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# The Mentally Retarded Offender

by  
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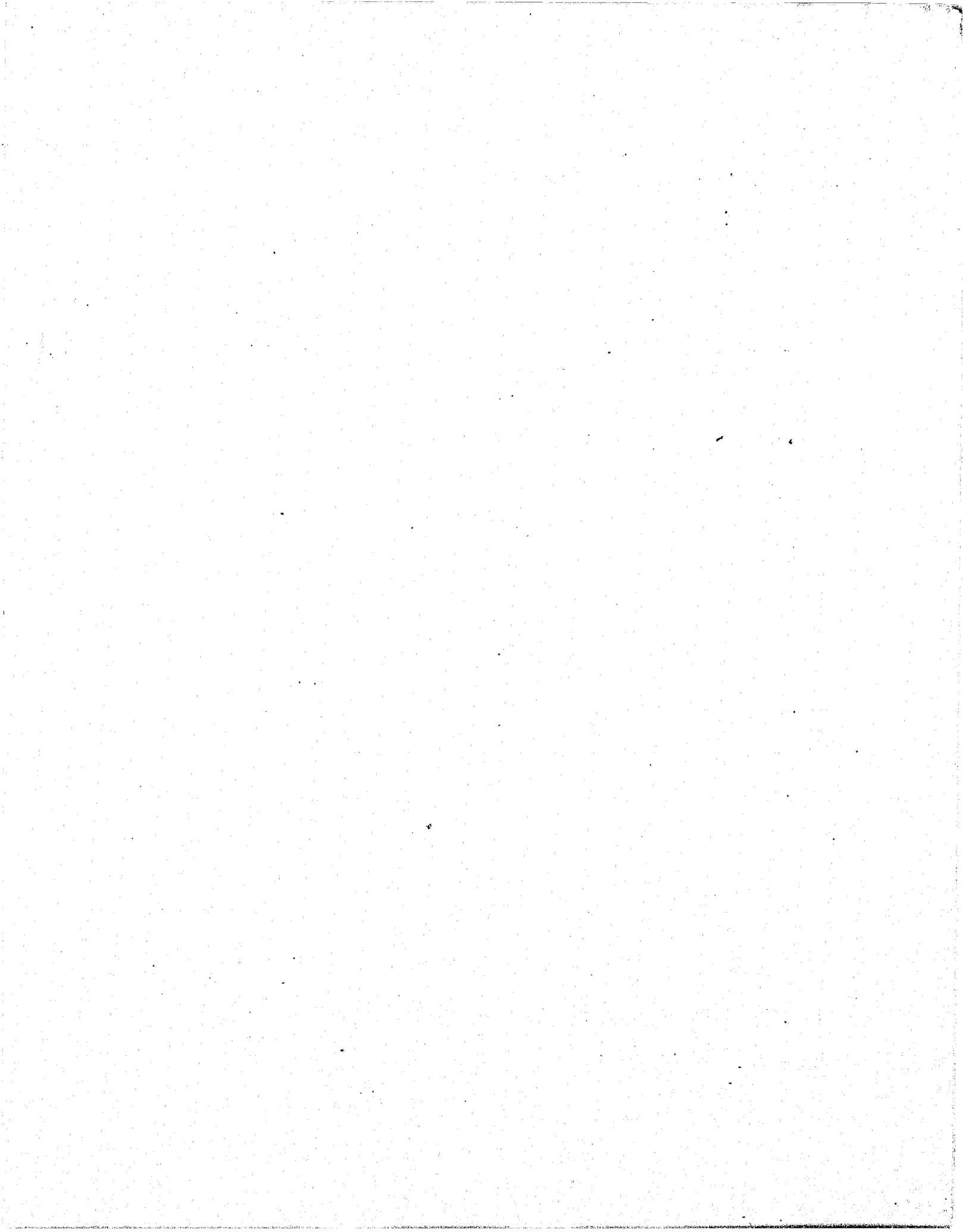
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NCJRS

MAR 7 1980

ACQUISITIONS

National Institute of Mental Health  
Center for Studies of Crime and Delinquency  
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DHEW Publication No. (ADM) 74-34  
(Formerly DHEW Publication No. (HSM) 72-9039)  
Printed 1971 – Reprinted 1973

## TABLE OF CONTENTS

<i>Section</i>	<i>Page</i>
I. INTRODUCTION -----	3
A. Early Enthusiasm (1890-1920) -----	3
B. Period of Denial and Neglect (1921-1960) -----	5
C. The Contemporary Scene (1961-) -----	8
II. BRIEF HISTORICAL OVERVIEW OF THE MAN- AGEMENT AND TREATMENT OF RETARDED OFFENDERS -----	10
III. THE DEFECTIVE DELINQUENT—CHANGING DEFINITIONS -----	18
IV. A SURVEY OF THE INSTITUTIONALIZED MEN- TALLY RETARDED OFFENDER -----	26
A. General Findings of the Major Survey -----	27
B. A Follow-up Survey of Inmates With IQ's Below 55 -----	31
C. Management Problems and Practices -----	33
1. Management Problems -----	33
2. Recommendations of Institutional Administra- tors -----	35
D. A Case Study of an Inmate Sample Analyzed for Socio-Psychological and Legal Variables -----	38
1. Results of Testing -----	39
2. Criminological Findings -----	40
3. Findings Related to the Administration of Crimi- nal Justice -----	41
V. CURRENT STATE PLANNING FOR RETARDED OFFENDERS -----	43
VI. CRITICAL ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH -----	48
A. An Overview of the Critical Issues -----	48
B. Recommendations -----	51

