and expressing them, your reflection may miss the mark. Concentrate on the person's response to discover how close you are. You may have to continue listening, observing, and reflecting the person's meanings and feelings until they accept your feedback as accurate and complete and do not introduce additional concerns.

Step 5
Refocus and Redirect the Interaction.
Evaluate the outcome of steps 1-4 and decide how to proceed with the interview. What you do and how you do it depends upon where the exchange has led. For example —

- *If,* by expressing the problem, the person seems more at ease and ready to get on with the interview, *then* simply resume the information exchange where you left off.

- *If* you find that the person is disturbed about a problem where you can assist or refer them, *then* do so and continue the interview.

- *If* the person's response reveals a conflict between you and them, go to a conflict resolution strategy *(Block 3)*

- *If* talking has not resolved the problem for them, and you can't assist or refer, and you and the person are not in conflict, *then* acknowledge the unresolved problem and continue the interview. Interviewees have probably gained something from the understanding they have been given, and the climate of acceptance and trust has been reinforced.

Block 2: You Have a Problem With Something the Interviewee Is Doing or Failing to Do.
You may be gathering relevant information routinely when you become aware that something the interviewee is doing annoys you. You begin to have trouble listening and concentrating on the interview. You may begin to feel dislike for them or wonder why you ever took this job. The more your negative feelings grow the less effective the interview is likely to be.

Strategy: This five-step strategy is intended to help you handle your problems with other's behavior without offending people or running rough-shod over them.

Step 1
Become Aware That You are Troubled By Some Behavior.
The first step in solving a problem is becoming aware of it. You may ignore or deny your negative feelings during an interview. Although it may seem to be the course of least resistance, it can be costly as it can deprive the interviewee of your full attention, energy, and skills.

An alternative is having you recognize physical and mental signals that an interviewee's behavior is a problem for you and then using judgment in confronting the behavior. For example, fidgeting, tenseness, discomfort, and fatigue traction, day-dreaming and mental criticism or judging them, are possible mental signs. These signs alert you to pay attention to your feelings and your needs in the interview.

Step 2
Focus On the Problem Behavior and Your Feeling about It.
Once you recognize a signal that something is wrong, observe more closely what is happening and how you are reacting. In this step, focus on the interviewee's behavior and your feelings about it. Mentally ask, "What is the interviewee doing or failing to do?" and "How do I feel about such behavior?" Label the behavior and your feelings in simple, concrete terms, without judging or analyzing your reaction.

For example: The interviewee is looking past you and out the window. Several times you've had to repeat questions. Following this strategy, you notice her growing tenseness. You label the behavior and your feelings about it:

Behavior: distraction and slow response to questions
Feeling: annoyance, frustration

This step allows you to begin to take conscious control of your reactions to the other person's behavior.

Step 3
Decide If There Is a Direct & Tangible Effect on the Interaction.
If you can specify a *direct and tangible adverse effect* the behavior has on the interaction, describe your problem to the other person (step 4 below). If you can't specify a direct and tangible adverse effect, then the basis for your negative reaction should be questioned — probably your own prejudice is coming into play.

For example: A person has failed to keep two previous appointments and is 20 minutes late for his third. As a result, you have wasted time on three occasions. These adverse effects are direct and tangible and are independent of your emotional response to the behavior. Even if you had not been upset, time has been lost and no work on the SNAP application has been done.

On the other hand: The interviewee chews tobacco during the interview, spitting into a small can he has brought along for the purpose. You are bothered to the point of revulsion. This behavior has no adverse effect, however, except on your emotions. You've had an adverse emotional reaction, but any adverse effect to the interview occurs *because of* your emotional response to the behavior. If you cannot specify a direct and tangible adverse effect to the interview you should mentally note the problem, decide to deal with it outside the interview, and proceed.

Step 4
Describe Your Problem to the Other Person.
The statement of the problem should include:

- What the problem situation or behavior is
- The direct and tangible effect of the problem behavior on you and the interaction.
- Your feeling about the effect of the problem behavior.

Remember that you are talking about a particular *behavior* and its *effect* on you. You are not talking about the interviewee him or herself.

For example:

"In this little office, cigarette smoke causes my eyes to burn, and I cough. I am afraid I won't be as alert to what you are saying as I should be."

"When I come to your home for an interview appointment, and you are not there, I hate losing the time and not getting the information I need for your application."

In each of these examples, the adverse effect on the interview occurred regardless of your emotional response to it.

Describing your problem to the interviewee gives you an effective way to communicate your problem. It also allows you to avoid a number of ineffective reactions like giving orders, threatening, warning, preaching, moralizing, or giving advice. All of these reactions convey the implicit message: "You don't know what to do, so I am telling you." Other ineffective reactions include judging, blaming, calling names, ridiculing, psychoanalyzing, instructing or teaching. The implicit message in these reactions is "There is something wrong with you that I can help you correct."

Step 5
Evaluate the Response.
Will people hear your problem and change their behavior in a way that meets your needs? If you follow the four steps above you have a better chance of getting a favorable behavior change, but it's not assured. You must listen to the person's full response and decide how to proceed. Here are four general possibilities and a suggested approach for each.

1. *If* the person seems not to recognize your problem (you're not getting through) *then* repeat step 4, telling them in clearer, stronger terms what adverse effects the behavior has and how you feel about it.

2. *If* the person becomes upset because you have confronted the problem behavior, *then* use the strategy for *Block 1: The Interviewee Has a Problem*, presented earlier, to help her with these feelings until she can return to her own problem.

3. *If* the person is unwilling to change the behavior despite recognizing it as a problem for the interview, *then* use the strategy for *Block 3: The Interviewer and the Interviewee are in Conflict*, described below, to resolve the conflict.

4. *If* the person changes the problem behavior in a way that meets your needs, you and they congratulate one another and get on with the interview.

Block 3: The Interviewer and the Interviewee Are in Conflict.

What happens when the interviewee's actions conflict with what you're trying to do, or when your actions conflict with the interviewee? Often these situations can be resolved as discussed previously when you try to understand the person's concerns and feelings (Block 1 Strategy). Or interviewees respond favorably when you tell them how their actions adversely affect the interview (Block 2 Strategy).

Even after these efforts, however, people may not change their behavior in a way that you find acceptable. And you may be unwilling or unable to change actions people don't like. How do you resolve such conflicts?

Strategy: This three-step strategy represents a way to resolve conflicts that avoids a win-lose contest decided by the greater power. You and the interviewee decide what each of you needs and then solve the problem of how to meet those needs through actions acceptable to both.

Step 1
Distinguish Needs From Actions.
Seldom do your needs and the other person's needs conflict directly. More often the conflict arises because the action taken by one person to meet her needs prevents or interferes with an action taken by the other to meet his needs. In these instances conflict resolution hinges on you and the client finding alternative *actions* which do not conflict, yet allow both of you to meet your needs. In most conflict situation actions are negotiable; needs are not.

For example:
A person refuses to get verification of her rent payments from her landlord. You refuse to proceed without it.

The person's need is to avoid letting the landlord know she is applying for SNAP benefits. Your need is to get reliable and acceptable verification of rent payments.

The actions you each have taken in pursuit of your needs are in conflict. Your needs are not. The most frequent block to conflict resolution is to allow the focus of the conflict to become a specific action rather than focus on the more general needs involved.

Step 2
State Needs as A Mutual Problem.
In this step you and the other person convert your conflict into a *mutual problem*, one step removed from the conflicting actions which blocked the interview.

Stating needs as a mutual problem is most effective when you —

• Use attending and reflecting skills to elicit the person's statement of his/her need and check your understanding of it.

• Express your problem and needs clearly, simply, and objectively, allowing the other person to clarify his/her understanding of your needs.

• State the needs of both you and the other person as a *mutual problem.*

• Offer to work with the person to solve the problem by meeting both sets of needs.

Step 3
Involving the Interviewee in Mutual Problem Solving.

1. List as many ideas as possible for getting both sets of needs met. Make sure to involve the other person especially in the beginning. Don't judge or criticize any of the ideas yet.

2. Select the ideas that seem most likely to work. Eliminate any idea that is not acceptable to both you and the client.

3. Choose the most promising ideas and work out a plan based on them. The plan should state *who* will do what, *when,* and *how* often.

If the plan works for both of you, congratulate one another. If no plan is mutually acceptable, terminate the interview in a way that enhances the self-esteem of both parties: summarize the conflict objectively, describe the impasse non-judgmentally, and congratulate the other person on his effort and good will in seeking a resolution.

The interview should be terminated in such a way that both parties can say they gave the search their best efforts; they admire the integrity of the each other; and they regret that a solution was not possible.

Interviewing Skills And Their Behaviors					
Attending the Interviewee	Eye contact	Intentional Silence	Attentive Body Posture	Verbal Invitation To Talk	Relevant Note-Taking
Reflecting the Interviewee's Statements & Feelings	Reflecting Interviewee's Statements	Summarizing Interviewee's Statements	Paraphrasing	Reflecting Interviewee's Statements of *Feeling*	Imagining & Reflecting Interviewee's Feeling from *Nonverbal Clues*
Focusing the Interview and Questioning the Interviewee	Tactful Interrupting	Responding to Relevant Information	Withholding Response to Irrelevant Information	Asking Open-Ended Questions	Asking Close-Ended Questions
Expressing Factual Information, Opinions and Feelings	Expressing Factual Information	Giving Instructions	Describing Options	Expressing Opinions	Expressing Feelings
Interpreting the Interviewee's Situation	Expressing New Ideas or Information for Possible Resolution	Helping See Situation Differently	Re-casting Problem to Reveal More Options	Connecting Disparate Events/Ideas	Drawing Conclusions

Interview Checklist

Preparing for the Interview

- Checklists
- Pertinent regulations, policies
- Place (privacy, confidentiality), seating arrangement
- Attire
- Mental attitude; ego needs
- Diversity issues
- What messages are you releasing?

Opening the Interview

- Introducing yourself and greeting the interviewee
- Warm-up; chit-chat
- Getting the interviewee's view of her/his problem
- Open ended questions: how can I help?
- Getting papers/documents
- Confidentiality
- Setting limits (time, ability to help)

During the Interview

- Structuring the interview
- Helping the client remember details (analogy; holidays)
- Who, what, where, when, why? (auditory, visual, kinesthetic thinkers)
- Literacy issues
- What will the other side say?
- Repeating and rephrasing to check understanding and verify facts
- What do they want?

Ending the Interview

- What you can do; what you will do, by when
- Waivers, retainers
- Getting the client to help
- Copying important documents
- How you will stay in touch
- Checking in with supervisor
- Making referrals

Memorializing the Interview

- Keeping Records

Cognitive Processes and Effective Interviewing

Becoming aware of some basic human cognitive processes — expectations, framing, and mindset — and their impact on the information gathering process, makes it more likely that we get and give more accurate information in relationships with clients and others we are trying to help.

Our expectations determine much of what we perceive. A little knowledge can be a dangerous thing allowing us to reach wrong conclusions quite confidently. We often find it inconceivable that alternative explanations exist to support other conclusions

People sometimes try to present us with selective information to frame their case, perhaps after talking to friends or watching the hottest legal show on television. They select the first legal frame that seems to fit the situation, usually one in which they win. They then make non-conforming information fit that frame. They will resist getting or giving information outside of that frame-set, engaging in selective exposure. They have "committed" to an image.

Some advocates tend to interpret these actions as manipulation, deception, second-guessing, or cognitive problems. Most people, however, are just trying to be helpful; a natural side effect of knowing "a little," and being able to pre-frame an issue for presentation. It's akin to the damage that can be done by an amateur interrogating a suspect before the "pros" arrive.

Because of how we interpret each other's behavior, these dynamics breed personal conflict, and personal conflict breeds poor information, mis-framing of legal issues and a rocky relationship.

The way we categorize people and events can be illogical or subject to error, causing us to miss the obvious. In one experiment, for example, a group of mechanics were shown a small list of possible causes for a mechanical problem and asked to provide additional reasons. The investigators found that exposing the mechanics to a small number of possibilities caused them to only list only a few additional reasons among many possible and obvious causes.

Specialization takes on previously unknown precision, since what we expect determines what we see. If we are familiar with a particular knowledge-set, we will see what we expect. The higher our degree of expectation, the less information we need for "cognitive closure" — before our minds snap shut. As advocates become more specialized and legal information becomes more available to the public at large, client and advocate expectations beighten. And the possibilities of miscommunication increase.

Numerous studies have shown how surprise attacks and diplomatic failures leading to world conflict result from failing to abandon an old image or perceptual set. It's the flood phenomenon — even if people see the water rising and are warned to get out, they expect a "final, final warning," allowing them time to change their position. In meta-tempo, incremental decision-making can have dangerous results.

Keep in mind:

• Your area of expertise affects how you define a problem; recognize that you see problems through that lens to the exclusion of others.

• Assume that clients are presenting their problem to you in what they think is the most winnable legal frame rather than engaging in difficult or untruthful behavior.

Strategies for Dealing with Difficult Interviews

STRATEGY 1
WHEN THE CLIENT HAS A PROBLEM

1. ATTEND: Listen to the client's words, voice quality, and body movements for signs of a problem.

2. DECODE: Determine the client's meanings & feelings.

3. REFLECT: Express to the client your understanding of the client's meanings & feelings.

4. ATTEND: Listen again to the client's words, voice quality & body movements to evaluate the client's response.

5. REPEAT: Repeat steps 1- 4 until the client's response shows you have understood and the flow of relevant information is restored.

PURPOSE: To help keep communication open and minimize any adverse effects the client's problem may have on the interview.

EXPECTED RESULTS:
- allows clients to tell about their problems from their point of view
- increases your understanding of the client; helps you show understanding effectively
- prevents you from discounting the presented problem
- increases trust, cooperation
- allows you to refer

STRATEGY 2
WHEN YOU HAVE A PROBLEM WITH THE CLIENT

1. ATTEND: Listen to yourself. Identify the behavior that bothers you & your feeling about the behavior.

2. DECODE: Determine if the client's behavior directly & tangibly affects the interview.

3. RECOUNT: Describe to the client your problem, how it affects you & the interview & your feelings about it.

4. ATTEND: Listen to the client's words, voice quality and body movements to evaluate the client's response.

5. REPEAT: Repeat steps 1-4 or use strategy 1 or 2.

PURPOSE: To help keep communication open and minimize any adverse effects your problem may have on the interview.