## I. INTRODUCTION

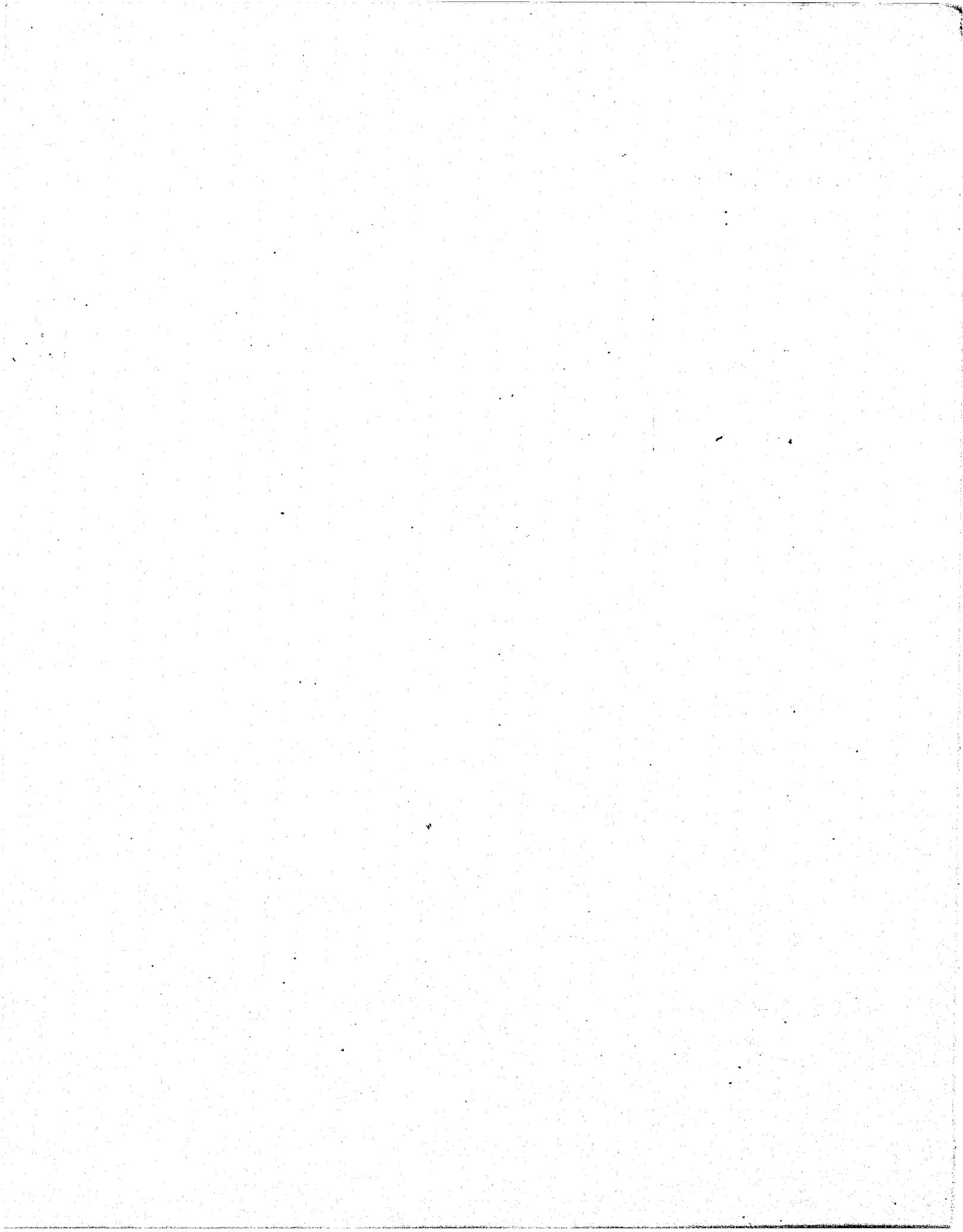
The problem of the mentally retarded offender is small in absolute numbers and large in significance. It concerns the overlap of two major aspects of the human condition, behavior and intelligence, an overlap where the unthinking, unfeeling reaction is to castigate the doubly handicapped individuals as both stupid and bad. And yet as a civilization we can be measured by our response to these unfortunates. Less humanistically but as important is that a deeper understanding of the mentally retarded offender may yield important insights into the general problem of anti-social behavior and yield new knowledge in the complex area of retardation.

Viewed historically, professional interest in, and society's responses to the mentally retarded offender develop within three periods, each manifesting a set of distinct characteristics. Assigning arbitrary labels and dates to these periods, we find a period of Early Enthusiasm: 1890-1920; a period of Denial and Neglect: 1921-1960; and The Contemporary Scene: 1961-. Generalizing rather sweepingly, interest in and responses to mentally retarded offenders proceed, during these three periods, from a dramatic emphasis on the offender as almost always feeble-minded, through a period of over-reaction entailing the relegation of mental retardation as it relates to criminal behavior to a secondary position so that it is almost totally ignored, to the very recent resurgence of attention given to the relationship between retardation and anti-social behavior. What follows is a more detailed discussion of the historical development within the context of the three periods.

### A. EARLY ENTHUSIASM: 1890-1920

During this period two phases may be distinguished. The first of these, historically, ranging from the latter part of the nineteenth century until the introduction of intelligence testing in the United States, may be termed a *pre-testing phase* (1890-1914). It is characteristic of much of this phase that mental retardation was linked to crime, with poverty, insanity and physical and moral degeneracy all in one rather vague category of deviancy. As Martha Clark, a training school worker, stated in 1894:

. . . Crime, imbecility, and insanity are hereditary diseases of the mind. . . . (All) non-organic cases of imbecility show somewhere in the



## THE MENTALLY RETARDED OFFENDER

family annals there has been opium-eating, immoral living, drunkenness, insanity, imbecility or actual crime.<sup>1</sup>

A physician at the Indiana State Prison in 1906 reported that after "eliminating an uncertain though considerable number (of inmates) who are merely dull, eccentric, or cranky" the mental defectives who remain (12% of the population) are either insane, epileptic, feeble-minded, or "dull degenerate individuals".<sup>2</sup> This same general theme is advanced by the assistant superintendent of the renowned Elmira Reformatory when he stated in 1913 that the association of crime, feeble-mindedness and degeneracy is a nearly perfect one. He said that in every case of mental deficiency in the Reformatory he was able to find conclusive proof of the "stigmata of physical degeneracy".<sup>3</sup> This conclusion regarding the existence of physical stigmata is found in many works in the early literature pointing to the causal connection between degeneracy and certain physical characteristics and crime. This connection is made in much the same way by criminologists of the Italian school (Lombroso, et al.). This school of criminological thought proposed the thesis that criminals are a distinct physical type when compared with the non-criminal population. The rejection of Lombroso's findings roughly at the turn of the century, first by Gabriel Tarde and Charles Goring, left a vacuum in the field filled only too easily by the proponents of mental deficiency as the unitary factor explaining much of criminal behavior.<sup>4</sup>

During this pre-testing phase, mental retardation seemed to be viewed as almost automatically resulting in criminal behavior, and Fernald in his now classic article "The Imbecile with Criminal Instincts" indicated that every feeble-minded person was a potential delinquent or criminal "needing only the proper environment

<sup>1</sup> "The Relation of Imbecility to Pauperism and Crime", *Arena*, 10 (Nov. 1894), p. 789.