EXPECTED RESULTS:
- allows you to give the client your full attention, energy and skills
- allows you to take conscious control of your reactions to client behavior
- prevents you from giving ineffective responses like preaching, blaming, ridiculing
- increases trust/cooperation
- allows you to refer

STRATEGY 3
WHEN YOU AND THE CLIENT ARE IN CONFLICT

1. NEEDS: Identify needs/interests behind the behavior of you and client.

2. REFLECT: Express your understanding of the client's problem & needs, checking until client confirms.

3. RECOUNT: Describe to the client, your problem & needs, allowing client to clarify understanding of your needs.

4. PROBLEM SOLVE: Generate alternatives, select the best alternative, work out a plan.

5. CELEBRATE: Carry out plan.

6. TERMINATE: End the relationship with self-esteem intact.

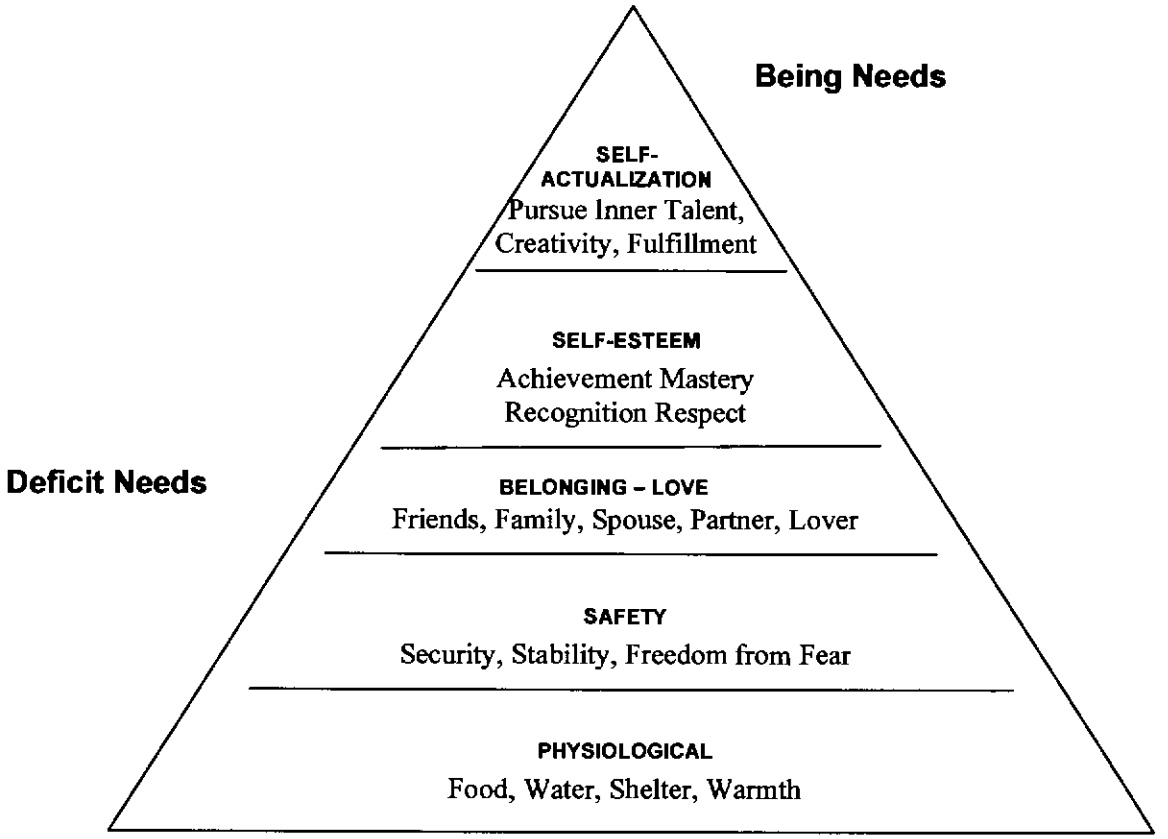
PURPOSE: To minimize any adverse effects mutual problems or conflicts may have on the interview or relationship

EXPECTED RESULTS:
- allows you to give the client's problem your full attention, energy and skills
- avoids win-lose conflicts decided by the greater power
- prevents you from giving ineffective responses like preaching, instructing, blaming, ridiculing
- increases trust/cooperation
- allows you to refer

People Engage In Difficult Behavior Because They

- Have expectations that have not been met
- Were already upset at something else (boss, spouse, partner, kids, co-worker, other business)
- Are tired, stressed or frustrated
- Feel like a victim — not much power in their lives in general
- Feel no one will listen to them unless they yell and make a ruckus
- Will use any excuse to prove they're right, whether they are or not
- Walk around with a chip on their shoulder — nothing is right in their life
- Were promised something by you or your organization that was not delivered
- Think that you or someone in your organization was indifferent, rude or discourteous to them
- Were told one thing by one staff member and something else by another
- Acted on something told them by a staff member and it was wrong
- Feel you or someone in your organization had an unpleasant attitude toward them
- Don't feel that they were listened to
- Are prejudiced — they may not like your "looks", hair, clothes etc.
- Feel that they can manipulate you to get what they want if they make a lot of noise
- Are suspicious of your organization and think that the organization or you are dishonest
- Wrongly assumed what your organization would do for them
- Were told that they had no right to be angry
- Were given a smart or flip reply
- Were transferred on the phone without their consent
- Were screened on the telephone
- Are embarrassed at doing something incorrectly
- Believe that their integrity or honesty has been questioned

Dealing with Difficult Behavior & the Maslow Need Hierarchy



Understanding why some clients engage in difficult behavior helps choose strategies to deal with the behavior effectively. Psychologist Abraham Maslow's (1908 - 1970) need hierarchy suggests that unmet needs help explain difficult behavior patterns.

While doing research, Maslow noticed that some needs took precedence over others. For example, if hungry and thirsty, most people deal with thirst first, a "stronger" need than hunger. And even if extremely thirsty, but unable to breathe, everyone would agree that breathing trumps thirst.

Maslow's theory holds that human beings are motivated by unsatisfied needs; lower needs take precedence over higher needs and must be satisfied first. When a need is mostly satisfied it no longer motivates and the next higher need takes its place.

Maslow's theory offers insight about the motivations behind "difficult" behaviors. Many of our clients have unsatisfied needs in the hierarchy's first four levels. People who are homeless, for example, are focused at the most basic physiological needs. Many other clients are focused on safety needs. Their level of need has implications for what kind of information clients need from us, how we might deliver that information, and how they might react when we don't or can't deliver what they need.

Physiological Needs

Physiological needs are the very basic needs such as air, water, food, sleep, sex. When unsatisfied we may feel sick, irritated, uncomfortable. These feelings motivate us to alleviate them as soon as possible to reestablish our equilibrium. Once alleviated, we are able focus on other things.

Physiological Needs:

• can affect perception - when on a diet, we are preoccupied with food;

• can be satisfied, *e.g.*, by getting enough to eat, drink;

• at work, focuses us on the next pay check;

• if deprived, can cause illness, *e.g.*, lack of Vitamin D can result in rickets;

• if pathological, we can eat, drink too much or engage in hoarding behaviors.

Safety Needs

When physiological needs are largely satisfied, we become increasingly interested in finding safe circumstances, stability, and protection. We might develop a need for structure, order, some limits. In many American adults, this needs set manifests itself in wanting a home in a safe neighbor-hood, some job security, or a good retirement plan.

When safety needs are not met, we can't move to the next level. If one partner in a relationship is abusive to the other for example, the abused partner cannot move to the next level because of constant concern for safety. Love and belongingness have to wait until fear subsides.

Safety needs:

• can affect our perception, *e.g.*, paranoia;

• can be satisfied, *e.g.*, getting a stable job;

• at work, focuses us on getting fringe benefits, dental insurance;

• if deprived, can lead to neurosis, insecurity;

• if pathological, can develop phobias such as agoraphobia.

Belonging - Love Needs

When physiological needs and safety needs mostly are met, we begin to feel the need for friends, a partner, children, affectionate relationships, a sense of community. Humans have a desire to live and belong to groups including clubs, work groups, religious groups, family, gangs. We need to feel loved and accepted by others. Viewed negatively, we become increasing susceptible to loneliness and social anxieties.

Belonging - Love Needs:

• can affect our perception, *e.g.*, singles vs. couples;

• can be satisfied; *e.g.*, good partnership or marriage;

• at work , we focus on getting a good boss and good working conditions

• if deprived, can lead to loneliness

• if pathological, can lead to antisocial behavior.

Esteem Needs

Maslow posed two versions -- lower and higher esteem needs. Lower form needs are respect from others, for status, fame, glory, recognition, attention, reputation, appreciation, dignity, even dominance. Higher form involves the need for self-respect, including such feelings as confidence, competence, achievement, mastery, independence, and freedom. Maslow considers this latter version a "higher" form because he considers self-respect as harder to lose than respect from others.

Low self-esteem and an inferiority complex are negative versions of these needs. Maslow agreed with psychologist Alfred Adler's theory that self-esteem needs are at the root of many, if not most, psychological problems. This theory also assumes that the more basic physiological, safety and love-belonging needs are mostly satisfied.

Esteem needs:

• can affect our perception, *e.g.*, "I get no respect;"

• can be satisfied, *e.g.*, doing a job well;

• at work, can focus us on "employee of the month" awards;

• if deprived, can lead to feelings of inferiority;

• if pathological, can lead to depression.

Self-Actualization Needs

The need for self-actualization is "the desire to become more and more what one is, to become everything that one is capable of becoming." People can seek knowledge, peace, esthetic experiences, self-fulfillment.

Self-actualization needs:
• do not distort our perception as do other needs; when self-actualized, we more accurately perceive what exists;

• can never be satisfied — when can you have enough truth, beauty, or justice?

• at work, focus on creativity, fulfillment; ways to increase employee enjoyment and satisfaction;

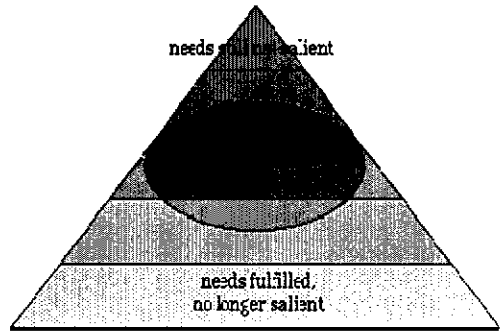
• if deprived, can cause feelings on lack of meaning in life, boredom;

• if pathological, metapathologies such as boredom, cynicism, alienation.

Deficit Needs

The first four levels — physiological, safety, belonging, self-esteem — Maslow calls deficit needs, or D-needs. If you don't have enough of something, *i.e.*, you have a deficit — you feel the need. But if needs are met, they are no longer salient and you feel nothing at all. Consequently, these needs don't motivate. As the old blues song goes, "you don't miss your water 'til your well runs dry."

Maslow extends to needs the principle of homeostasis or dynamic equilibrium. When lacking a certain substance, our bodies develop a hunger for it; when the body gets enough of that substance, hunger stops.



Maslow sees all these needs as essentially survival needs. Even love and esteem are needed for maintaining health. Humans have these needs built in genetically, like instincts.

Maslow conceived overall human development as sequentially satisfying these basic needs. As newborns, our focus — if not our entire set of needs — is on the physiological. Soon, we begin to recognize that we need to be safe. Soon after that, we crave attention and affection. A bit later, we look for self-esteem.

Regression and Neurosis

Under stressful conditions, or when survival is threatened, we can "regress" to a lower need level. When our great career falls flat, we might seek some attention. When we have family problems, it seems that love is again all we ever wanted. When we face bankruptcy even after a long and happy life, we suddenly can't think of anything except money.

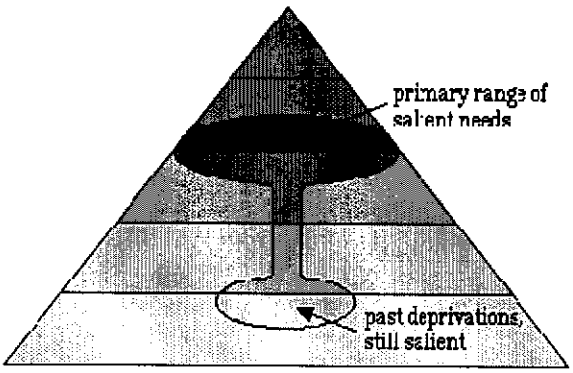
Regression can occur on a society-wide basis as well. When society suddenly flounders, people start clamoring for a strong leader to make things right. When planes start flying into buildings, they look for safety. When food stops coming into the stores, needs become even more basic.

Maslow suggested that we can ask people for their "philosophy of the future" — what would their ideal life or world be like — and get significant information as to what needs they do or do not have covered.

If we have significant problems along our development — a period of extreme insecurity or hunger, loss of a family member, or

significant neglect or abuse — we may "fixate" on that needs set for the rest of our lives.

Maslow understands neurosis as fixation at a certain needs level. If people grew up poor but now have everything they need and yet still find themselves obsessing over having enough money and keeping the pantry well-stocked. Or perhaps parents divorced when a person was young and now despite a wonderful partner, she gets insanely jealous or worries that her partner will leave because she's not "good enough."



Being Needs or Self-Actualization

Maslow referred to the highest level as growth motivation, being needs (B-needs) or self-actualization.

B-needs do not involve balance or homeostasis. Once engaged, they continue to be felt, becoming stronger as we feed them. They involve the continuous desire to fulfill potential, to "be all that you can be." They are a matter of becoming the most complete, the fullest "you" — hence the term, self-actualization.

According to Maslow, if we want to be truly self-actualizing, we need to have our lower needs mostly satisfied. In other words, if hungry, we scramble for food; if unsafe, we are continuously on guard; if isolated and unloved, we constantly are seeking love from other people or groups; if a low sense of self-esteem, we can be defensive or seek other ways to compensate. When lower needs are unmet, we can't fully devote ourselves to fulfilling our potential.

Maslow posited that as we become more self-actualized and self-transcendent we become wiser, knowing what to do in a wide variety of situations. At one point he suggested only about two percent of the world's population is truly, self-actualizing.

Needs Theory: Maslow & Beyond

Maslow first published his theory over 65 years ago (Maslow 1943) and it has become one of the most popular and often cited human motivation theories. In spite of a lack of hard research to support the model, it enjoys wide acceptance (Wahba & Bridgewell, 1976; Soper, Milford & Rosenthal, 1995).

John Burton in *Deviance, Terrorism and War* (1979) points out that Maslow's hierarchy of developmental needs is rooted in unacknowledged Western and bourgeois cultural values.

Norwood (1999) proposes that Maslow's hierarchy can be used to describe the kinds of information that individuals seek at different levels. For example, people at the physiological level seek "coping" information to meet their basic needs. Information not directly connected to helping meet these needs will be ignored. People at the safety level need "helping" information on how they can be safe and secure. People seeking to meet their belongingness needs seek "enlightening" information on relationship development. At the esteem level, people seek "empowering" information on how to develop their ego. People in self-actualization seek "edifying" information — how to connect to something beyond themselves.

The few major studies that have been completed on the hierarchy seem to support the proposals of William James (1892/1962) and Mathes (1981) that there are three levels of human needs. James hypothesized the levels of material (physiological, safety), social (belongingness, esteem), and spiritual. Mathes proposed the three levels were physiological, belonginess, and self-actualization; he considered security and self-esteem as unwarranted. Alderfer (1972) developed a comparable hierarchy with his ERG (existence, relatedness, and growth) theory. His approach modified Maslow's theory based on the work of Gordon Allport (1960, 1961) who

incorporated concepts from systems theory into his work on personality.

At this point there is little agreement about the identification of basic human needs and how they are ordered. For example, Deci and Ryan (1991) also suggest three needs, although they are not necessarily arranged hierarchically: the need for autonomy, the need for competence, and the need for relatedness. Thompson, Grace and Cohen (2001) state the most important needs for children are connection, recognition, and power. Nohria, Lawrence, and Wilson (2001) provide evidence from a sociobiology theory of motivation that humans have four basic needs: (1) acquire objects and experiences; (2) bond with others in long-term relationships of mutual care and commitment; (3) learn and make sense of the world and of ourselves; and (4) to defend ourselves, our loved ones, beliefs and resources from harm.

Bonding and relatedness needs are the only ones that are a component of every theory. Franken (2001) suggests this lack of accord may be a result of different philosophies of researchers rather than differences among human beings. In addition, he reviews research that shows a person's explanatory or attributional style will modify the list of basic needs. Therefore, it seems appropriate to ask people what they want and how their needs could be met rather than relying on an unsupported theory. For example, Waitley (1996) advises having a person imagine what life would be like if time and money were no object in a person's life. That is, what would the person do this week, this month, next month, if you had all the money and time needed to engage in the activities and were secure that both would be available again next year. With some follow-up questions to identify what is keeping the person from happening now, this open-ended approach is likely to identify the most important needs of the individual.

There is much work still to be done in this area before we can rely on a theory to be more informative than simply collecting and analyzing data. However, this body of research can be very important to those concerned with developing and using human potential. It provides an outline of some important issues that must be addressed if human beings are to achieve the levels of character and competencies necessary to be successful in the information age.

This article is based on the materials by:
Dr. C. George Boeree, Psychology Department, Shippensburg University
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http://chiron.valdosta.edu/whuitt/col/regsys/maslow.html

Maslow's publications are listed at www.maslow.com/

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Interviewing Feedback Guide

1. Accomplish Goals

Did the interviewer accomplish the objectives s/he wanted to achieve?

What strategies and techniques did the interviewer use to achieve these objectives? Effective or ineffective?

What would you have done differently?

2. Gather Relevant Information

What was the interviewer's strategy, if any, for gathering information?

Was it effective?

What would you have done differently?

Did the interviewer get all relevant facts opinions, feelings? e.g., problem's operative facts, documents.

3. Giving Important Information

What did the interviewer do most effectively in giving information?

What did the interviewer do in giving information that was not effective?

Did the interviewer give all the necessary information?

4. Developing and Maintaining A Climate of Trust

What did the interviewer do to develop and maintain a climate of trust?

What interviewee behaviors suggested that the interviewer was successful?

What strategies did the interviewer use to deal with any communication blocking events? effective?

What would you have done differently?

5. Involving the Interviewee

Did the interviewer's judgments about how actively the interviewee could become involved in the case assume too much, too little or were they about right?