<sup>2</sup> J. W. Mulligan, "Mental Defectives Among Prisoners", *Proceedings of the American Prison Association*, 1906, p. 198.

<sup>3</sup> F. L. Christian, "The Defective Delinquent", *Albany Medical Annals*, 34 (May 1913), p. 280.

<sup>4</sup> For a comprehensive review of Lombroso's views, see M. E. Wolfgang, "Cesare Lombroso", in H. Mannheim (ed), *Pioneers in Criminology*, Quadrangle Books, Chicago, 1960. For an excellent commentary on the point that the vacuum created by the destruction of the Lombrosian conclusions was filled by those proposing mental deficiency as the causal factor in crime and delinquency see A. E. Fink, *The Causes of Crime; Biological Theories in the United States 1800-1915*, The University of Pennsylvania Press, Philadelphia, 1938, pp. 236-237.

## INTRODUCTION

and opportunity" to overtly manifest his criminality.<sup>5</sup> This statement is representative of the feeling in the field prior to the introduction of a significant amount of scientific testing.<sup>6</sup>

With the onset of intelligence testing in the United States immediately preceding World War I, an *early testing phase* may be identified within this period. This phase is characterized by a tendency to resist the lumping of such phenomena as mental retardation, crime, insanity and degeneracy into a broad category of deviancy. During much of this phase the factor of mental defect is made to stand out as a separate and major causal variable in crime and delinquency. Beginning with Goddard's work and lasting until the 1920s, many studies were undertaken employing intelligence tests to determine the proportion of criminal and delinquent populations falling into the retarded range. The reports of these early studies claimed that as many as 100% of such offenders were defective. Goddard himself variously tested institutionalized criminal and delinquent populations and found that between 25 and 100% could be classed as feeble-minded depending upon the skill in administering the intelligence test (the better the administrator the higher the percentage according to Goddard).<sup>7</sup> The enthusiastic and extreme claims of this phase were relatively short-lived.

### B. THE PERIOD OF DENIAL AND NEGLECT: 1921-1960

Soon after psychometric testing of inmate populations began in the United States an interesting reaction set in. This reaction is manifested by a steady movement away from the position that intelligence is a significant factor in the causation of criminal and delinquent behavior with the accompanying conclusion that most offenders are retarded. The early intelligence testers were, at least partly, responsible for this development. The spotty methodologi-

<sup>5</sup> W. E. Fernald, "The Imbecile with Criminal Instincts", *The American Journal of Insanity*, 65 (April 1909), p. 747.

<sup>6</sup> See, for example, H. H. Goddard, "The Treatment of the Mental Defective Who is Also Delinquent", *The Proceedings of the National Conference of Charities and Correction*, 1911, p. 64.

<sup>7</sup> To obtain an idea of the variation in the findings of the early intelligence test studies of offender populations see R. Pinter, "One Hundred Juvenile Delinquents Tested by the Binet Scale", *Journal of Genetic Psychology*, 21 (1914), pp. 523-531; Thomas and Lond, et al., "Observations on Delinquent Mental Defectives", *Journal of Mental Science*, 71 (1925), pp. 41-47; Raphael, et al., "Socio-Psychiatric Delinquency Studies from the Recorder's Court, Detroit", *The American Journal of Psychiatry*, 3 (1924), pp. 767-778.

#### THE MENTALLY RETARDED OFFENDER

cal foundation of much of the ambitious early studies led to an almost ludicrous variety of claims as to the prevalence of mental retardation among criminal populations. In addition, the early research projects often operated without the benefit of clearly thought out concepts of retardation.

One example of the beginning of the reaction can be found in the work of Brian Donkin when he severely criticized what he termed the "Mendelians" and "Biometricians".<sup>8</sup> Donkin stated that the early testers placed too much stress on the role of heredity and failed to realize that "man's characters are both inborn and acquired . . . the product of the action and use of experience . . . on the various capacities for the development in his organism".<sup>9</sup> He went on to indicate the importance of understanding the interplay of heredity and environment and pointed out that both the Mendelians and the Biometricians allowed little or no room for correcting or reforming the defective offender. In this regard, they were seen as similar to the Lombrosians.

Perhaps the most devastating attack on the earlier testers was the classic study of Murchison in 1924 comparing the intelligence of criminals with the general adult population (as sampled through the United States Army World War I draft).<sup>10</sup> Murchison's criticisms of Goddard and the other testing pioneers centered around two points: the lack of a meaningful definition of mental retardation and an over-estimation of the level of intelligence in the general population. The results of Murchison's study can best be summarized in his own words: "The criminal need not fear from the results of direct comparison" with the non-criminal population.

Murchison's greatest achievement was the reporting of the geographic distribution of intelligence. Here for the first time an attempt was made to relate cultural and social factors with level of intelligence. In broad conclusions regarding this relationship, Murchison divided the United States into three "traditional" regions: North, South and West. He said that differential intelligence levels can best be explained in the light of cultural characteristics in each of the three regions. He concluded by saying that never again must the concept of intelligence be examined in isolation from the social environment in which it is measured.

<sup>8</sup> "Notes on Mental Defect in Criminals", *Journal of Mental Science*, 63 (1917), pp. 16-35.

<sup>9</sup> *Ibid.*, p. 26.

<sup>10</sup> C. Murchison, "American White Criminal Intelligence", *Journal of Criminal Law and Criminology*, August, 1924, pp. 289-312.

## INTRODUCTION

This theme that intelligence must be viewed in a total environmental context was taken up again and again in the years following the publication of Murchison's work. It merged with the relatively new cultural transmission or ecological school of sociology originating from the University of Chicago in the 1920s. This school had tremendous impact on the entire field of criminology through the works of Thrasher, Shaw, McKay, and Sutherland to mention only a few of its leading figures. It was inevitable that this new orientation should creep into the studies seeking out the role intelligence plays in criminal behavior, and during the 1930s a rather large number of such investigations were carried out. These studies tended to show that intelligence levels of offenders were not significantly different from those of non-offenders, holding environmental factors constant.<sup>11</sup>

An important reinforcement to the reaction of this period was Zeleny's famous 1.26 to 1 ratio of feebleminded offenders in the offender population to feebleminded persons in the general population which he proposed in 1933.<sup>12</sup> In his article setting forth this ratio Zeleny reported on the prior research in the field and attempted to control for the myriad tests employed and sampling errors. In particular, he found it necessary to try to create some order out of the chaotic lack of adequate criteria for establishing the limits of feeblemindedness. This process highlighted the total inadequacy of the methodology employed by the early testers.

What may be of crucial importance at this stage of the period of "Denial and Neglect" is that within American criminology the reaction away from assigning a causal significance to mental retardation was part of the general ecological school's extension of the theories of the French sociologist Tarde, whose famous Laws of Imitation postulated that behavior is learned in a social process whether it be criminal or non-criminal behavior. More importantly for criminology, it represented a sharp breakaway from the constitutional interpretations pioneered by Lombroso in Italy and the neo-Lombrosians on the European continent. The striking pat-

<sup>11</sup> A sampling of these studies includes: R. L. Jenkins, et al., "The Geographical Distribution of Mental Deficiency in the Chicago Area", *Journal of Psychoasthenics*, 40 (1935), pp. 291-307; H. A. Lane, "The Mental Ability of Delinquent Boys", *Journal of Juvenile Research*, 19 (1935), pp. 1-12; M. Lichenstein, et al., "Intelligence in Achievement of Children in a Delinquency Area", *Journal of Juvenile Research*, 22 (1938), pp. 1-24; D. Shakow and M. Millard, "A Psychometric Study of 150 Adult Delinquents", *Journal of Social Psychology*, 6 (1935), pp. 437-457.

<sup>12</sup> L. D. Zeleny, "Feeblemindedness in Criminal Conduct," *American Journal of Sociology*, 39 (1933), pp. 564-576.

## THE MENTALLY RETARDED OFFENDER

terns of crime and delinquency rates discovered by the ecologists and the relatively simple techniques involved, struck a responsive chord among criminologists eager to replace the brilliantly hopeful anthropological approach of the Europeans which had by the 1920s and 1930s become theoretically and methodologically discredited. The seemingly fixed nature of intelligence as a causal factor in criminal behavior as described in much of the American research during the pre-testing and early testing phases, so closely related to the constitutional orientation, ran counter to this ongoing reaction. Thus, the ecological development within sociology offered criminologists an appropriate if not readymade alternative.

In many respects the impact of the ecological school in criminology is the decisive factor in current practice and research. The anomie or opportunity structure theoretical frame of reference within which many American criminologists now operate is a logical extension of the concern expressed during the 1920s and 1930s about the deteriorated high delinquency area.<sup>13</sup> One unfortunate by-product of this development has only recently been offset. It is the almost total neglect of the intelligence factor in explaining criminality and delinquency. The general lack of concern for the retardation factor was verified through a review of twenty criminology texts commonly employed in American colleges and universities in 1960. Most of these make some mention of mental retardation, but only to the extent of indicating that it is not a significant variable, and then summarizing the older studies attempting to establish a relationship between retardation and criminal behavior, highlighting their dubious methodology and possibly erroneous conclusions.

### C. THE CONTEMPORARY SCENE: 1961-

Quite recently the issue of the relationship between mental retardation and criminal behavior has received increased attention. Significantly, much of this revived interest has been generated by the legal community and not by criminologists. In 1961, the American Bar Foundation published its landmark volume *Mentally Disabled and the Law*.<sup>14</sup> This extensive study includes one section dealing with the relationship of mental disability and the criminal

<sup>13</sup> An example of this recent anomie or opportunity structure theoretical framework see R. Cloward and L. Ohlin, *Delinquency and Opportunity*, The Free Press of Glencoe, 1960.

<sup>14</sup> F. T. Lindman and D. M. McIntyre, University of Chicago Press, 1961.

## INTRODUCTION

law. While the major emphasis of this study is directed toward the mentally ill, attention is given to the problems of the retarded or defective accused person. Issues related to the general area of criminal responsibility, a review of defective delinquency and sexual psychopath statutes point to some of the problems involved in dealing with the mentally retarded defendant in a criminal case.

Also in 1961 interest in mentally retarded offenders was greatly stimulated when the late President John F. Kennedy appointed a distinguished panel of physicians, lawyers, scientists, judges and civic leaders to review the field of mental retardation. In particular, the report of the Presidential Panel's Task Force on Law focussed attention on many crucial problem areas involving retarded persons coming into contact with the criminal law.<sup>15</sup> Some of these areas are competency to stand trial, criminal responsibility, admissibility of confessions, and the advisability of incarcerating mentally retarded offenders in penal or correctional institutions. This report has led to new research efforts encompassing retardation and antisocial behavior.<sup>16</sup>

<sup>15</sup> The President's Panel on Mental Retardation, *Report of the Task Force on Law*, United States Department of Health, Education and Welfare, Washington, D.C., 1963. For the full report of the work of the Panel, see *A National Plan to Combat Mental Retardation: Report of the President's Panel on Mental Retardation*, U. S. Government Printing Office, Washington, D.C., 1963.

<sup>16</sup> An example of such research effort is the three-year empirical study, supported by a grant from Public Health Service, being undertaken by The George Washington University Institute of Law, Psychiatry and Criminology entitled, *Mental Retardation and the Law*.

## II. BRIEF HISTORICAL OVERVIEW OF THE MANAGEMENT AND TREATMENT OF RETARDED OFFENDERS

Generally, one can say that in the United States the treatment or handling of mentally retarded offenders centers historically around attempts to provide separate or special institutional facilities. There is some evidence to indicate that the drive for such management and treatment of the offender conforms to the patterns of interest in the retarded outlined in the first part of this paper. That is, at around the turn of the century there were many proponents of such specialized treatment programs and facilities, but for a substantial period beginning with the 1920s little or nothing seems to have been done to implement the early recommendations beyond a very few pioneer facilities. It can also be stated at this point that much of the strong interest in the provision of separate institutional handling of retarded offenders seems clearly to have been related to the fear that committing retarded offenders to institutions where non-offending retardates were housed had a deleterious effect on the welfare of the non-offenders, and was thus not directed at a more therapeutic setting for the offender.