What clues from the interviewee did the interviewer have to base his or her judgment on?

What would you have done differently?

6. Managing Time

What techniques did the interviewer use to move the interview along?

What would you have done differently?

Administrative Agencies

Contents

Administrative Agencies

Federal, state and local administrative agencies are governmental authorities, other than courts or legislatures, which administer and carry out the laws enacted by the legislature. Agencies are considered part of the Executive Branch of government because their function is to carry out and administer the laws.

Most agencies perform legislative and judicial functions. In their quasi-legislative capacity, they promulgate rules; in their quasi-judicial capacity, they adjudicate disputes. Agencies are authorized to perform these functions only because a legislature has delegated the power to them through specific statutes or *enabling legislation*. If regulations do not carry out the provisions of enabling legislation, they are invalid.

Rulemaking power

The United States and many states – including California – have enacted an Administrative Procedure Act (APA) which governs the manner in which agencies must exercise their rulemaking power. For example, like many state APAs, the Federal APA provides that an agency must:

• publish proposed notices of rulemaking,

• allow public participation in rulemaking, and

• have procedures for interested parties to request the issuance, amendment or repeal of a rule.

The federal APA does not govern all federal agencies. Unfortunately, many state agencies that legal services advocates deal with are non-APA agencies. Although non-APA agency rulemaking is subject to some procedural requirements, they usually are more lenient than APA requirements.

To be valid, an agency regulation must:

• interpret, implement, make specific or carry out the provisions of enabling legislation,

• be promulgated according to rulemaking procedures, and

• be constitutional.

Most administrative rulemaking is subject to court review. The federal and most state APAs provide that "any interested party" may challenge a rule on the grounds it does not conform to APA promulgation standards; *e.g.*, a party may file a case in court asking that a rule be invalidated. Most often, however, agency rulemaking procedures are challenged in the context of an individual case; *e.g.*, a party raises a rule's invalidity in response to an agency's attempt to apply the rule to the party's situation.

Adjudicative power

When an agency exercises its adjudicative power, it acts as courts do in resolving disputes; it determines facts and interprets and applies the law to those facts in order to render a decision. The first step in this process is usually a hearing presided over by an official – hearing officer, examiner or Administrative Law Judge (ALJ). This officer takes evidence, determines facts, decides what law governs the facts, and makes a decision. Many hearing officers issue written decisions containing a statement of the issues, findings of fact, conclusions of law, the reasons the officer decided the way she or he did and the decision. A certain amount of due process is required such as notifying the claimant of the issues, allowing the claimant the opportunity to present evidence, and issuing a formal hearing decision.

In some agencies, the hearing decision is not final, but a recommendation to higher officials who adopt or reject the decision. In many other agencies, decisions may be appealed to a body that determines whether the hearing officer made any errors of law. Most agency decisions are

subject to judicial review, where the court exercises its appellate jurisdiction to determine whether the agency erred as a matter of law.

Sources of law

Most federal regulations are published in the Code of Federal Regulations (C.F.R.), a multi-volume paperbound set organized by subject matter. The C.F.R. is organized into fifty titles. Each title covers a general subject matter, *e.g.,* Title 20 contains Social Security regulations; Title 42 contains Medicaid regulations. Regulations are initially published in the Federal Register, issued every business day and available on line.

At least thirty states have a state administrative code that contains regulations for some of its agencies. Many state and local agencies maintain their regulations in loose-leaf manuals, which are, should be available at the agency responsible for promulgating them. Some agencies publish "guidelines" or "interpretive" memos that operate much like regulations. If these agencies will not give you access to these documents, research whether a Freedom of Information Act gives you access or contact your friendly legislator.

Guidelines for working with an administrative agency

• Locate any practice manual, narrative source or web site that describes the agency, its practices, rules and regulations. Many manuals pertinent to legal services practice are published by Support Centers.

• Find the agency regulations – loose leaf or in an administrative code. Read the table of contents to identify how the regulations are organized – or not organized.

• Find agency policy statements – letters, memos, bulletins or handbooks or whatever they're called. This information is what agency workers – especially the worker bees – pay attention to.

• Find the enabling legislation for the agency and the important laws that it implements. While in the annotated code, check out the court opinions interpreting these laws.

• Look again at the agency website. What kind of information do they provide? Who do they perceive are their main constituency? How much propaganda is there? Write down any useful contact information.

• Identify who's who in the zoo; the formal and informal chain of command.

• Identify any existing MOUs.

• Repeat these steps if more than one agency is involved; *e.g.,* federal, state, local

• Be a student! Ask questions about how things work. Appear naïve.

The Public Benefit System

Public benefit programs are primarily an outgrowth of the Social Security Act of 1935. They can be divided into two broad categories:

Social Insurance Programs where individual and employer payment into a special insurance fund entitles the individual to benefits;

Income Assistance Programs or welfare programs where eligibility is conditioned on:

- fitting into a special category of persons
- having very limited income
- having very limited resources

Social Insurance Programs

During the past 95 years, the United States has developed seven major social insurance programs:

- Worker's Compensation (1908)
- Veterans Compensation (1917)
- Old Age-Survivors/Disability Insurance (1935)
- Railroad Retirement (1937)
- Medicare (1965)
- Black Lung (1969).

While these programs are designed to meet a broad range of needs, they share these characteristics:

- Eligibility for benefits is conditioned upon previous work in covered employment.

- Eligibility is conditioned upon a triggering event such as unemployment, illness, disability, retirement, or a principal earner's death.

- Benefit levels are often related to previous earning levels.

Insurance programs supplement employment income and savings. Because insurance benefits are not calculated on income from all sources, these benefits are paid mostly to the non-poor. On the other hand, insurance programs have helped many people from falling below the poverty line.

Income Assistance "Welfare" Programs

The major income assistance programs include:

- Veterans Pensions (1933)
- Aid to Dependent Children (1935) now Temporary Assistance to Needy Families (1996).
- Food Stamps (1964)
- Medicaid (1965)
- Supplemental Security Income (1972)

The common characteristics of welfare programs are

- Individuals must belong to a certain category of Persons — **Categorical Eligibility**

- Individuals must be needy, meet a means test — **Financial Eligibility**

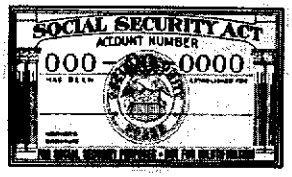
- Individuals must give up certain rights and perform certain acts as a condition of eligibility— **Conduct Eligibility**

- Individuals must comply with agency procedures for demonstrating initial and ongoing categorical, financial and conduct eligibility—**Procedural Eligibility**

- State and local variations exist in these programs

- Benefits are inadequate for the purpose for which the program is intended.

These programs are supposed to help people with insufficient income or social insurance to meet their most basic needs such as food, clothing, shelter, and medical care. They provide benefits in several forms, and are financed and administered at several different levels of government. Benefits are provided in cash— TANF and SSI, vouchers— Food Stamps and Medicaid, and in-kind—school lunches.



Social Insurance Programs	Income Assistance Programs
Funds come from a "special tax:" employer/employee contributions or individual contributions.	Funds come from general revenue
No stigma attached – recipient has "earned" or "deserved" benefits.	Stigma attached — recipient "gets something for nothing."
Benefits sometimes adequate, sometimes not.	Benefits never adequate for program's purpose
People rarely have to give up "rights" to receive benefits.	People often have to give up rights to receive benefits
Only test— work income	Means test— income and resources counted
Benefits sometimes adequate, sometimes not.	Categorical Eligibility Test: person must fit into a category of persons to receive benefits

Program Administration

Federal and state laws govern most public benefit programs. The federal government reimburses states for a certain percentage of their administrative and benefit costs. When states choose to participate in these programs—which most of them do— they must comply with federal law. In several programs, federal law allows states some discretion to "opt in" to certain parts of programs and to set standards and limits within certain guidelines in other programs.

The enabling legislation for public benefit programs—primarily the Social Security Act—contains general provisions which:

- set out general eligibility requirements
- describe the criteria for state participation in programs
- delegate authority to a federal agency to promulgate regulations and to supervise program administration
- allow states discretion in opting in to certain program parts

The Social Security Act delegates responsibility for TANF and Medicaid to the Department of Health and Human Services (HHS). Each agency promulgates the regulations that govern these programs. Each state has enacted into law statutes that, in turn, delegate responsibility for daily program administration to state and some-times local agencies. These agencies are primarily responsible for implementing each program and as such, promulgate their own rules and regulations. These rules and regulations must conform to all pertinent federal and state legislation.

The Food Stamp Act provides for a somewhat similar federal- state-local system. The Department of Agriculture is the federal agency that has overall responsibility for program administration. In most states, the state or local agency that is charged with daily Food Stamp Program administration is the same agency that is responsible for administering TANF and Medicaid.

The Social Security Administration (SSA) is responsible for implementing the SSI and OASDI Programs. SSA administers these programs at the state level with one exception. The SSI Program allows for states to supplement SSI grants. In that instance, either the state or SSA may administer the state's SSI state supplementation program.

Emergency Payments and Programs

Most programs provide for some kind of emergency payments.

Expedited Services put people on an eligibility fast track, speeding up the time to begin to receive benefits. Agencies also will temporarily suspend certain verification requirements. To qualify, applicants must have little or no liquid income and resources. The emergency payment usually is an advance on the first benefit check.

Special Needs programs give recipients cash and in kind assistance for special needs such has housing and replacing and repairing essential personal property items.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

TANF Block Grant

On August 22, 1996, President Bill Clinton signed the welfare reform bill, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) ending 60 years of federal safety net to needy families. It abolished AFDC and established Temporary Assistance to Needy Families (TANF).

A major way in which AFDC and TANF differ is that AFDC was an entitlement and TANF is not. For public benefit purposes, "entitlement" means that people who meet all a program's eligibility requirements receive benefits as long as they remain eligible. People were entitled to AFDC, and the federal government gave money to the states, as long as they met eligibility requirements. As a block grant, TANF is a fixed sum of money provided to each state to spend as it sees fit within certain limits. When the block grant runs out, people in most states won't receive TANF benefits even if they met eligibility requirements.

One of TANF's most significant limits on the states is that no family may receive this federally funded aid for more than five years. Each state's last few annual AFDC spending levels determined its block grant amount. Federal funding can be increased or decreased depending on how the state meets certain federal requirements, *e.g.*, a state's decrease of out-of-wedlock births merits bonus funds; a state's inefficient child support collection system results in losing funds.

Other Changes

Welfare Reform also narrowed eligibility for children's SSI, reduced food stamps to certain 18-50 year olds, and drastically limited benefits to most legal immigrants. Many of these changes remain in effect today, weakening the Food Stamp Program and making life more difficult for low-income legal immigrant families.

Food Stamps

These changes included an across-the-board benefit reduction for nearly all recipient households, including families with children, the working poor, the elderly, and people with disabilities. Eligibility also was severely curtailed for legal immigrants and unemployed childless adults. Congress has moderated some of the most severe cuts, but about two-thirds of the cuts remain in effect.

Legal Immigrants' Benefit Eligibility

PRWORA restricted legal immigrants' eligibility for public benefits —undocumented immigrants have not been eligible for public benefits. Congress later scaled back some of the cuts, reversing its decision to cut elderly and disabled legal immigrants already receiving SSI benefits off of the program, but denying eligibility for virtually all immigrants who entered after 1996 and restoring food stamp eligibility to some groups of legal immigrants.

The welfare law's real impact on legal immigrants cannot be measured by eligibility changes alone. The law convinced many immigrant communities that they were not eligible for benefits and they — and their citizen family members — should not participate out of fear that legal immigrants who did participate would be deported or denied citizenship.

Despite outreach efforts, many eligible immigrants and their citizen children continue to shun benefit programs such as Medicaid and food stamps. Immigrants' participation rates in these programs are significantly below those of the general population, and their hardship levels

— as measured by food insecurity and uninsurance rates — are much higher. Legal immigrants make up a significant portion of the low-wage working population, and nearly one-quarter of children in poverty have an immigrant parent. Finding new ways to make these individuals eligible and to connect them to assistance is critical to responding to the needs of low-wage workers.

Food Stamp Program Timeline

http://www.fns.usda.gov/fsp/rules/Legislation/about_fsp.htm

The First Food Stamp Program (FSP) - May 16, 1939-Spring 1943

Pilot Food Stamp Program - May 29, 1961-1964

Food Stamp Act of 1964 - August 31, 1964

Program Expansion - FSP Participation Milestones in the 1960s and Early 1970s.

Major Legislative Changes - Early 1970s

1974 Nationwide Program

The Food Stamp Act of 1977

Cutbacks of the Early 1980s

The Mid- to Late 1980s

Development of Electronic Benefit Transfer (EBT): 1988-2004

1993 Mickey Leland Childhood Hunger Relief Act

The Personal Responsibility and Work Opportunities Reconciliation Act of 1996

The Farm Bill of 2002

The Food, Conservation, and Energy Act of 2008 (FCEA) (P.L.110-246) enacted June 18, 2008

California Health and Human Services Websites

California Health and Human Services

www.chhs.ca.gov/departments/Pages/default.aspx

Dept of Aging
www.aging.ca.gov/

Dept of Alcohol & Drug Programs
www.adp.ca.gov/

Dept of Community Services & Development
www.csd.ca.gov/default.aspx

Dept of Developmental Services
www.dds.ca.gov/

Dept of Mental Health
www.dmh.cahwnet.gov/

Dept of Health Care Services
www.dhcs.ca.gov/Pages/default.aspx

Dept of Rehabilitation
www.rehab.cahwnet.gov/

Emergency Medical Services Authority
www.emsa.ca.gov/

Managed Risk Medical Insurance Board
www.mrmib.ca.gov/

Employment Development Department
www.edd.ca.gov/

Office of Statewide Health Planning and Development
www.oshpd.ca.gov/

Department of Social Services
www.dss.cahwnet.gov/
All County Letters (ACL)

www.dss.cahwnet.gov/lettersnotices/PG931.htm
Civil Rights Bureau
www.dss.cahwnet.gov/civilrights/
Office of Deaf Access
www.dss.cahwnet.gov/cdssweb/PG116.htm
Refugee Programs
www.dss.cahwnet.gov/cdssweb/PG62.htm
State Hearings Division
www.dss.cahwnet.gov/shd/
About Hearings
www.dss.cahwnet.gov/shd/PG1094.htm
Authorized Representative Organizations
www.dss.cahwnet.gov/shd/PG1141.htm
Hearing Sites
www.dss.cahwnet.gov/shd/PG1163.htm
Hearing Terms (Glossary)
www.dss.cahwnet.gov/shd/PG1186.htm
Paraphrased Regulations
www.dss.cahwnet.gov/shd/PG1018.htm
Delegation Documents
www.dss.cahwnet.gov/shd/PG1159.htm
Welfare to Work Division
www.dss.cahwnet.gov/cdssweb/PG141.htm
Community Care Licensing
http://ccl.dss.cahwnet.gov/
Children & Family Services
www.childsworld.ca.gov/
Office of Child Support
www.childsup.cahwnet.gov/
Electronic Benefits Transfer (EBT)
www.ebtproject.ca.gov/

LAWS & AGENCIES: FOOD STAMPS

US Constitution

Congress →
[7 USC §201]

President

Dept. of Agriculture (USDA)
[Food-Nutrition Service]
[7 CFR §270]

California Constitution

Legislature →

[W&I Code §1000]

Governor

Dept. of Social Services (DSS)