Attempts to provide specialized facilities for the retarded offender developed a strong sense of urgency after Fernald identified and described the defective delinquent in 1909.<sup>17</sup> Essentially, Fernald's concern for separate institutionalization was based upon the poor influence the defective delinquent had on the non-deficient defective. In his words:

... it is most unfortunate that this criminal type of defective ... should complicate the care and training of the ordinary defective without criminal habits or propensities. They have had a very bad influence on the ordinary defective who constitutes the legitimate problem of the school for the feeble-minded.<sup>18</sup>

It should be stressed here that Fernald was not recommending separate facilities because he was concerned for the correctional treatment of the defective delinquent. This is quite clear in his description of this type of offender when he indicated that defective delinquents "cannot be discharged because they are unsafe persons for community life."

<sup>17</sup> W. E. Fernald, *loc. cit.*

<sup>18</sup> *Ibid.*, p. 749.

## HISTORICAL OVERVIEW OF MANAGEMENT AND TREATMENT

Fernald was by no means the first to advocate specialized institutionalization. Clark, in 1894, stated that only by special segregation of the feeble-minded offender could society be free from the threat posed by him. In her colorful language, Clark recommended that those children "who in early life portrayed . . . the viciousness and . . . (who were) even slightly below par intellectually should be kept from society as we would keep poison from food."<sup>19</sup>

In 1906 J. W. Mulligan, a physician at the Indiana State Prison, reported on problems encountered in handling the defective inmates in the usual prison setting. He complained that they required much different treatment from the usual offender and were constantly in trouble with prison authorities. He recommended as an ideal solution the development of separate institutions, but indicated that in practice special segregated sections of existing penal facilities should be organized. As in the case of Clark before him, and others following his statement, Mulligan was not concerned with the establishment of separate units or facilities in order that specialized treatment programs might be developed for the mentally retarded offender. Rather, he thought that these segregated units should be custodial in nature and that commitment to them be made for life.<sup>20</sup>

Following Fernald's pioneering statements, Goddard in 1912 made a strong case for special and separate handling of the feeble-minded delinquent. Attacking the tendency he saw in society to blame the school and church as well as other institutions for the fact that there are large numbers of mentally retarded offenders (attacking them on the basis that feeble-mindedness is caused by heredity or accident rather than by socio-cultural variables), he stressed that penal institutions were inappropriate for their care. He called on the American Prison Association to recommend the removal of these inmates from the prisons to more suitable environments. Based upon his belief that almost all (at least two-thirds) of the feeble-minded delinquents come by their defect through heredity, Goddard indicated that the only practicable solution to the problem was a twofold one: sterilization and long-term "colonization and segregation".<sup>21</sup>

As a result of the contributions of Fernald and others, some

<sup>19</sup> Martha Clark, *op. cit.*, p. 791.

<sup>20</sup> J. W. Mulligan, *loc. cit.*

<sup>21</sup> H. H. Goddard, "Feeble-mindedness and Crime", *Proceedings of the American Prison Association*, 1912, pp. 353-357.

## THE MENTALLY RETARDED OFFENDER

early steps were taken to provide separate institutions for the defective delinquent. Davies reported on the establishment of the Massachusetts State Farm (Bridgewater) and the Napanoch (New York) institutions for defective delinquents.<sup>22</sup> The former was authorized by statute in 1911 although the facility was not opened until 1922. This institution provided for treatment in the form of education, recreation and industrial training within the framework of a rigid discipline. Davies reports that by 1928 a total of 127 patients had been paroled from this facility with only 28 revocations. While the defectives had proved to be almost unmanageable in ordinary mental deficiency schools, there were no serious behavioral problems reported at Bridgewater.

The New York or Napanoch plan was established in 1921 (thus being the first separate facility exclusively for the defective delinquent in the United States) and provided for the indefinite commitment of male mental defective delinquents over sixteen years of age. Parole under the Napanoch plan was possible as was indefinite commitment. The institution at Napanoch was designed to provide constructive training with industrial education and farming activities being the cornerstones. Davies reports excellent results with about 70% success for those paroled.

One still, however, gains the impression that the real work of these early attempts at special handling was viewed at the time as mainly beneficial for the non-delinquent mental defective. The removal of the defective delinquent from the schools for the feeble-minded reduced behavioral problems significantly at these institutions. As Davies put it, "what a boon the complete separation of the defective delinquents . . . has been to the superintendents of the mental deficiency institutions. . . ." <sup>23</sup> Later, he said that the policy of complete separation,

. . . instead of condemning all mental defectives and treating them uniformly as anti-social beings, demanding lifelong custodial and treatment care, seeks out that small proportion . . . who show serious delinquent tendencies, and gives them such care. Relieved of the stigma caused by the small group, the rest of the mentally deficient can be seen in the true light as relatively docile and amiable creatures.<sup>24</sup>

At this point, it is interesting to note the somewhat surprising development beginning almost from the moment that the Napanoch and Massachusetts facilities began operating. This develop-

<sup>22</sup> S. P. Davies, *Social Control of the Mentally Deficient*, Crowell, New York, 1939.

<sup>23</sup> *Ibid.*, p. 136.

<sup>24</sup> *Ibid.*, p. 144.

## HISTORICAL OVERVIEW OF MANAGEMENT AND TREATMENT

ment continued until the 1950s. During this time period there is an increasingly loud cry for separate facilities and basically custodial care for the defective delinquent. What is surprising in this development is that seemingly little progress had been made since Fernald's urging and the establishment of the pioneering institutions in New York and Massachusetts in the early 1920s. At that time it appeared that a breakthrough had occurred in thinking and operating regarding this particular group of offenders, a breakthrough that was very quickly slowed and very nearly stopped.