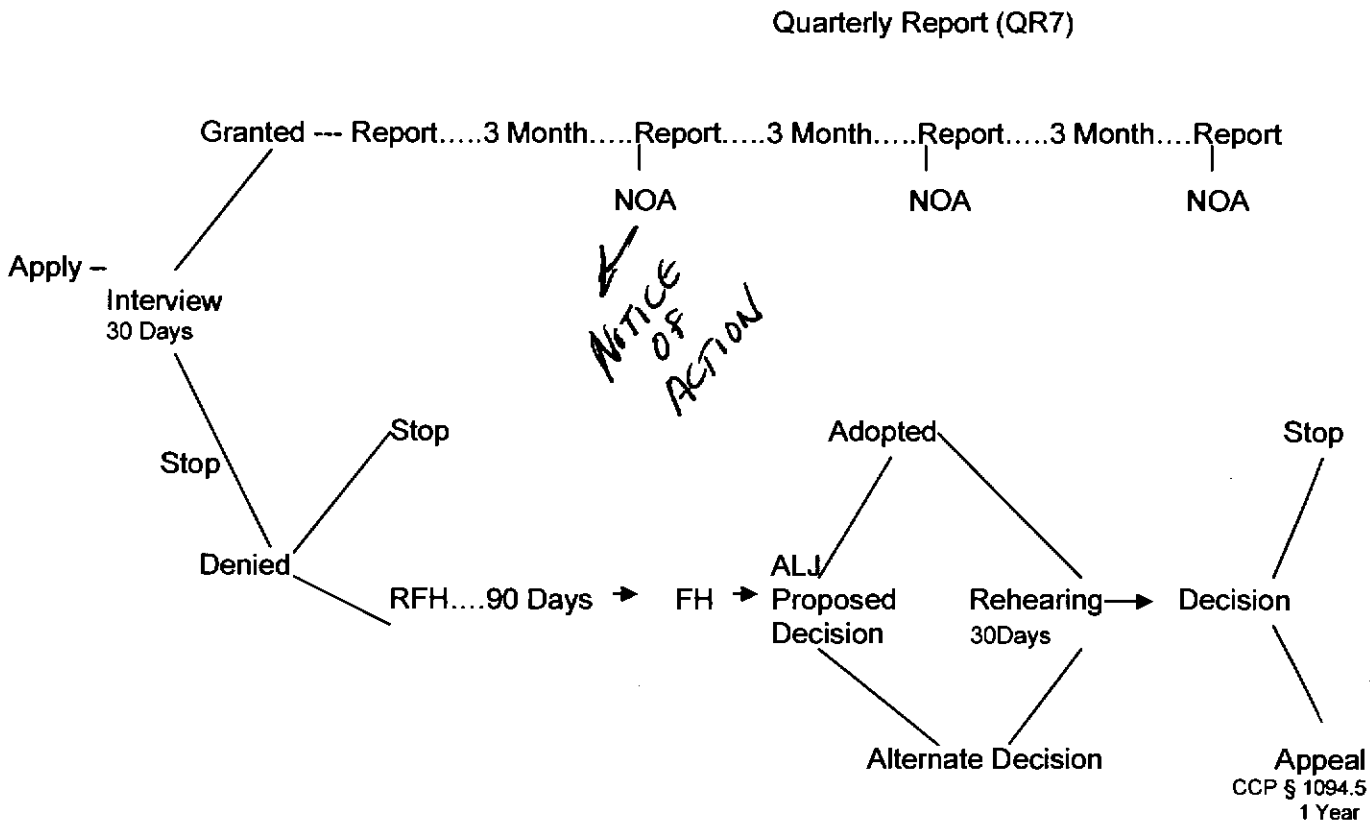
State Plan
[MPP §16,19-22, 63] [All County Letters]

Local Legislative Bodies

County Executives

County Welfare Department | **County Welfare Department** | **County Welfare Department**

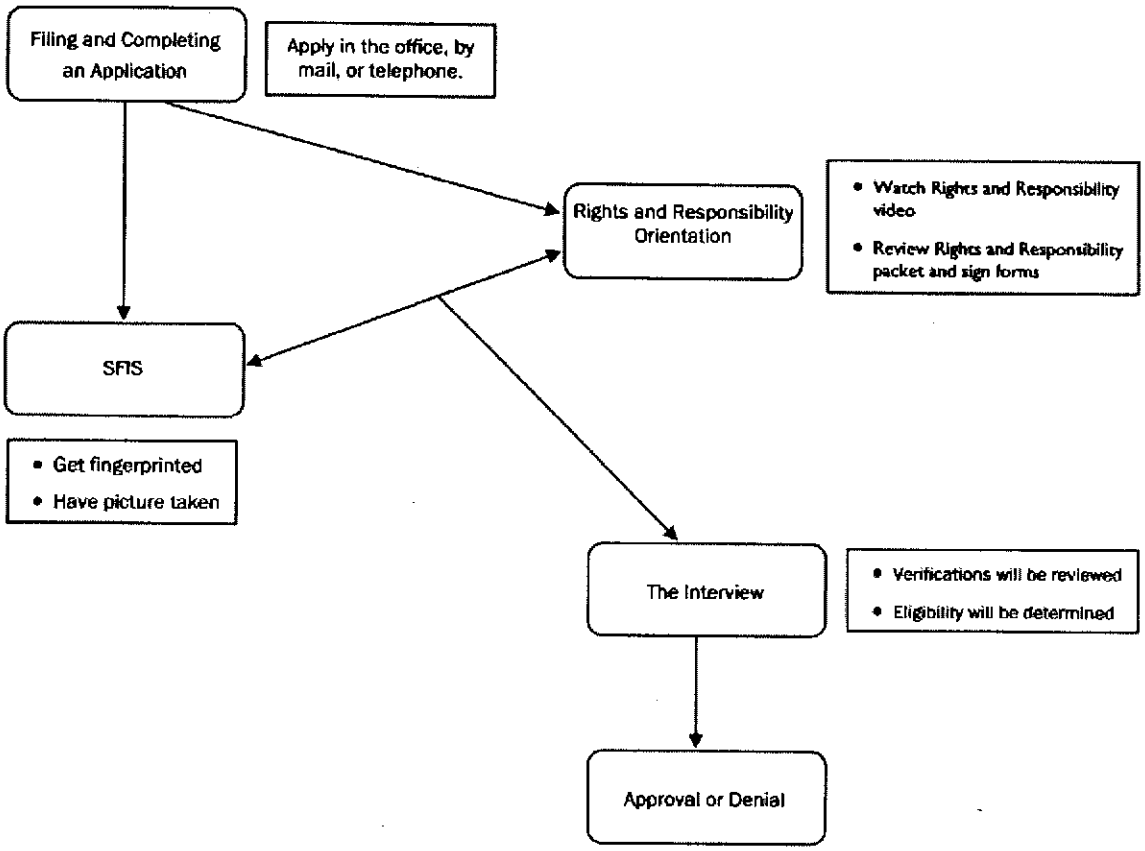
SNAP: The Journey



From: Community Outreach Training
Merced County Human Services Agency – Nutritional Services/Food Stamps

Community Outreach

Application Process Eligibility Guide—Flowchart



The County Welfare Department shall provide eligible households, who complete the initial application process, an opportunity to participate as soon as possible, but no later than 30 calendar days following the date the application was filed.

State Law: Fair Hearings, Grievances and Complaints

CalWORKs, Food Stamp and Medi-Cal applicants and recipients have the right to a state fair hearing to challenge any action the county takes or fails to take that affects their benefits — such as correcting a grant, adding an additional household member.

MPP 22-001 et seq. governs fair hearing procedure.

CalWORKs provides for three ways to try to challenge county actions:
1. State Hearings
2. Grievances and
3. Administrative complaints:

1. State Hearings

Whenever county action or inaction affects client benefits, the client can request a state "fair hearing," presided over by a state administrative law judge. Clients have the right to:

• the county's written position statement;

• have a representative — legal or community advocate, friend or relative — at the hearing;

• ask questions of the county or of any witness at the hearing;

• an interpreter, paid for by the state.

When a county wants to take an action, it must send a notice at least 10 days before the proposed action will take place. And clients don't have to wait for a written notice before they can request a fair hearing.

If a hearing is requested before the county takes its action, clients have the right to continue receiving their benefits or "aid paid pending" until the state issues a hearing decision. If clients lose at the hearing, any aid paid pending the hearing will be considered an overpayment that must be paid back.

If appealing a sanction for failing to comply with a welfare-to-work activity, the sanction may begin if clients do not participate in their welfare-to-work plan during the appeal.

Appealing a Fair Hearing Decision
If clients lose at the fair hearing level, an appeal must be filed in Superior Court one year from the hearing decision date. If appealing a decision that relates to working conditions or workers' compensation coverage, clients may also file an appeal with the U.S. Department of Labor.

2. Grievances

If a CalWORKs program requirement or assignment violates a client's welfare-to-work plan or state law, a grievance can be filed with a neutral party — who may work for the county or for an outside agency — to review the complaint. A grievance cannot be filed to challenge an assessment. Each county has its own grievance procedure.

A grievance may resolve the problem faster than a state fair hearing. The county, however, may or may not continue aid while the grievance is pursued. To be sure aid will continue, request a grievance and a fair hearing at the same time. If the problem is resolved through a grievance, you can cancel the fair hearing. There is no penalty for asking for, and then canceling, a fair hearing request.

3. Administrative Claims and Complaints

Taking action to resolve certain types of problems involves filing a claim or complaint with an administrative agency.

• For County Welfare Department Discrimination, contact the county's Civil Rights officer.[1]

Each California county must submit an annual Civil Rights Plan demonstrating that it is complying with MPP Division 21 in county

[1] GEN 1179 (08/99) - Complaint of Discrimination is available at:
http://www.cdss.ca.gov/pdf/GEN1179.pdf

programs, including CalWORKs, Overpayment and Tax Intercepts or Collections, Children's Services, Foster Care and Adoptions Placement, Adult Programs, Fraud Investigations, Food Stamps, Non-Assistance Food Stamps, Cash Assistance Program for Immigrants, and all other social service programs administered by the county and funded through CDSS.[2]

• Employer Discrimination — Two agencies handle complaints of discrimination against private employers: the U.S. Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH).. Call 1-800-USA-EEOC for information on federal EEOC offices, and 1-800-884-1684 for the state DFEH offices.

• Workers' Compensation: For information about filing a claim for an injury on the job, call 1-800-736-7401.

• Minimum Wages/Breaks: To file a complaint for a minimum wage violation or no rest or meal breaks, contact the nearest Labor Commissioner's office. Look in the state government section of your local phone book under Department of Industrial Relations, Division of Labor Standards Enforcement.

[2]Information about filing complaints is available at the Department of Social Services Civil Rights Bureau: http://www.dss.cahwnet.gov/civilrights/

Advocacy Tips

Get the Facts

• All papers — letters, notices, or anything else that your client has received from the agency, its workers. These documents should give you a clue about what the agency is trying to do and why.

• Everything your client has sent to the agency, its workers, or anyone else about the problem.

• Names and all contact information of people you client has spoken to at the agency or anywhere else.

• What does the client think is happening? Why?

• Client's written authorization to talk to the agency and review files.

Read the Law

• What regulations or other laws is the agency relying on? Read those regulations; they should lead you to others.

Ask—

► Do these regulations properly apply to the client's problem?

►Do you agree with how the agency interprets the regulations?

►Are there other regulations and laws that apply to the client's problem that the agency should consider?

►Are the regulations and laws that the agency is applying to the clients problem inconsistent with other laws?

• Check and double-check deadlines. Start with the due dates in the agency notice.

Get the Agency's Position

• Contact the agency worker who is closest to the action. Get their viewpoint.

• Listen! Find out as much as you can. Don't personalize. Write down what you find out.

• What are the agency's interests? Always go behind agency positions to its interests.

• Negotiate.

• Write everything down.

• Review this information with your client.

Climb the Ladder

• If you can't get satisfaction from the person closest to the problem, go to that person's supervisor.

• Repeat this process for each supervisor or rung of the ladder.

Request a Hearing

• Ask for a hearing immediately via telephone and in writing. You always withdraw the request for any reason.

• Remember Aid Paid Pending. If you request a hearing before the date that benefits will be cut or reduced, the client will continue to get benefits at the same level until the hearing decision is issued.

• Note that deadlines differ according to the Public Benefits program.

Reapply for Benefits

• Clients have the right to reapply for benefits. Even if clients have requested an hearing, they may avoid overpayments if they pursue this strategy.

Hearing Checklist

Get the Facts

• All papers — letters, notices, or anything else that your client has received from the agency, its workers. These documents should give you a clue about what the agency is trying to do and why.

• Everything your client has sent to the agency, its workers, or anyone else about the problem.

• Names and all contact information of people with relevant information that the client has spoken to at the agency or anywhere else.

• What does the client think is happening? Why?

• Client's written authorization to talk to the agency and review the file.

Read/Analyze the Law

• What regulations or other laws is the agency relying on? Read those regulations; they should lead you others.

► Do these regulations properly apply to the client's problem?

► Do you agree with how the agency interprets the regulations?

► Are there other regulations and laws that apply to the client's problem that the agency should consider?

► Are the regulations and laws that the agency is applying to the clients problem inconsistent with other laws?

• Check and double-check deadlines. Start with the due dates in the agency notice.

Get the Agency's Position

• Contact the agency worker who is closest to the action. Get their viewpoint.

• Listen! Find out as much as you can. Don't personalize. Write down what you find out.

• What are the agency's interests? Always go behind agency positions to its interests.

• Negotiate.

• Write everything down.

• Review this information with your client.

Review the Agency File

• Know agency rules on looking at files, copying costs etc.

• Be prepared with a list of what you want.

• Be open to what else you can find.

• Do not wait until the last minute.

Interview Witnesses

• Consider putting statements in writing.

• Consider subpoenaing witnesses to the hearing; don't subpoena the other side's case.

Write Brief/Position Statement

• Argument on the law.

Organize Evidence

• Decide how you will prove essential elements including documents.

• Decide on the order of proof.

• Research your opening and closing.

Prepare Client and Witnesses

• Explain what will happen; who will do what, when,

• Roleplay your questions and questions that the judge might ask with your witnesses.

Followup on Hearing Decision

• Has the agency complied?

• Do you need to reopen the case?

BENEFITS CHECKLIST

This checklist helps you frame the issues no matter what the agency or substantive law that governs the problem.

1. Are there time limit issues?
   __time limit to appeal
   __time limit for aid paid pending
   __other (specify)

Notes:

2. Are there categorical eligibility issues?
   __household
   __deprivation (death, incapacity, unemployment, absence)
   __age
   __disability/incapacity
   __insured status
   __other (specify)

Notes:

3. Are there financial eligibility issues ("excess") issues?
   __assets (resources)
   __income

Notes:

4. Are there conduct eligibility issues?
   __failure or perceived failure to act
   __good cause for failure

Notes:

5. Are there procedural eligibility issues?
___failure or perceived failure to act
___good cause for failure

Notes:

6. Are there debt issues?
__overpayment
__other

Notes:

7. Is there another program/benefit for which client or client's family can qualify?

Emergency:
CW Immediate Need __ CW Special Needs
Homeless Asst.__Expedited FS
SSI Proven eligible _ SSI Special Needs

Notes:

8. Need additional facts?
Notes:

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, California 95814

September 7, 2007

REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order
[ ] Clarification Requested by One or More Counties
[X] Initiated by CDSS

ALL COUNTY LETTER NO.: 07-31

TO: ALL COUNTY WELFARE DIRECTORS
ALL FOOD STAMP COORDINATORS
ALL CalWORKs PROGRAM SPECIALISTS
ALL CONSORTIUM PROJECT MANAGERS

SUBJECT: FOOD STAMP SIMPLIFICATION OPTIONS EFFECTIVE NOVEMBER 1, 2006 – CLARIFICATION OF THE $50 CHILD SUPPORT DISREGARD AND 19 YEAR OLD STUDENT EARNINGS EXCLUSION

REFERENCE: FOOD STAMP REAUTHORIZATION ACT OF 2002, (PUBLIC LAW 107-171 OF MAY 13, 2002), ALL COUNTY LETTER 06-31; ALL COUNTY INFORMATION NOTICE I-40-06; ALL COUNTY INFORMATION NOTICE I-69-06

The purpose of this letter is to provide new instructions on how to budget the $50 child/spousal support disregard received by a food stamp household. It also clarifies a change in the treatment of income earned by a child under 19 years old who is an elementary or secondary school student at least half time. As provided in the Simplification Options All County Letter (ACL) 06-31, dated August 16, 2006, the above mentioned forms of income were meant to align with rules under the California Work Opportunity and Responsibity to Kids (CalWORKs) program as part of simplification options allowed in the 2002 Farm Bill (Public Law 107-171, Section 4102). However, the California Department of Social Services (CDSS) was recently notified by the Food and Nutrition Service (FNS) that the State misinterpreted the meaning of federal law in regard to the treatment of the child support disregard and student earnings. CDSS has been directed by FNS to correct the policy released in ACL 06-31.

The changes discussed below are effective immediately and must be implemented no later than November 1, 2007. Implementation before November 1, 2007, is encouraged as it is in the best interest of County Welfare Departments (CWDs) to implement as soon as administratively possible to reduce the potential for quality control errors and overissuance of benefits to households. Corrections will also need to be made to automated systems as soon as administratively feasible. A retroactive case review is not

required and no over-issuance claim is to be made based on policy in effect prior to countywide implementation of the provisions stated in this letter.