As an example, in dealing with the Illinois situation in 1940, Hart indicated that defective delinquents were transferred from the Dixon State Hospital to the Illinois Security Hospital, this practice having begun in 1933.<sup>25</sup> In discussing the criteria for such transfers, Hart pointed to such factors as attempted escapes and uncooperative or "combative" behavior. We can see that the separate institutionalization at the Illinois Security Hospital is still, in 1940, looked upon in terms of maintaining security through more effective custodial arrangements. Also, transfers to the Illinois Security Hospital did not, in effect, result in separate institutionalization vis-a-vis other mentally abnormal offenders.

In 1941, Dybwad discussed the problems encountered in the institutional placement of high-grade mentally defective delinquents in the course of a report of research undertaken at the Warwick (New York) Training School.<sup>26</sup> In particular, he was concerned about the deleterious effects produced by shifting the borderline case between various institutions. Use of the regular training school for treating these cases was deplored and Dybwad strongly urged the establishment of completely separate facilities. Again, one must see from his work the theme, previously noted, that the incarceration of mentally retarded offenders in the regular training schools for the retarded was an unfortunate situation for the non-delinquent retardate.

In an important study of the post-release records of patients at the Wassaic (New York) State School who were determined to be defective delinquents, Pense in 1943 pointed out several problems in handling this type of patient in the regular state school, two of

<sup>25</sup> B. D. Hart, "The Defective Delinquent", *The American Journal of Mental Deficiency*, 45 (1940), pp. 84-88.

<sup>26</sup> G. Dybwad, "The Problem of Institutional Placement for High-Grade Mentally Defective Delinquents", *American Journal of Mental Deficiency*, 45 (1941), pp. 391-400.

#### THE MENTALLY RETARDED OFFENDER

which are important here.<sup>27</sup> First, the defective delinquent was described as generally a severe behavioral problem in the state school setting, disrupting the orderly functioning of programs designed primarily for non-delinquents. The second major problem concerns the area of release procedures. Pense reported that almost three-fourths of the delinquent defectives were released or paroled from the school against the advice of the staff. Appropriate mechanisms were not available for insuring that dangerous cases were not placed in the community until the danger had been removed which might involve commitment for life. Pense sent questionnaires to other states in an attempt to sample opinions on these issues. He reported that others agreed that the state school was a poor choice for the incarceration of defective delinquents and that special statutes ought to be enacted setting up appropriate facilities with adequate safeguards for society in the segregation of these dangerous elements.

Other investigators made similar recommendations. Lurie, finding the defective delinquent to be a distinct clinical entity, recommended his segregation from non-delinquent defectives; the Philadelphia Municipal Court, in 1944, scored existing procedures and facilities for dealing with defective delinquents and recommended various innovations designed to more adequately protect society and provide for the separate care of retarded delinquents; Westwell urged a tri-state regional institution for the care of defective delinquents, especially since there seemed to be too few cases of defective delinquents in any one state to justify the establishment of a separate facility.<sup>28</sup> From these sources and others, one can see that during the 1940s and, at least partly into the 1950s, a great concern in the United States among those dealing with the defective delinquent was that of urging specialized and separate institutional facilities. This movement also seems to be couched in the security or custodial framework rather than a therapeutic one. It thus differs only slightly from the drive for such facilities and care that began at the turn of the century.

<sup>27</sup> A. W. Pense, "Problem of the Male Defective Delinquent in the State School", *American Journal of Mental Deficiency*, 47 (1943), pp. 467-472.

<sup>28</sup> L. A. Lurie, et al, "The Defective Delinquent", *American Journal of Orthopsychiatry*, 14 (1944), p. 103; J. O. Reinemann, "The Problem of the Feebleminded and the Defective Delinquent Child in Philadelphia", *American Journal of Mental Deficiency*, 49 (1945), pp. 487-497; A. E. Westwell, "The Defective Delinquent", *American Journal of Mental Deficiency*, 56 (1951), pp. 283-289.

## HISTORICAL OVERVIEW OF MANAGEMENT AND TREATMENT

Recent developments in the handling of defective delinquent offenders include the Patuxent Institution located in Maryland, which by statute is designed to treat the offender who "constitutes a danger to society" and who is either emotionally disturbed and/or mentally retarded.<sup>29</sup> This special institution, while rather unique on the American scene, by combining emotionally disturbed and/or mentally retarded offenders into the defective delinquency category may be viewed as a return to the much earlier tendency in criminology to categorize a wide variety of deviants into one legally defined administrative entity. Other recent developments in this area include defective delinquency statutes in other jurisdictions as well as sexual psychopathy laws. However, many of these do not provide for the separate handling of such offenders.

Turning, for the moment, to the international scene in the handling and treatment of defective delinquents, it is interesting to note that in contrast to the United States reports from England and Sweden would seem to indicate that personnel there during the first half of this century were more concerned with providing a therapeutic or treatment orientation in the institutionalization of defective delinquents. Also, they were apparently much less concerned about the effects of combining defective delinquents with non-delinquent defectives. Morris, for example, reporting on the situation in Norfolk County (England) stated that in 1948 the resocialization methods commonly employed were inadequate for the return of defective delinquents to the community.<sup>30</sup> He urged the establishment of more psychiatric services especially for the family of such delinquents. In addition, he recommended that a hostel system be instituted so that a half-way house organization could provide a better way to release delinquents to the community. It should be noted here that therapeutic endeavors were well under way in Norfolk County at the time of this article, and that Morris was concerned with intensifying them.

Foale reported on the experiences of handling almost 300 defective delinquents at the Lennox Castle (England) Institution for

<sup>29</sup> The statutory authority for the Patuxent Institution is found in Article 31B, *The Annotated Code of the Public General Laws of Maryland*, section 5.

<sup>30</sup> J. V. Morris, "Delinquent Defectives: A Group Study", *American Journal of Mental Deficiency*, 52 (1948), pp. 345-349. For a discussion by Morris of a special maximum security unit for the housing of delinquent defectives see his article, "The Special Unit for Delinquent Defectives", in *American Journal of Mental Deficiency*, 62 (1957), pp. 432-435.