CHILD/SPOUSAL SUPPORT DISREGARD

The child/spousal support disregard as listed under Manual of Policies and Procedures (MPP) section 63-502.2 (q) (1)(B) is not an allowable exclusion under the "simplified definition of income" option contained in the Farm Bill of 2002 (Public Law 107-171, Section 4102). The option allowed states to align certain types of income exclusions with their Temporary Assistance for Needy Families (TANF) programs. However, a child/spousal support payment made to a household member by an individual who is legally obligated to make the child support payment, must be counted in its entirety, which includes the $50 child/spousal support disregard received by a CalWORKs Assistance Unit. Therefore, MPP section 63-502.2 (q)(1)(B) will be deleted from State regulations and the $50 child/spousal support disregard will no longer be considered an exclusion from income, but is considered income to the household. Draft emergency regulations are attached (Attachment A).

EARNED INCOME OF A CHILD

The income of a child under 19 years of age, who is an elementary or secondary school student at least half-time is not an allowable exclusion. Regulations will be changed to delete all references to the income exclusion of a child under 19 years of age. Regulations are corrected to read that the income exclusion applies to a child under 18 years. The application of the exclusion of student earnings remains unchanged. It is only the age of the child which has changed. Draft emergency regulations are attached (Attachment A).

IMPLEMENTATION SCHEDULE

For new applications: The above changes are effective immediately upon receipt of this letter.

For Change Reporting Households: All changes are effective as soon as administratively feasible but must be done no later than November 1, 2007.

For Quarterly Reporting Households: Changes are treated as county-initiated mid-quarter actions per MPP section 63-509(h) and are effective as soon as administratively feasible, but not later than November 1, 2007.

QUALITY CONTROL

The Hold Harmless period for Simplification Options expired on March 1, 2007 and will not be extended. Quality Control has been informed to immediately review food stamp cases based on correct federal law pending corrections to State regulations.

MASS CHANGE NOTICING

A draft copy of the Mass Change Notice, Notice to all Food Stamp Recipients, is attached (Attachment B). The final version, which will include both the English and Spanish language translations, should be transmitted to counties within a week.

The Notice must be made available to all recipients upon county implementation. The notice will explain that the child support disregard is no longer considered an exclusion from income and will now be considered income to the household. Additionally, the earned income of a child under 18 years, not 19 years, who is in elementary or secondary school at least half time, will be excluded as income. The CWD may publicize the simplification option changes through the news media; posters in certification offices, issuance locations, or other sites frequented by certified households; or mass change notices mailed to households per MPP 63-504.391(b).

FORMS

Revised budget worksheets for Quarterly Reporting and Change Reporting households and for medical deductions (QR 285B, DFA 285B, DFA 285D respectively) will be accessible on-line at the CDSS web page noted below within a few days from the date of this letter. The forms were revised to delete references to the child support disregard as an income exclusion. The forms are also attached for reference (Attachment C).

CAMERA-READY COPIES AND TRANSLATIONS

For a camera ready copy of the English language version, contact the CDSS Forms Management Unit at (916) 657-1907. If your office has internet access, you may obtain these forms from the CDSS web page at:

http://www.dss.cahwnet.gov/cdssweb/FormsandPu_271.htm.

When all translations are completed per MPP 21-115.2, including Spanish forms, they will be posted on an ongoing basis on our web site. Copies of the translated forms and publications can be obtained at:

http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm.

For questions on translated materials, please contact Language Services at (916) 651-8876.

If you have any questions regarding this letter, please contact LeAnne Torres, Food Stamp Policy Implementation Unit at (916) 654-2135 or via e-mail at LeAnne.Torres@dss.ca.gov.

Sincerely,

CHARR LEE METSKER
Deputy Director

Attachments

Attachment A

Regulation Changes

Amend Section 63-502.2, to read:

DRAFT

63-502 INCOME, EXCLUSIONS AND DEDUCTIONS (Continued) 63-502

.2 Income Exclusions (Continued)

(i) The earned income (as defined in Section 63-502.13) of children who are members of the household, who are elementary or secondary school students at least half time, and who have not attained their 18th ~~19th~~ birthday. Income of a student who attains their 18th ~~19th~~ birthday during the certification period, shall be excluded until the month following the month in which the student turned 18 ~~19~~. If the student becomes 18 ~~19~~ during an application month, the income is excluded in the month of application and counted in the following month except as specified in Section 63-507(a)(4)(A). The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share shall be excluded. Individuals are considered children for purposes of this provision if they are under the parental control, as defined in Section 63-102(p)(1), of another household member. (Continued)

(q) All payments excluded or exempt from consideration as income in the Eligibility and Assistance Standards Manual at Section 44-111, with the exception of Sections 44-111.2~~3~~2, .23, ~~and~~ .43, and .47.

HANDBOOK BEGINS HERE

(1) Examples include, but are not limited to, the following:

(A) Federal and state work study programs.

~~(B) Child/Spousal Support Disregard. The First $50 per month of current child/spousal support paid to or on behalf of an assistance unit shall be disregarded when determining both eligibility and grant amount.~~

~~(C)~~ (B) Job Training Partnership Act (JTPA). All payments to and earnings of a child which are derived from participation in JTPA programs. All payments to an adult which are derived from participation in JTPA programs.

~~(D) All earned income of a child under 19 years old is exempt if he/she is a full-time student, or he/she has a school schedule that is equal to at least one-half of a full-time curriculum, and he/she is not employed full time.~~

~~(E)~~ (C) Independent Living Program (ILP). Income and incentive payments earned by a child 16 years of age or older who is participating in the ILP.

~~(F)~~ (D) Relocation Assistance Benefit, paid by a public agency to a recipient who has been relocated as a result of a program of area redevelopment, urban renewal, freeway construction or any other public development, involving demolition or condemnation of existing housing.

~~(G)~~ (E) Payments received under the California Victims of Crimes Program.

~~(H)~~ (F) Allowance for training expenses paid to recipients participating in Department of Rehabilitation training programs.

~~(I)~~ (G) Any award or scholarship provided to or on behalf of a dependent child based on the child's academic or extracurricular activity.

~~(J)~~ (H) Contribution from persons or organizations that would not be available for expenditure unless used in accord with conditions imposed by the donor. For example, an uncle gives $200 to the household to purchase new tires. $200 is exempt when receipts for the intended purpose verify the expenditure.

HANDBOOK ENDS HERE

Attachment B

Mass Change Notice

IMPORTANT NOTICE TO FOOD STAMP HOUSEHOLDS

On or before November 1, 2007, the following types of money will now count as income when figuring food stamp benefits:

- All child/spousal support, including the $50 disregard.
- Earned income of a child 18 years or older. (Earned income of a child under 18 years and who is also an elementary or secondary student at least ½-time is not treated as income.)

If your food stamp household receives the types of income talked about here, benefits may decrease depending on other changes that may happen in you household.

You will get a separate notice if your food stamps change for other reasons.

For questions, call your county representative.

If you think we made a mistake in figuring your benefits because of this change, you may ask for a state hearing within 90 days of when you got this notice by writing to:

Or you may call toll free: 1-800-952-5253. If you are deaf and use TDD, call 1-800-952-8349. When you ask for a state hearing, you must tell us why you think we made a mistake. You can speak for yourself at the hearing or you can have a friend, attorney, or other person speak for you. You may ask for free legal aid at a legal aid office in your area. If you get benefits and then get an adverse fair hearing decision, you may have to repay the benefits.

Attachment C

Forms

FOOD STAMP BUDGET WORKSHEET

CASE NAME	COMPANION CASE REFERENCE	CASE NUMBER	CLASSIFICATION ☐ NA ☐ PA ☐ MIXED ☐ TFS
CERTIFICATION PERIOD FROM THROUGH	CHANGE REPORT ☐	QR 7 ☐	MID-QUARTER REPORT ☐

PART 1 -INCOME FOR CHANGE REPORTING (CR) AND QUARTERLY REPORTING (QR) HOUSEHOLDS

A. NONEXEMPT GROSS UNEARNED INCOME

	SOCIAL SECURITY, UIB, DIB, PENSIONS	CHILD/SPOUSAL SUPPORT	SCHOLARSHIPS, GRANTS, LOANS	OTHER
1. Month 1/Year ____/____	$____	$____	$____	$____
2. Month 2/Year ____/____	$____	$____	$____	$____
3. Month 3/Year ____/____	$____	$____	$____	$____

4. Unearned Income (A1 + A2 + A3) — Total $____ (A4)
5. QR Averaged Gross Unearned Income (A4 ÷ number of months) — Total $____ (A5)
6. Cash Aid — Total $____ (A6)
7. Less Child Support Paid (enter any remainder in B6) — Total $____ (A7)
8. Total Gross Unearned Income (A5 + A6 - A7) — Total $____ (A8)

B. NONEXEMPT GROSS EARNED INCOME

	GROSS SALARY/WAGES	SELF EMPLOYMENT	TRAINING ALLOWANCES
1. Month 1/Year ____/____	$____	$____	$____
2. Month 2/Year ____/____	$____	$____	$____
3. Month 3/Year ____/____	$____	$____	$____

4. Total Gross Earned Income (B1 + B2+ B3) — Total $____ (B4)
5. QR Averaged Gross Earned Income(B4 ÷ number of months) — Total $____ (B5)
6. Less Remainder of Child Support Paid (if not fully used in Section A) — Total $____ (B6)
7. Total Gross Earned Income (B5 - B6) — Total $____ (B7)

PART 2 - GROSS INCOME TEST FOR CR AND QR REPORTING HOUSEHOLDS

C. GROSS INCOME TEST

1. Maximum Gross Income allowed for Household Size of _____ (from table) $____
2. Total Gross Income (A8 + B7) = $____
3. Gross Income Eligible? (Is C2 less than or equal to C1?) ☐ YES ☐ NO — Total $____ (C3)

PART 3 - NET INCOME

D. NONEXEMPT GROSS INCOME

1. Gross Earned Income (B7) $____
2. Adjusted Gross Earned Income (80% of D1) $____
3. Total Gross Unearned Income (A8) $____
4. Nonexempt Gross Income (D2 + D3) $____

E. EXCESS MEDICAL EXPENSES (Special Medical)

1. Expected Recurring Expenses (Occurring during the entire certification period). Include recurring averaged expenses. $____
2. Limited Period Expenses (Occurring during only a portion of the certification period). Include limited averaged expenses. $____
3. Total Allowable Expenses (E1 + E2) $____
4. Less Medical Expense Allowance ($35) $____
5. Excess Medical Expenses (E3 - E4) $____

F. STANDARD, DEPENDENT CARE, MEDICAL, HOMELESS SHELTER DEDUCTIONS

1. Standard Deduction $____
2. Dependent Care
   - Child(ren) Under Two $____
   - Other Dependents & Child(ren) 2 and Over $____
   - Total Dependent Care Deductions
3. Homeless Shelter Deduction $____
4. Excess Medical Expenses (E5) $____
5. Total Deductions (F1 + F2 + F3 + F4) $____

G. ADJUSTED NET INCOME

1. Nonexempt Gross Income (D4) $____
2. Total Deductions (F5) $____
3. Adjusted Net Income (D4 - F5) or (G1 - G2) $____

H. SHELTER DEDUCTION

1. Total Housing Costs $____
2. Total Utility Allowance $____
3. Total Shelter costs $____
4. Allowable Shelter costs (50% of G3) $____
5. Excess Shelter costs (H3 - H4) $____
6. Maximum Allowance For Shelter $____
7. Allowable Shelter Deduction (Lesser of H5 or H6) $____

I. NET MONTHLY INCOME (G3 - H7) $____

J. NET INCOME TEST

1. Household Size ____
2. Maximum Net Income Allowable (from table) $____
3. Net Income eligible

PART 4 - BENEFITS

☐ YES ☐ NO

DOCUMENTATION

INCOME:

☐ Weekly $ ____ x 4.33 = $ ____

☐ Biweekly $ ____ x 2.167 = $ ____

DIRECT CHILD/SPOUSAL SUPPORT:

Received $____

CHILD SUPPORT PAID OUT (not to exceed the monthly child support obligation)

Month 1 $____
Month 2 $____
Month 3 $____
Total $____
Total ÷ by number of months $____
Amount used in A7: $ ____
Remainder to be used in B6: $____

EXPENSES $____

	QTR AVG	MID QTR AVG
☐ Dependent Care		
☐ Medical Expense		

☐ Utilities
- ☐ SUA
- ☐ LUA
- ☐ TUA

☐ Housing ☐ PRORATED

ALLOTMENT	SUPPLEMENT	E.W. Initials/Date

K. RESOURCE ELIGIBILITY (Nonexempt Resources Only)	PAYMENT QUARTER	PAYMENT QUARTER
1. Quarter/Month's Resources	$ _____	$ _____
2. Additional Resources (specify)		
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
3. Subtotal (K1 + K2a + K2b + K2c)	$ _____	$ _____
4. Resources Sold, Traded or Given Away (specify)		
a. _____	$ _____	$ _____
b. _____	_____	_____
c. _____	_____	_____
5. Subtotal (K4a + K4b + K4c)	$ _____	$ _____
6. Current Resources (K3 - K5)	$ _____	$ _____
7. Resource Eligible?	☐ Yes ☐ No	☐ Yes ☐ No

PART 5–INCOME COMPUTATIONS	PAYMENT QUARTER	PAYMENT QUARTER
L. SELF-EMPLOYMENT (Nonexempt Resources Only)		
1. Gross Income from Self-Employment	$ _____	$ _____
2. Expenses: ☐ Standard 40% Deduction		
☐ Actual Expenses (Verification Required)	$ _____	$ _____
3. Total Nonexempt Income from Self-Employment	$ _____	$ _____
If averaging self-employment income go to L7. If adjusting a previous average, continue to L4.		
4. Adjustment to Gross Income	$ _____	$ _____
5. Adjustment to Expenses	$ _____	$ _____
6. Adjusted Self-Employment Income (L3 + L4 + L5)	$ _____	$ _____
7. Monthly Self-Employment Income (L3 or L6 ÷ number of months income covers)	$ _____	$ _____

M. EDUCATIONAL GRANTS, SCHOLARSHIPS AND LOANS	PAYMENT QUARTER	PAYMENT QUARTER
1. Income from Grants, Scholarships or Loans	$ _____	$ _____
2. Tuition and Mandatory Fees	$ _____	$ _____
3. Total Nonexempt Educational Income (M1 – M2)	$ _____	$ _____
4. Monthly Income from Grants, Scholarships or Loans (M3÷ number of months income covers)	$ _____	$ _____

PART 6–REPORTED CHANGES (Other than the QR 7 or DFA 377.5)

Type of Change					
Date Change Occurred					
Date Change Reported					
EW Initials					

FOOD STAMP BUDGET WORKSHEET/CHANGE REPORTING HOUSEHOLD

CASE NAME	CASE NUMBER	COMPANION CASE REFERENCE	CLASSIFICATION ☐ NA ☐ PA ☐ MIXED ☐ TFS
FICATION PERIOD FROM THROUGH	ISSUANCE MONTH	ISSUANCE MONTH	**DOCUMENTATION**

PART 1 - GROSS INCOME ELIGIBILITY

A. NONEXEMPT GROSS UNEARNED INCOME			Child/Spousal Support Received $_____
1. Cash Aid	$_____	$_____	
2. Social Security, UIB, DIB, Pensions	$_____	$_____	
3. Child/Spousal Support	$_____	$_____	
4. Scholarships, Grants, Loans	$_____	$_____	
5. Other	$_____	$_____	
6. Gross Unearned Income (A1 + A2 + A3 + A4 + A5)	$_____	$_____	
7. Less Child Support Paid (enter any remainder in B5)	$_____	$_____	
8. Total Gross Unearned Income (A6 - A7)	$_____	$_____	
B. NONEXEMPT GROSS EARNED INCOME			
1. Gross Salary, Wages	$_____	$_____	
2. Self-Employment	$_____	$_____	
3. Training Allowance	$_____	$_____	
4. Gross Earned Income (B1 + B2 + B3)	$_____	$_____	
5. Less Remainder of Child Support Paid (if not fully used in Section A)	$_____	$_____	
6. Total Gross Earned Income (B4 - B5)	$_____	$_____	
C. GROSS INCOME TEST			
1. Household Size	_____	_____	
2. Maximum Gross Income Allowed (from Table)	$_____	$_____	
3. Total Gross Monthly Income (A8 + B6)	$_____	$_____	
4. Gross Income Eligible? (Is C3 less than or equal to C2?)	☐ YES ☐ NO	☐ YES ☐ NO	