## HISTORICAL OVERVIEW OF MANAGEMENT AND TREATMENT

Mental Defectives between 1942 and 1950.<sup>31</sup> In this article she presented the central theme of the institution as the provision for the defective delinquent's need for expression and understanding. All personnel at the Institution were selected with this frame of reference in mind. Effective retraining, according to Foale, meant that the delinquent comes to realize that he can be accepted as an individual and the institution bends all effort in this direction.

The Swedish technique for handling what would probably be called defective delinquents is reported by Rylander.<sup>32</sup> The penal code as revised in 1945 essentially removed this offender from criminal responsibility if he was diagnosed as an imbecile (defined as having an upper limit between I.Q. 65-70), and also upon the consideration of certain personality and social factors. This imbecile is generally handled after an offense in much the same way as a psychotic (i.e., he is sent to a general or security hospital for treatment for a stated maximum of time). Release on parole may be granted by a board of mixed lay and psychiatric personnel. Also in Sweden, the juvenile imbecilic offender is generally handled by locally organized child welfare committees which can recommend probation, home placement or commitment to a special school.

It would seem that the English and Swedish ideas of "retraining" and "resocialization" motivating workers in the field in the post-World War II period have had little in common with the American emphasis on security and custodial care seemingly desired as much for the benefit of the non-delinquent defective and the administrator of institutions as for the welfare of the defective delinquent. We know, from the survey of penal and correctional institutions which will be discussed in some detail later, that most institutions in this country are unable or unwilling to provide for the special handling of retarded offenders, either in terms of treatment programs or segregated facilities. In fact, over 90% of all institutions responding to the survey stated that they did not provide special separate facilities for retarded offenders, and over half (56%) were not able to provide any specialized training or therapy services for their retarded inmates.

<sup>31</sup> M. Foale, "An Approach to the Stabilization of Male Juvenile Mental Defective Delinquents", *American Journal of Mental Deficiency*, 57 (1952), pp. 116-122.

<sup>32</sup> G. Rylander, "Treatment of Mentally Abnormally Offenders in Sweden", *British Journal of Delinquency*, 5-6 (1954), pp. 262-268.

#### THE MENTALLY RETARDED OFFENDER

Certainly significant attention to the relationship between mental retardation and criminal behavior and the concomitant issue of the treatment and handling of mentally retarded offenders has, until recently, been characterized by a distinct lack of scientific inquiry, and a necessary corollary has been a glaring deficiency in the development of new treatment and handling strategies.

### III. THE DEFECTIVE DELINQUENT— CHANGING DEFINITIONS

Crucial to any discussion of the mentally retarded offender is the concept of defective delinquency. This descriptive term has been employed with varying degrees of vagueness and precision throughout the three historical periods discussed earlier in this paper. It is necessary here to present a representative sampling of definitions since a significant portion of the overall handling of retarded offenders today is carried out under the auspices of defective delinquency statutes.

As mentioned earlier, Lurie and his associates announced in 1944 that a defective delinquent was a distinct clinical entity.<sup>33</sup> According to them, the defective delinquent can be shown to have certain basic pathological characteristics. In their words,

[t]he mental retardation of the defective delinquent is almost always on a hereditary basis. The parents and siblings in the majority of the cases . . . were feeble-minded. A very large incidence of psychoneurotic and psychiatric conditions were also present in the members of the family. . . .

\* \* \* \* \*

The defective delinquent, as a rule, is suspicious, phlegmatic, degressed, egocentric, and selfish. He has a violent temper, is obstinate and unimpressionable, and is emotionally unstable and immature. The type of child is usually imitative, a definite follower, and lacking in qualities of leadership.

. . . He is unable to adjust no matter where he is placed. He is undisciplined, underhanded, untruthful and resentful of authority. His stubbornness is outstanding and he shows no reasoning ability. This type of child is always on the defensive and shows marked feelings of insecurity and inferiority. He feels the world has wronged him, hence his feelings of hostility and acts of aggression toward his environment. His conduct is non-constructive and ineffectual, and the patterns of his behavior definitely anti-social and paranoiac. . . .<sup>34</sup>

Other definitions of defective delinquency are not nearly as broad-gauged nor as certain that defective delinquency is a clearly defined clinical phenomenon. Much earlier definitions than that of Lurie and his associates include a substantial amount of moral content. Fernald, giving one of the earliest definitions, stated in 1909 that defective delinquents are

. . . morally insensible. As a rule, they are able to carefully differentiate in the abstract what is right and what is wrong as applied to their

<sup>33</sup> "The Defective Delinquent".

<sup>34</sup> *Ibid.*, p. 102.

## THE DEFECTIVE DELINQUENT—CHANGING DEFINITIONS

personal environment, but in practice their ability to make these distinctions bears no relation to their actions and conduct.

They seldom show embarrassment or shame when detected in wrongdoing. I have never known an imbecile to exhibit traits of remorse. Correction or punishment is of little effect.

They revel in mawkish sentiment. They are susceptible to the emotional phase of religious expression. They are very apt to choose intimate companions very much younger than themselves, or persons very much beneath them socially or below them in this scale of intelligence. They are generally cowardly in the presence of actual physical danger. They are very susceptible to suggestion and are easily led.<sup>35</sup>

Fernald also stated that in every case of an imbecile with a court record, a long history of prior encounters with the criminal law will be observed.

In 1913, F. L. Christian described the defective delinquent he encountered at the Elmira Reformatory. He claimed that such an offender is

[m]entally . . . usually dull, seems preoccupied, and comprehends slowly. He has not been accustomed to continuous effort, and so has not gained a knowledge of any useful occupation. . . . Their immediate desires must always be satisfied, and they will go to extremes, regardless of known consequences, in order to obtain the moment's desire. . . . They are selfish, vain, and cruel, and act upon neither reason nor judgement, but principally upon impulses. Their mental processes work slowly, and they detest and will avoid, when possible, any sustained mental effort. They are vindictive and revengeful, and are always eager to make a personal attack to right any imagined wrong. . . .