PART 2 - NET INCOME ELIGIBILITY

D. NONEXEMPT GROSS UNEARNED INCOME (A8)	$_____	$_____
E. NONEXEMPT GROSS EARNED INCOME		
Gross Earned Income (B6)	$_____	$_____
Adjusted Gross Earned Income (80% of E1)	$_____	$_____
F. TOTAL GROSS INCOME (D + E2)	$_____	$_____
G. STANDARD/DEPENDENT CARE/HOMELESS SHELTER/DEDUCTIONS		
1. Standard Deduction:	$_____	$_____
2. Dependent Care (Lesser of Actual or Maximum)		
Child(ren) under two	$_____	$_____
Child(ren) two and over/all other dependents	$_____	$_____
Total Dependent Deductions	$_____	$_____
3. Homeless Shelter Deduction	$_____	$_____
4. Total Deductions (G1 + G2 + G3)	$_____	$_____
5. Preliminary Adjusted Income (F - G4)	$_____	$_____
H. SHELTER DEDUCTION		
1. Total Housing Costs	$_____	$_____
2. Total Utility Allowance	$_____	$_____
3. Total Shelter Costs (H1 + H2)	$_____	$_____
4. Allowable Shelter Costs (50% of G5)	$_____	$_____
5. Excess Shelter Costs (H3 - H4)	$_____	$_____
6. Maximum Allowance for Shelter	$_____	$_____
7. Allowable Shelter Deduction (Lesser of H5 or H6)	$_____	$_____
I. NET MONTHLY INCOME (G5 – H7)	$_____	$_____
J. NET INCOME TEST		
1. Household Size	_____	_____
2. Maximum Net Income Allowable from	$_____	$_____
3. Net Income eligible	☐ YES ☐ NO	☐ YES ☐ NO

PART 3 - BENEFITS

	ALLOTMENT	SUPPLEMENT	ALLOTMENT	SUPPLEMENT
E.W. Initials/Date				

K. RESOURCE ELIGIBILITY (Nonexempt Resources Only)	ISSUANCE MONTH	ISSUANCE MONTH
1. Previous Month's Resources	$ _____	$ _____
2. Additional Resources (specify)		
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
3. Subtotal (K1 + K2a + K2b + K2c)	$ _____	$ _____
4. Resources Sold, Traded or Given Away (specify)		
a. _____	$ _____	$ _____
b. _____	_____	_____
c. _____	_____	_____
5. Subtotal (K4a + K4b + K4c)	$ _____	$ _____
6. Current Resources (K3 - K5)	$ _____	$ _____
7. Resource Eligible?	☐ YES ☐ NO	☐ YES ☐ NO

PART 4–INCOME COMPUTATIONS	ISSUANCE MONTH	ISSUANCE MONTH
L. SELF-EMPLOYMENT		
1. Gross Income from Self-Employment	$ _____	$ _____
2. Expenses: ☐ Standard 40% Deduction		
☐ Actual Expenses (Verification Required)	_____	_____
3. Total Nonexempt Income from Self-Employment If averaging self-employment income go to L7. If adjusting a previous average, continue to L4.	$ _____	$ _____
4. Adjustment to Gross Income	$ _____	$ _____
5. Adjustment to Expenses	_____	_____
6. Adjusted Self-Employment Income (L3 + L4 + L5)	$ _____	$ _____
7. Monthly Self-Employment Income (L3 or L6 ÷ number of months income covers)	$ _____	$ _____

M. EDUCATIONAL GRANTS, SCHOLARSHIPS AND LOANS	ISSUANCE MONTH	ISSUANCE MONTH
1. Income from Grants, Scholarships or Loans	$ _____	$ _____
2. Tuition and Mandatory Fees	$ _____	$ _____
3. Total Nonexempt Educational Income (M1 – M2)	_____	_____
4. Monthly Income from Grants, Scholarships or Loans (M3 ÷ number of months income covers)	$ _____	$ _____

PART 5–REPORTED CHANGES (Other than the CA 7 or DFA 377.5

Type of Change					
Date Change Occurred					
Date Change Reported					
EW Initials					

FOOD STAMP BUDGET WORKSHEET – Special Medical/Shelter Deductions

CASE NAME	CASE NUMBER	COMPANION CASE REFERENCE	CLASSIFICATION ☐ NA ☐ PA ☐ MIXED ☐ TFS
CERTIFICATION PERIOD FROM THROUGH	☐ PROSPECTIVE	☐ PROSPECTIVE	DOCUMENTATION
PART 1 – NET MONTHLY INCOME	ISSUANCE MONTH	ISSUANCE MONTH	
A. NONEXEMPT GROSS UNEARNED INCOME			
1. Cash Aid	$	$	
2. Social Security, UIB, DIB, Pensions	$	$	
3. Child/Spousal Support	$	$	**Child/Spousal Support**
4. Scholarships, Grants, Loans	$	$	
5. Other	$	$	Received $
6. Gross Unearned Income (A1 + A2 + A3 + A4 + A5)	$	$	
7. Less Child Support Paid (enter remainder in B5)	$	$	
8. Total Gross Unearned Income (A6 - A7)	$	$	
B. NONEXEMPT GROSS EARNED INCOME			
1. Gross Salary, Wages	$	$	
2. Self-Employment	$	$	
3. Training Allowance	$	$	
4. Gross Earned Income (B1 + B2 + B3)	$	$	
5. Less Remainder of Child Support Paid (if not fully used in Section A)	$	$	
6. Total Gross Earned Income (B4 - B5)	$	$	
7. Adjusted Gross Earned Income (80% of B6)	$	$	
C. TOTAL NONEXEMPT GROSS INCOME (A8 + B7)	$	$	
D. EXCESS MEDICAL EXPENSES			
1. Expected Recurring Expenses (occurring during the entire certification period). Include recurring averaged expenses.	$	$	
2. Limited Period Expenses (occurring during only a portion of the certification period). Include limited averaged expenses	$	$	
3. Total Allowable Expenses (D1 + D2)	$	$	
4. Less Medical Expense Allowance ($35)	$	$	
5. Excess Medical Expenses (D3 - D4)	$	$	
E. STANDARD/DEPENDENT CARE/MEDICAL/ HOMELESS SHELTER DEDUCTIONS			
1. Standard Deduction:	$	$	
2. Dependent Care (Lesser of Actual or Maximum)			
Child(ren) under two	$	$	
Child(ren) two and over/all other dependents	$	$	
Total Dependent Deductions	$	$	
3. Excess Medical Expenses (From D5)	$	$	
4. Homeless Shelter Deduction	$	$	
5. Total Deductions (E1 + E2 +E3 + E4)	$	$	
6. Total Adjusted Income (C - E5)	$	$	
F. SHELTER DEDUCTION			
1. Total Housing Costs	$	$	
2. Total Utility Allowance	$	$	
3. Total Shelter costs	$	$	
4. Allowable Shelter Costs (50% of E6)	$	$	
5. Excess Shelter Costs F3-F4	$	$	
G. NET MONTHLY INCOME (E6–F5)	$	$	
PART 2 – NET INCOME ELIGIBILITY			
H. NET INCOME TEST			
1. Household Size			
2. Maximum Net Income Allowed (From Table)	$	$	First-Month Benefits Prorated?
3. Net Income Eligible? (Is G less than or equal to H2?)	☐ YES ☐ NO	☐ YES ☐ NO	☐ Yes ☐ No
PART 3 – BENEFITS	ALLOTMENT / SUPPLEMENT	ALLOTMENT / SUPPLEMENT	
E.W. Initials/Date			

I. **RESOURCE ELIGIBILITY** (Nonexempt Resources Only)	ISSUANCE MONTH	ISSUANCE MONTH
1. Previous Month's Resources	$ _____	$ _____
2. Additional Resources (specify)		
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
3. Subtotal (I1 + I2a + I2b + I2c)	$ _____	$ _____
4. Resources Sold, Traded or Given Away (specify)		
a. _____	$ _____	$ _____
b. _____	_____	_____
c. _____	_____	_____
5. Subtotal (I4a + I4b + I4c)	$ _____	$ _____
6. Current Resources (I3 – I5)	$ _____	$ _____
7. Resource Eligible?	☐ Yes ☐ No	☐ Yes ☐ No

PART 4–INCOME COMPUTATIONS	ISSUANCE MONTH	ISSUANCE MONTH
J. **SELF-EMPLOYMENT** (Nonexempt Resources Only)		
1. Gross Income from Self-Employment	$ _____	$ _____
2. Expenses: ☐ Standard 40% Deduction		
☐ Actual Expenses (Verification Required)	_____	_____
3. Total Nonexempt Income from Self-Employment If averaging self-employment income go to J7. If adjusting a previous average, continue to J4.	$ _____	$ _____
4. Adjustment to Gross Income	$ _____	$ _____
5. Adjustment to Expenses	_____	_____
6. Adjusted Self-Employment Income (J3 + J4 + J5)	$ _____	$ _____
7. Monthly Self-Employment Income (J3 or J6 ÷ number of months income covers)	$ _____	$ _____

K. **EDUCATIONAL GRANTS, SCHOLARSHIPS AND LOANS**	ISSUANCE MONTH	ISSUANCE MONTH
1. Income from Grants, Scholarships or Loans	$ _____	$ _____
2. Tuition and Mandatory Fees	_____	_____
3. Total Nonexempt Educational Income (K1 – K2)	$ _____	$ _____
4. Monthly Income from Grants, Scholarships or Loans (K3 ÷ number of months income covers)	$ _____	$ _____

PART 5–REPORTED CHANGES (Other than the CA 7 or DFA 377.5

Type of Change					
Date Change Occurred					
Date Change Reported					
EW Initials					

Legal Analysis

CONTENTS

PROCESS OF ANALYZING ENACTED LAW

1. Break Rule into its Elements and Consequences

Consequences: What happens if the rule applies
Elements: What must occur before the consequences of the rule will result

2. Identify Elements in Contention
Compare elements with facts to determine if elements in dispute

3. Formulate Issue(s)
Take elements in contention and the facts to which each element applies and make a question using the language from the elements and major facts

4. Define Elements
Examine case law, enacted law, legislative history, secondary authority and dictionaries to find meaning for elements

5. Connect Element Definitions with Facts (Preliminary Analysis)
Apply all definitions of elements to the facts; state facts that tend to show the element applies and facts that show the element does not apply

6. Close Fact Gaps
Identify facts needed to complete analysis and use investigation and discovery techniques to find them

Memorialize this Analysis
Issues
Facts
Analysis
Counter-analysis
Conclusion
Next Steps

Components of Legal Analysis
Once you have gone through the six steps, you have the basic information to complete your legal analysis of a given fact situation. For each issue, your ultimate analysis will contain these components:

- **An Issue**

A question, the answer to which tells you whether the rule applies to the facts.

- **A Rule**

Legislation — statute, regulation, treaty, court rule, Constitution etc. and any case law which interprets the legislation.

- **Analysis**

The most reasonable argument on how the rule applies to the facts in a way that will be most helpful to the client on whose behalf you are working.

- **Counteranalysis**

The most reasonable argument on how this same rule applies to the facts in a way that will be most helpful to the opponent.

- **Conclusion**

An educated guess on what decision a particular court would make if it had to decide the rule's applicability to the facts.

All of these components can be embodied in a legal memorandum which presents your legal analysis. The components dictate the memorandum's organization. Even less formal will be the legal reasoning that you do in your head. The same analytical structure is needed:

Question + Rule + Analysis/Counteranalysis = Conclusion

1. BREAKING A RULE INTO ITS ELEMENTS

Analysis by Elements

One of the most important skills of legal analysis is the ability to break down any rule into its elements.

An element is:

(a) a portion of a rule which can be conveniently discussed separately from the other elements

(b) a precondition of the applicability of the entire rule; if one of the elements of the rule does not apply, the entire rule does not apply.

To a very large extent, legal analysis proceeds by element analysis. As we demonstrated in the last chapter, element analysis is of major importance to the structure of a legal memorandum.

A major characteristic of sloppy legal analysis is that it fails to take the reader through the elements of a rule clearly. Good analysis discusses every element in sequence. No element is passed over.

Suppose that you are analyzing the following rule found in a statute:

§971.221(1) Change of place of hearing

(1) The claimant may move for a change of the place of hearing on the ground that an impartial hearing cannot be had in the county. The motion shall be made at the hearing.

As with the majority of rules, this rule is not broken down into elements. You must identify the elements on your own.

Step one is to distinguish between:

(a) the consequences of the applicability of the rule — what will happen if the rule applies,

(b) the conditions of the applicability of the rule — what must occur before the consequences of the rule will result

Conditions of the rule (b) constitute its elements.

The consequences of §971.22(1) applying in a particular case is that the place of the hearing will change. Now ask yourself what must happen before this result will follow. What are the preconditions for the result to occur? The answer will provide you with the rule's elements:

1) Claimant

2) Move for a change of the place of hearing

3) An impartial hearing cannot be had in the county

4) The motion must be made before the hearing.

There are four elements of §971.22(1). All four must be present in order to bring about a change in the place of the hearing.

Let us look at each of the above four elements. A number of logical questions should come to your mind as you examine each element. You should ask these questions as you isolate the elements. These questions are the springboard for further research and analysis.

1) Claimant
Apparently the welfare department or any other state entity cannot take advantage of §971.22(1). The statute is addressed to a "claimant." What is a "claimant?" Is any person who asks for a hearing a claimant? Is an applicant for benefits a claimant? Is a recipient of benefits a claimant? When does someone become a claimant?

2) Move for a change of the place of the hearing
It is not enough that a change is justified; there must be a request for it. There must be a specific motion or request for the change. Does the motion have to be in writing?

3) An impartial hearing cannot be had in the county
What is an "impartial hearing?" Complex definitional problems are likely in analyzing this element.

4) Hearing
The motion must be made at a specific time — at the hearing. The motion will be denied if made at the time that the hearing is requested (too early) or after the hearing is over (too late).

Let's look at another example:

§25-403. A pharmacist selling prescription drugs to a minor will be fined $5,000.

The consequence of the applicability of section 25-403 is a $5,000 fine. The elements of this rule are:

1) Pharmacist

2) Selling

3) Prescription drugs

4) Minor

The $5,000 fine will not apply until the four elements of the statute are established.

If a pharmacist sells simple aspirin (a non-prescription drug) she or he is not liable under the statute. The third element cannot be established since the transaction involved a non-prescription drug rather than a prescription drug as the statute calls for. Hence there can be no fine since one of the elements or preconditions cannot be met.

Another example:

> §100. A company that keeps or suffers to be kept upon premises owned or occupied by it within 50 yards of an inhabited building of another more than 50 pounds of nitroglycerine shall be subject to a fine of $500 per day.

The first step is to determine the rule's consequences. The consequence of §100 is a $500 fine. The next step is to break this rule down into its elements:

1) A company

2) Keeps or suffers to be kept more than 50 pounds of nitroglycerine

3) Within 50 yards of an inhabited building of another

The fine of $500, the consequences of violation, will not apply until all of the above four elements are established. It is the nature of an element that if one of the elements falls, the entire rule falls. Hence, if a private citizen who is not a "company" keeps 50 pounds of nitroglycerine within 50 yards of another, there apparently is no fine under §100 since the first element on its face calls for a "company."

Unraveling Complex Rules

Some rules are difficult to break into elements because of their length. Statutes and regulations, for example, sometimes appear to be endless. Nevertheless, the same process is used. You must take the time to dissect the rule into its component elements.

Other reasons may make it difficult to break down into elements. For example:

- the rule contains lists
- the rule is phrased in the alternative
- the rule has exception or proviso clauses

Examine this rule:

> §5 While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence provided the client remains ultimately liable for such expenses.

Elements:

1) A lawyer

2) Representing a client in connection with contemplated litigation <u>or</u> in connection with pending litigation

3) Advances financial assistance to his client <u>or</u> guarantees financial assistance to his client, *except* that the following is proper:

(i) lawyer advances or guarantees court costs

or,

(ii) lawyer advances or guarantees expenses of investigation or,

(iii) lawyer advances or guarantees expenses of medical examination

or,

(iv) lawyer advances or guarantees costs of obtaining evidence

or,

(v) lawyer advances *or* guarantees costs of presenting evidence *so long as* the client remains ultimately liable for these expenses of litigation.

When an element is stated in the alternative, list all the alternatives within the same element. Alternatives related to one element should be kept within the phrasing of that element. The same is true of exception or proviso clauses. State them within the relevant element since they are intimately related to the applicability of that element.

In the above example, the most complicated element is the third. Within it there are lists, alternatives, an exception and a proviso. But they all relate to the same point of the propriety of financial assistance. None of the sub-divisions of the third element could become its own separate element.

The lesson is that sometimes you must do some unraveling of a rule in order to identify its elements. This had to be done with the third element in §5 above. Some unraveling and regrouping was also necessary in §100 of the nitroglycerine statute where some of the clauses and phrases in the sentence had to be reordered so that each of the elements could stand as a logical unit.

Don't be afraid to pick the rule apart in order to cluster its thoughts around unified themes that can stand alone as elements. Diagram the rule for yourself as you examine it. If more than one rule is involved in a statute, regulation, constitutional provision, charter, ordinance, etc., treat one rule at a time. Each rule should have its own elements and, when appropriate, each element should be sub-divided into its separate components.

Common sense should be one of your major guides in identifying elements. Be as narrow as possible in stating the element without losing context. Notice, for example, in the nitroglycerine statute (§100) that the second element covers the verbs, keep or suffer to keep. The object of the verb -- nitroglycerine -- also needs to be included in the second element since it is impractical to discuss a verb separate from its object (Keep what?). The 50 yard clause, however, can be separately discussed, so it was placed in its own element.

Determining the Consequences

Sometimes the rule's consequences are not apparent. What is the consequence of §5? The rule doesn't tell us. For example, assume that §223 states that no person shall beg while standing on the sidewalk. Or

what? The rule's consequences are not specified. Most likely, the consequences will be included in another statute. For example, §225 provides that any person who violates § 223 shall be fined $50. Moreover, sometimes when no consequence is apparent, the rule is definitional -- it's purpose is to define terms.

A way to determine a rule's consequences is to ask: what is this rule about? What will happen if it applies? Is the consequence spelled out somewhere else? Does the rule define something? If you are totally confused, start breaking the rule into elements. This unraveling should help you determine the rule's consequences.

Elements Provide Structure
Once you have determined the consequences of a rule and broken the rule down into its elements, you have the structure of the analysis in front of you. Each element becomes a separate section of your analysis. You discuss one element at a time, concentrating on those elements that pose the greatest difficulties.

ASSIGNMENT A
Determine the consequences of these rules and then break them into their elements.

1. The term safety belt interlock means any system designed to prevent starting or operation of a motor vehicle if one or more occupants of such vehicle are not using safety belts.

Consequences:

Elements:

2. Privacy is invaded only if the information sought is of a confidential nature and the defendant's conduct was unreasonably intrusive.

Consequences:

Elements:

3. An owner of premises is prohibited from willfully or intentionally injuring a trespasser by means of force that either takes life or inflicts great bodily injury.

Consequences:

Elements:

4. Every applicant for aid shall register for work unless the applicant is a mother or other relative of a child under the age of six who is caring for the child.

Consequences:

Elements:

5. It is unlawful for a landlord to evict a tenant in retaliation for the tenant's complaint to the Health Department regarding health and safety violations existing on the rental premises.

Consequences:

Elements:

6. In short, where an internal operation is indicated, a surgeon may lawfully perform, and it is his duty to perform, such operation as good surgery demands, even when it means an extension of the operation further than was originally contemplated, and for so doing he is not to be held in damages as for an unauthorized operation.

Consequences:

Elements:

7. The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

Consequences:

Elements:

8. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

Consequences:

Elements:

2. IDENTIFY ELEMENTS IN CONTENTION
3. FORMULATE ISSUES

A Legal Issue

In order to do legal analysis, you must identify the legal issue. A legal issue is simply a question. Its answer will tell whether a particular rule applies to a particular set of facts. To fail to identify the issue would be like trying to steer a ship without a rudder or to drive a car without the steering wheel: your legal analysis would drift aimlessly.

A legal issue has two components:

(1) a brief quote from the element of the rule in contention, and

(2) the major facts to which the element is being applied.

Both of these components must be present in your statement of the legal issue.

As indicated earlier, every element of a rule is potentially a separate issue. A rule with five elements, for example, could constitute five separate issues, each structured around whether the element applies.

It is rare, however, for every element to be a separate issue. This is because every element of a rule will probably not be in contention. For an element to be in contention you must be able to make a reasonable prediction that the parties to the dispute will probably disagree on whether the element will apply. If it is clear that both parties will agree on the applicability or non-applicability of a particular element, then it would be a waste of time to constitute an issue around that element and to spend time analyzing it.

At the time you write your memorandum, you may not know for certain what the other side will eventually argue on a rule. You must do your best to anticipate what your opponent might say about the rule and any element within it.

Guidelines for Determining An Issue

These guidelines should be followed in determining whether a particular element should become the basis of an issue:

1. If there is some ambiguity in your mind when you try to connect an element with the facts, then the element should form the basis of a legal issue.

2. If you can think of more than one reasonable definition of an element and the different definitions may make a difference as to the element's applicability, then the element should form the basis of a legal issue.

3. When in doubt about whether to form an issue around an element, resolve the doubt in favor of framing an issue for the element.

To illustrate, let us return to one of the statutes we examined in the last chapter:

§25-403. A pharmacist selling prescription drugs to a minor will be fined $5,000.

Suppose the following facts are involved:

FACTS: Fred Jones owns a drug store and is a licensed pharmacist. One day he sells tetracycline to Phil, a 19 year-old male.

Has Fred violated §25-403?

Step one is to determine the rule's consequence which is a $5,000 fine. Next, we break §25-403 down into its elements:

1) Pharmacist

2) Selling

3) Prescription drugs

4) Minor

These elements become a checklist from which we begin exploring the presence of legal issues.

The first and second elements are not realistic candidates for legal issues. There is no reasonable dispute and no reasonable doubt over whether Fred is a pharmacist and whether he engaged in selling. The facts clearly tell us that he is a pharmacist who did make a sale.

What about the other elements? Should element 3) become the basis of a legal issue? Did Fred sell a "prescription drug?" Is tetracycline such a drug? There is a factual gap which hinders our ability to answer this question at this point. The facts do not tell us whether tetracycline is sold over-the-counter or whether Phil purchased it by prescription. Further interviewing or investigation is needed on this factual question. Such action is a "next step" which would have to be listed at the end of the memo.

Element 4) clearly poses some ambiguity. What is a minor? Is a 19 year-old a minor? It is not clear. This ambiguity should prompt the preliminary draft of a legal issue:

Is a 19 year-old a "minor" within the meaning of §25-403?

Alternate phrasing of the issue:

When a pharmacist sells tetracycline to a 19 year-old, has the pharmacist violated §25-403 which prohibits sales of "prescription drugs" drugs to "minors"?

Every element is part of a checklist that must be examined in the above manner. If one element is glossed over, a potential legal issue may be missed.

Recall again the components of a legal issue:

- a brief quote from the element in contention

- the major facts to which the element is being applied.

Determining Major Facts

We have just explored how you go about determining an element is in contention. The next question is: how do you know what facts are major? Fortunately, the process of determining when an element is in contention also will tell you which facts are major:

In phrasing a legal issue, you include major facts that raise the ambiguity or doubt in your mind on whether the element is in contention.

The fact that Phil is a 19 year-old is a major fact because this is the fact that prompted us to ask the question: what is a minor? Hence, the reason for the first phrasing of the above issue:

Is a 19 year-old a "minor" within the meaning of §25-403?

Note that the fact that Phil was a male was left out of the statement of the issue. It does not appear to be relevant to the applicability of §25-403 that the buyer is a male or female. Sex is not major, but age is.

The alternative phrasing of the above issue does contain more facts:

When a pharmacist sells tetracycline to a 19 year-old, has the pharmacist violated §25-403 which prohibits sales of "prescription drugs" to "minors"?

More facts are included in this statement of the issue, e.g., pharmacist, selling, tetracycline. Two reasons account for phrasing the issue in this way:

-the issue raises the question of the applicability of the entire rule rather than simply one of the elements of the rule,

-the issue contains facts which provide a context to an understanding of the issue even if all of the facts are not major to the element primarily in contention.

Both reasons can justify a longer statement of a legal issue if the issue does not become so long that the issue is too awkward to read, and if the added facts will not hamper the reader in being able to focus on the element which is primarily in contention. Neither of these difficulties appear to be present in the alternative phrasing of the issue provided above.

Shorthand Statements of the Issues

Avoid shorthand statements of legal issues. For example:

Does section 504 apply?

or,

The issue is the meaning of minor.

or,

Does he have the burden of proof?

This first reason that these statements of legal issues are weak is the absence of facts contained within the issue. Legal disputes do not arise in the abstract. There must be a set of facts which give rise to a

controversy in order for a legal dispute to exist. One cannot comprehend the issue until one knows the facts that give birth to that issue.

Including facts in the issue statement does not mean that it must contain a statement of all the facts. Only the major facts — those that give rise to the issue -- need be stated in the issue plus, perhaps, a limited number of additional facts that help give context to the issue.

Second, the three statements of issues above are incomplete because they do not quote the pertinent language from the element that is ambiguous or in dispute when applied to the major facts.

Hence, the two rules which should govern the phrasing of issues are as follows:

1. The legal issue should contain a statement of the major facts from the problem which raise the ambiguity in the language of an element (a limited number of context facts may also be added);

2. The legal issue should also contain a brief quotation from the language of the element which is ambiguous in view of the major facts of the problems.

The components of the legal issue do not have to be stated in the above order — so long as both components are present in the legal issue.

ASSIGNMENT B
Determine the consequence(s) of each rule, break it down into its elements, and then phrase the legal issue involved in each situation.

1. Section 26-133. No person shall stock or introduce fish of any species into the waters of any pond, lake or stream without the written authority of the game warden.

Consequences:

Elements:

Facts: Wanda fishes in a small pond near her home, using live minnows as bait. While trying to place the minnows on the hook, several of the minnows fall from her hands into the pond. The minnows are very slippery. No matter how careful she is, however, some escape. The game warden tells her to stop.

Issue:

2. Section 39.4901. Any person who shall carry in any manner whatever, with the intent to go armed, any razor, disk, bowie knife, or other knife of like form, shape or size, ice pick, sling shot or any other similar object shall be guilty of a misdemeanor.

Consequences:

Elements:

Facts: James Tucker is enrolled in a wood carving class at a local recreational center. He buys a triple blade jack knife for use in the course. On the way to class one day, a police officer sees the knife and tells him it is illegal to carry it.

Issue:

3. Section 31(b). No investigation can be commenced by the Board until it has served a copy of the complaint on the person against whom the complaint is directed within five days after the complaint has been filed with said Board.

Consequence:

Elements:

Facts: Smith files a complaint against Jones at the Board on Wednesday. On the following Tuesday, the Board serves a copy of the complaint against Jones and begins its investigation. Jones claims the investigation is improper.

Issue:

4. Section 69-105. A landlord who leases a premises to a tenant for residential use impliedly warrants that the premises are habitable for residential use and breaches that warranty when the premises are not habitable.

Consequences:

Elements:

Facts: Kilgore Trout leased a one-bedroom apartment from Eliot Rosewater. The ceiling in the bedroom of the apartment collapsed. Kilgore notified Rosewater that the ceiling had collapsed and that he was forced to sleep in the living room. Rosewater refuses to repair the collapsed ceiling.

Issue:

5. Section 11351. Whenever an unrelated adult male resides with a family applying for or receiving CalWORKs, he shall be required to make a financial contribution to the family which shall not be less than it would cost him to provide himself with an independent living arrangement.

Consequences:

Elements:

Facts: Jane and her two children by a former marriage receive CalWORKs. Jane's friend, Jack, who is a traveling salesperson, stays at Jane's apartment during his monthly business trips which allow him to stay in town 5 to 10 days at a time.

Issue:

5. DEFINE ELEMENTS

Definitional Questions

Legal analysis consists of applying definitions to facts. Definitions of what? Of the elements of the rules being applied. Hence, once you have broken a rule down into its elements, the next step is to seek definitions of the major words and phrases in these elements.

Let us examine again the nitroglycerine statute that we first saw in Chapter 9.

Section 100 - A company that keeps or suffers to be kept upon premises owned or occupied by it within 50 yards of an inhabited building of another more than 50 pounds of nitroglycerine shall be subject to a fine of $500 per day.

A number of definitional questions could be asked about specific words and phrases in the elements of this statute:

- What is a "company?"
- What is meant by "keeps or suffers to keeps?"
- What is "nitroglycerine?"
- What are "premises?"
- What does "owned or occupied" mean?
- What is an "inhabited building?"
- What does "another" mean?

You must challenge the elements by demanding of yourself and of others that definitions be provided. The same is true if you are listening to a lecture or a discussion about the law: you must insist that the terms be defined.

You will note in the list of words and phrases that need defining from the nitroglycerine statute that a number of items were not listed: "or," "more than 50 pounds" "upon," "by," "within 50 yards." There may, however, be circumstances where you must define those words or phrases. It's not unusual for a court to spend time defining a conjunction of a preposition.

Trespass, for example, requires an intrusion or an entry <u>on</u> land. Litigation has been necessary to define what is meant by "on." If you throw a rock through someone's land which never touches the ground, has there been an entry <u>on</u> the land? Depending upon the particular facts of the problem being analyzed, it may be that some of the conjunctions and prepositions in the nitroglycerine statute will also need defining. The same is true of words such as "yards."

The *major* words and phrases in an element must be defined. The two tests to use to determine whether something is major are common sense and whether you can anticipate that the word or phrase will be the center of a dispute between the parties. When in doubt about whether something is major, provide the definition.

In applying these two tests, you may decide that words such as "nitroglycerine" and "premises" do not need to be defined. Both parties may agree, for example, that the substance that exploded was nitroglycerine and that this occurred on the premises. If so, time does not have to be wasted defining such terms. Be careful, however, in coming to such conclusions. If you must err, do so on the side of providing too many definitions.

Guidelines for Providing Definitions

The basic guideline to keep in mind is as follows:

Proper legal analysis requires that the major words and phrases in elements be defined so that the definitions can be applied to the facts. When in doubt about whether a word or phrase is major, resolve the doubt in favor of providing a definition. Whenever you anticipate a dispute between the advocates that centers on a word or phrase in an element, that word or phrase is always major.

You may think that it is an easy task to know when to ask or search for a definition. Quite the contrary. Time and again you will see and hear people analyzing the law without defining the major terms. *They make the assumption that the reader or listener already knows the definitions of the words or phrases being used or that the definitions are obvious from the context of the analysis.*

This assumption is very dangerous to make. You are urged to avoid making this assumption in your own analysis even though you will be surrounded by courts, legislatures, lawyers, teachers, and paralegals, who regularly make the assumption. Sloppy analysis does not cease to be sloppy simply because it appears that everyone is doing it!

To be sure, shorthand analysis in which people in the law communicate through short summarizations of legal principles without providing all of the definitions involved does exist. Such analysis plays an important role in a busy law office. In your own career, however, it is probably too early for you to attempt such summarizations. You must first learn how to do a complete analysis before you start using shorthand analysis. Also, when people talk shorthand to you, you should not be reluctant to slow them down so that you can understand what is going on.

This understanding comes primarily when you inquire about definitions. Take the risk that someone will think that you do not know a lot of law. At this stage in your career, you probably don't. Ask about definitions, or ask for additional time so that you can go search for definitions.

Of course, simply because you have a definition, you are not home free. It frequently happens that you need a definition of the definitions! Suppose that you find the following definition of "hazardous substance:"

"Any substance that is toxic, corrosive or an irritant." While it is very helpful to have this definition, you obviously do not stop your search. What is "toxic?" What is "corrosive?" What is an "irritant?" You need definitions of the definition.

It is important that you train your ear and eyes to recognize legal analysis that fails to provide definitions of the major words or phrases involved. For example, suppose you hear or read the following?

The defendant acted reasonably because every safety precaution was taken before the fireworks were exploded. Furthermore, the explosion was not the proximate cause of the injury suffered by the plaintiff. The case should be dismissed.

Such a passage should give you intellectual indigestion. There are a number of significant concepts that are not defined: "reasonably," "safety precaution," and "proximate cause." The author of the passage assumes that you know what they mean. Again, this is a dangerous assumption to make in the law.

Researching Definitions

Having recognized the need for definitions, the next question is: where do you get them? When you read a newspaper story and see a word you don't understand, you reach for Webster's or a similar dictionary. Legal words, on the other hand, may not be defined such a dictionary because only lawyers, paralegals, and judges use them. Law, in other words, has its own jargon or technical language.

In the law, jargon or technical language is referred to as *terms of art*. A term of art is any word or phrase that has a technical meaning. The meaning will usually not be found in Webster's dictionary. The difficulty is that you will not always know whether a word or phrase is a term of art or whether its ordinary "lay" definition was intended. The safest course for you to pursue is as follows:

-Know the "lay" definition of the word or phrase (check it in Webster's or other standard, non-technical dictionary).

-Assume, however, that the word or phrase is a term of art until you establish otherwise.

-Use the basic research techniques to obtain the meaning of the word or phrase.

The basic research techniques of finding definitions of words and phrases in the elements of rules are as follows:

(a) find case law interpreting the words or phrases;

(b) if the rule is a statute see if there are definitions provided in the statute itself;

(c) if the rule is a statute, check the legislative history of the statute;

(d) if the rule is a statute, check the legislative history of the statute;

(e) check the multi-volume legal dictionary, *Words and Phrases,* to locate leads to cases defining the words or phrases;

(f) look for leads to definitions in the legal encyclopedias, CJS and AM Jur. 2nd;

(g) look for leads to definitions in legal periodicals and in treatises;

(h) look for leads to definitions in the annotations in ALR, ALR 2d, ALR3, ALR 4th and ALR Fed.

When these research techniques prove to be unproductive, rely on your best judgment of what you think was meant by the words and phrases. What does your common sense tell you the words and phrases mean?

In your search for definitions, do not assume that only one definition is possible or reasonable. It may be that opposing parties could reasonably conclude that different definitions of the same word or phrase are

possible. You must be prepared for such diversity and actively seek it out in view of the requirement of objectivity that an internal memorandum must demonstrate.

Factors

The definitions of words or phrases in elements may sometimes be phrases as factors. There may not be a concise definition of the word or phrase. Instead, the court may list a series of factors which it will examine. Carefully distinguish an element from a factor:

> Element: A portion of a rule which is precondition to the applicability of the entire rule to a set of facts.
>
> Factor: One of many considerations that a court will examine in trying to decide whether an element applies to a set of facts.

Rarely will one factor be controlling. The court will examine and balance all of the factors and then determine whether an element applies.

For example, examine the following rule:

§ 402. Best Interest of Child.
The court shall determine custody in accordance with the best interest of the child. The court shall consider:

> (1) the wishes of the child's parent or parents as to his custody;
>
> (2) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;
>
> (3) the wishes of the child as to his custodian;
>
> (4) the mental and physical health of all individuals involved.

The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

This statute does not provide a definition of "best interest of the child" which is a critical element to the applicability of § 402. Instead, the rule specified four *factors* which a court will consider and one *factor* which it will not consider in deciding whether a particular custody determination is in the "best interest of the child."

Each factor should be analyzed separately.

Hence, when looking for definitions of words or phrases within elements, find out through your legal research whether there are factors rather than straight definitions which a court will use to assess whether an element applies.

5. CONNECT ELEMENT DEFINITIONS WITH FACTS (Preliminary Analysis)

At this stage:

1) you begin with a rule

2) you break down the rule into its elements

3) you identify the elements in contention and to phrase the issue(s)

4) you identify words and phrases in the elements that need definition

5) you use the standard research techniques of locating definitions

The next step is to apply the definitions to the facts. This should be done preliminarily before you do any formal writing of the memo. One method by which this preliminary analysis is done is the column method described below.

Line up each of the elements of the rule you are applying. On a scrap sheet of paper, draw a list of columns with one column per element. At the top of each column repeat the element or a brief summary of it. In each column, write three kinds of information that are relevant to the applicability of that element:

-state facts that tend to show the element applies;

-state facts that tend to show that the element does not apply;

-state missing facts or other questions that could be relevant to the applicability of the element (it is sometimes as important to point out what the facts do not indicate as to state what they do indicate)

Frequently the same facts or questions will be relevant to more than one element. If so, be sure to repeat the same facts in every element column to which it is relevant.

It should be stressed again that this column method is part of a preliminary analysis. The columns are simply your checklist of categorized facts which you must consider when you begin writing your first draft. The columns are a way for you to structure your thinking by elements and to make sure that all facts are eventually analyzed.

Let us look at an example. To do the preliminary analysis, you need a set of facts, a rule and the elements of that rule. From this data, you draw the columns and fill in the three kinds of information listed above.

Example:
On January 7, 2009 a Family Court trial judge declared the marriage of John and Mary Smith to be dissolved. On January 8, 2009, John married Linda. On January 10, 2009, the clerk of the Family Court made a notation in the court's official docket that the judge declared a dissolution of the marriage of John and Mary Smith. On January 17, 2009, Mary Smith filed a notice of appeal with the state appellate court appealing the dissolution order of the trial judge.

§ 314 A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal.

Elements of § 314

(a) marriage
(b) decree of dissolution or legal separation
(c) when entered
(d) subject to the right of appeal

The above four elements tell us when the decree is final, which is the consequence of the applicability of § 314.

Now form four columns and list the three kinds of information that are relevant to the applicability of each element. Be sure to include questions about important missing information.

PRELIMINARY ANALYSIS

Marriage	**Decree of Dissolution or Legal Separation**	**When entered**	**Subject to the Right of Appeal**
John and Mary M. Smith are married	On 1/7/09 the judge declared the marriage dissolved It is not clear from the facts whether this declaration is a "decree".	On 1/10/09, the clerk of the Family Court made a notation in the court's official docket that the judge declared the dissolution It is not clear whether this notation is entering of a decree. The notation was made after John's 1/8/09 remarriage	On 1/17/09 Mary Smith filed a notice of appeal of the 1/7/09 dissolution This filing was made after John's 1/8/09 remarriage

You are now ready to begin the formal writing of your memo, *e.g.*, statement of legal issues, analysis, etc. The data in the columns become the checklist that you use in doing this writing.

If more than one rule is involved in the memo, a preliminary analysis by columns is done for each rule. All defenses to an action, for example, constitute rules which all must go through the same process.

When you find that a series of factors will be used by a court to determine whether a particular element applies, you should set up a separate series of columns for the factors and place the same kinds of information under each column that are relevant to the applicability of each factor.

ASSIGNMENT C

Do a preliminary analysis by columns of the facts and rules below..

FACTS: Tom and Mary were married in this jurisdiction (state #A) on September 5, 2008. On April 1, 2009, the Superior Court of State #A declared their marriage void on the ground that Tom was under the age of consent when married. The age of consent in state #A is 18 for males and 16 for females. Tom turned 18 on April 2, 2009. Mary was 17 at the time of the marriage on September 5, 2008. On July 4, 2009, Tom and Mary entered a marriage ceremony in state #B. They then returned to state #A where they continue to live together. Can the marriage in state #B be voided? The following rule (§30-105) is part of the law of state #A.

RULE:§30-105. If any marriage declared illegal in this jurisdiction shall be entered into in another jurisdiction by persons having and retaining their domicile in this jurisdiction, such marriage shall be deemed illegal, and may be decreed to be void in this jurisdiction in the same manner as if it had been celebrated therein.

FACTS: Tom lives in a residential neighborhood. He plants a new tree along the edge of his property two feet from Jim's land. He finishes planting at 8 a.m. on Tuesday morning. Before Tom goes to work, he turns on his hose in front of the tree to water it. He sees that the water quickly collects around the tree and starts draining toward Jim's land. Tom decides to leave the hose on while he is at work. When he returns at 6 p.m. that day, Jim's yard is flooded by the water. Jim sues Tom for trespass to land.

RULE:§401. Trespass to land exists when there has been an act which has caused an intentional intrusion on land in possession of another.

For purposes of this assignment, assume the following definitions of major words or phrases in the elements of §401:

Act: an act is a voluntary movement of the body.

Intrusion on land: intrusion means physically going on land.

In possession of another: possession means actual occupancy of the land with the intent to have exclusive control over it, or the right to immediate occupancy when no one else is actually occupying it with intent to control it.

Intent to intrude: intent is (1) the desire to intrude, or (2) the knowledge with substantial certainty that the

intrusion will result from what the defendant does or fails to do.

Causation of the intrusion: there are two definitions of causation: "but for" and substantial factor.

(1) "But for" what the defendant did, the harm would not have occurred;
(2) the defendant was a substantial factor in producing the harm. Plaintiff must establish causation by either definition.

After you have broken down §401 into its elements, use the above definitions to help you identify the three kinds of relevant information that should go under the columns for the elements.

6. CLOSE FACT GAPS

The Importance of Finding Missing Facts

During the early stages of your legal analysis of a problem, you will find yourself saying: "In order to give you an answer to the problem, I need to know more facts." This should happen often while you are still doing your preliminary analysis and legal research. It is rare that the initial client interview will have covered every fact that is relevant to the analysis. It is rare that your supervisor will have given you every fact that you need.

Assume, for example, that you are analyzing whether or not a company has violated the nitroglycerine statute set out earlier in this Part. One element in the statute was that the nitroglycerine should not be stored "within 50 yards of an inhabited building of another." And as you start your legal analysis, suppose that you realize that you have no information to indicate how far the storage area is from the nearest "inhabited building of another." This is obviously a missing fact.

The likelihood is that your initial statement of facts will not be fully adequate to enable you to give an intelligent answer to your question; you simply do not have enough facts. The deeper you get into the legal analysis and research of the problem, the wider the gap may become between the facts that you have and the facts that you need to find out about. Indeed, this is one of the functions of legal analysis: *to help you identify what facts you need to try to obtain through further investigation and additional client interviewing.* Analysis and research regularly feed into investigation and interviewing in this way.

Step one in handling missing facts is to identify that they are missing. Avoid the danger of ignoring what you don't have when the gaps could fundamentally affect whether a particular element could apply.

In the last section, you had to identify missing facts relevant to the applicability of an element. This was one of the three kinds of information that you were told to place within the columns.

Guidelines for Handling Missing Facts

The following guidelines should be followed with respect to missing facts:

1. Identify all missing facts that could affect the applicability of an element -- do not ignore them.

2. If the factual gap can be quickly resolved by an additional investigation or interviewing (e.g., by a phone call) close the gap by doing the investigation or interviewing (stop your analysis and writing until the gap is resolved.

3. If the factual gap can be resolved only by extensive, time consuming additional investigation or

interviewing, then check with your supervisor on what s/he wants you to do.

4. If you do not have time to do the additional investigation or interviewing but you still must write the memo, simply incorporate the missing facts into your analysis. Under your analysis of each element, present the facts that you have and state what the missing facts are that could affect the applicability of the element.

Under the fourth guideline above, your analysis of a particular element will be inconclusive *and you say so in your memo.* Tell the reader what facts are missing. State why you need the missing fact, unless the reason would be obvious. If, for example, one of the elements of a rule concerns the number of feet that explosives are stored next to a dwelling and the facts are silent on distance, all you need to say is "we don't know how many feet it was to the dwelling," or "in order to be able to apply this element, we must know how many feet it was to dwelling; the facts do not tell us." In this example, it is obvious why you need the facts on distance. In other situations, the reason may not be so obvious, in which event you should spell out how the missing fact might affect the applicability of the element.

When you get to the "next steps" portion of your memorandum, you should again list all of the missing facts which you earlier identified as important to the applicability of any of the elements.

MISSING LAW

Thus far we have looked at the problem of missing facts which prompt the need for further factual research through investigation or interviewing. Another equally serious gap which must not be overlooked is missing law.

In the marriage example presented earlier, for example, the second element is:

"decree of dissolution of marriage or of legal separation"

and the third element is: "when entered."

What is a "decree?" What does "entered" mean? These are legal questions. They cannot be answered by fact investigation or interviewing. They must be resolved primarily by legal research.

The following guidelines should be followed with respect to such missing law:

1. Identify all missing laws that could affect the applicability of an element — do not ignore them. Most of these missing laws will consist of missing definitions of major words and phrases in the elements.

2. When you do your preliminary analysis of the problem by the columns be sure to list all legal questions, such as the definition of a word or phrase in an element, under the element to which the legal question is relevant.

3. If time is available, do the needed legal research to find the answer to legal questions that you have identified.

4. If your legal research efforts do not provide you with an answer, you must determine the answer based on your own common sense and best judgment. Always be alert to the possibility that more than one definition may exist for the same term. Do not limit yourself to a definition that will help only your client if other reasonable definitions are possible which could help the other side. Your memo must be objective.

5. If you do not have time to do legal research (or if such research is otherwise impractical) but you must still write the memo, simply incorporate the missing law in your analysis. Under your analysis of each element, state the missing law that you do not know. Analyze the law that you know and identify what you don't know.

Under the fifth guideline above, your analysis of a particular element will be inconclusive *and you must say so in your memo.* Tell your reader what law you do not have. State what further legal research needs to be done. This should be done in the body of the memo as well as in the "next steps" component of the memo.

The major theme of these last two chapters cannot be overemphasized:

Tell your reader about missing facts
and missing law in the memo itself.

Many legal workers relatively new to the law bypass both. They only want to write about what they know and about what will be helpful to their client. They find it awkward and perhaps embarrassing to write about what they do not know. This attitude misses the point of an internal or inter-office memorandum of law. It must be objective. It must point out all the flaws and gaps that stand in the way of coming to a conclusion that you would like to reach.

It may be that you have begun your writing too soon. Comprehensive prior legal research should be done to resolve all of the legal questions to the best of your ability before you begin writing a draft of the memo.

WRITING THE FIRST DRAFT

The major problem that you must address in writing the first draft of the memo is what organization the memo should have, or more specifically, how should you organize the analysis component of the memo.

As we saw above, a basic seven-part format to a relatively simple memo is:

1. Heading
2. Statement of the assignment
3. Statement of the issue being treated
4. Statement of the facts
5. Analysis
6. Conclusion
7. Next Steps

For a more complicated memo, you can add:

- Table of contents
- Table of authorities
- Summary of issues and conclusions

The organization of the analysis depends largely on the number of rules being examined in the memo. If the memo is examining one rule (e.g., one statute, one regulation or one ordinance), the structure of the analysis is fairly simple:

-State the rule

-Break the rule into its elements

-Begin analyzing one element at a time (after you have done your preliminary analysis via the columns)

-As you analyze each element provide the definitions of major words and phrases in the element (legal research will be needed to provide these definitions),

-As you analyze each element, do not be one-sided; provide the counteranalysis; state what you feel the other side will argue

-Do not give equal time and writing to each element; concentrate on the elements in contention

-As you analyze each element, identify and integrate missing facts and missing law into your analysis.

-If there is more than one rule that is being analyzed in the memo, each rule should go through the same process outlined above. Of course, the more rules involved, the more complex the memo will become. Yet the same organizational principles will apply to the structure of the memo.

Increased complexity will also result from the introduction of case law to help define certain words or phrases in the elements. If, for example, you are using four or five cases to help interpret a particular element, the discussion of that element will probably be fairly long. Some of the cases may have to be used to help analyze more than one element. In any event, no matter how complex and long term the memo becomes, it will have a unified organization if you have methodically proceeded through an analysis of all the elements.

The counteranalysis should be integrated throughout the memo. Play "ping pong" within your discussion of every element. When you state the position of one side of the applicability of an element, immediately or in the next paragraph state what the other side would argue. The objectivity of an inter-office memorandum of law requires great care in pointing out differing points of view.

Of course, it is of no value to insert a counteranalysis simply for the sake of having a counteranalysis. The counter-positions must be reasonable. You can't invent arguments for the other side which the latter would be unlikely to raise on its own.

The conclusion of your memo should contain your personal opinion on which side has the better arguments. Here you predict which side would probably win if the dispute came before a court or agency. You should not provide any new arguments in the conclusion. If you want to raise new points, you should re-write the analysis and insert the new points within the discussion of the element(s) to which the new points pertain.

If during your analysis of the elements, you have already indicated your personal opinion (e.g., after the discussion of each element), then there is no need for a long repetition of your views in the conclusion. A brief summarization will suffice.