Few are good physical specimens, and practically all have the stigmata of physical degeneracy. They have little or no conception of morals, and will indulge in falsehoods and deceit when the truth would have served better. . . . While they are frequently able to differentiate between right and wrong as an abstract proposition, they seem utterly unable to follow the principles in their conduct when at large. . . . The future holds no great concern for these defectives; each day is a day unto itself. . . . They are self-centered and some of them are immeasurably egotistic.<sup>36</sup>

Not all of the early concepts of defective delinquency presented this offender in one clinical category. For example, V. C. Branham reporting on a study of 135 cases at the Napanoch Institution described "four well-defined groups of defective delinquents, classified on the basis of prognosis and treatment. . . ." <sup>37</sup> A brief summary of these four types are as follows: (1) "community

<sup>35</sup> W. E. Fernald, *op. cit.*, p. 733.

<sup>36</sup> "The Defective Delinquent," *op. cit.*, pp. 279-280.

<sup>37</sup> V. C. Branham, "The Classification and Treatment of the Defective Delinquent", *The Journal of Criminal Law and Criminology*, 1926, p. 201.

### THE MENTALLY RETARDED OFFENDER

conscious type (social)." This is described by Branham as made up of two sub-types one, being the good conduct group which is able to adjust socially in the community, with another of this good conduct group being able to adjust satisfactorily in an institutional setting only. A second sub-group of this basic type of defective delinquent is called the unstable group which includes those offenders whose psychopathic traits are not well-developed. (2) "The community-indifferent type (asocial)." This type of defective delinquent is also subdivided into two categories, one of which is termed the unplanned or disorderly individual whose conduct is described as childish. This offender is in the low-grade feeble-minded group. The second sub-group is one described as being highly suggestible and easily led particularly in the area of sex offenses. This offender exhibits a considerable amount of passivity and is extremely low in intelligence. (3) "Community-antagonistic type (anti-social)." The two-sub-groups of this type are the offender with marked aggressive resentment against authority who engaged in a good deal of assaultive and theft type of behavior; he also is often seen to be in a pre-paranoid state. The second group is made up of those whose resentment against authority is not as marked and includes those who are given to petty thievery and some vandalism. (4) "The community-irresponsible" type which is made up of four sub-groups including those who are drug users or consume alcohol to excess; the psychopathic group; the episodic group—those subject to marked emotional upsets, epileptics, and those exhibiting transient delusional states; and the actively psychotic group.<sup>38</sup>

What is significant to note at this point is that subsequent attempts at defining defective delinquency seem not to have been based upon either refinements of Branham's classification scheme or on new endeavors at detailed descriptions of various sub-types of defective delinquents. What seems to have occurred is that students of the problem report that it is an almost impossible task to arrive at meaningful definitions; or that the defective delinquent is generally to be considered as a psychopath and in so doing the definitional difficulty is handled by assigning practically all offenders of low intelligence to this ill-defined category—a practice in keeping with the earliest attempts at definitions. As an example of the latter approach, F. O. Butler's presidential address to the American Association on Mental Deficiency in 1942 diagnosed the defective delinquent as

<sup>38</sup> For a concise outline of this classification scheme see *ibid.*, p. 205.

## THE DEFECTIVE DELINQUENT—CHANGING DEFINITIONS

. . . an individual of subnormal intelligence, who has decided antisocial tendencies as well as definite psychopathic attributes—in other words, he is subnormal, criminalistic and psychopathic. He must be all of these to qualify as a defective delinquent.<sup>39</sup>

Commenting on the tendency to categorize all defective delinquents as psychopathic, A. E. Westwell, in 1951, stated that

. . . It is not surprising to find the Defective Delinquent tossed about like the "hot potato" that he is, among the various mental and penal institution groups, often emerging with the impressive but vague identification tag which reads "psychopathic personality."<sup>40</sup>

After saying this, however, Westwell proceeds to a definition of defective delinquency which is not far removed from those who apply the psychopathy label. He refers to this offender in the following way:

The Defective Delinquent . . . converts his impulses and desires of the moment into action, regardless of the consequences. Remorse is unknown to him.<sup>41</sup>

In 1955, P. W. Bowman reported on defective delinquency in the state of Maine, and in his comments he seemed to be attempting to eschew any attempt at a specific definition of the term defective delinquency. He stated that "defective delinquency . . . would mean behavior disorders in persons with impaired intellectual potential or impaired functions who have come into conflict with the law and they should be treated accordingly."<sup>42</sup> Thus, he would seem to be in agreement with much of what Butler said about the defective delinquent, with the significant exception, however, that he [Bowman] did not consider the defective delinquent to be *necessarily* psychopathic. In an address delivered at the National Institute on Crime and Delinquency in Seattle, on July 24, 1962, C. H. Martin stated rather clearly that

it is obvious that the Defective Delinquent is not a single clinical entity. The taproots of his behavior are numerous and deepseated and the overt results are varied and in individual cases, often unpredictable. The delinquent offenses of mental retardates, therefore, are usually the results of interactions of many factors. Consciousness of being different in

<sup>39</sup> F. O. Butler, "Presidential Address to the American Association on Mental Deficiency", May 1942, p. 8.

<sup>40</sup> A. E. Westwell, "The Defective Delinquent", *American Journal of Mental Deficiency*, 56 (Oct. 1951), p. 283.

<sup>41</sup> *Ibid.*, p. 285.

<sup>42</sup> P. W. Bowman, "Defective Delinquency in Maine", *Journal of the Maine Medical Association*, 46 (Oct. 1955).

## THE MENTALLY RETARDED OFFENDER

some way may, in itself, be responsible for feelings of inferiority, frustration and resentment. These forces seem to be at work in the mildly retarded particularly, for they are capable of realizing their differences and become frustrated by these differences in relation to their normal peers. Such awareness may stimulate these persons to kick over the traces and commit acts of violent aggressiveness and destructiveness which often are directed unconsciously toward the assertion of self and the gaining of peer attention and prestige that they crave.<sup>43</sup>

Martin goes on to indicate that the defective delinquent is subject to all the frustration-producing situations faced by the general society, although in his case frustration comes about in a world he does not fully comprehend, nor can he often adequately handle frustration because of his intellectual deficit. Thus, according to Martin, such persons often are impulsive and their delinquency frequently is a result of attempts to "strike back."

The problem of clinical definitions of defective delinquency is necessarily related to the issue of legal control of such offenders. There are, today, statutory definitions of defective delinquents and institutions authorized and designed to deal with such offenders. Before examining a few of these, it is instructive to note what C. S. Chandler and his associates found in a 1958 survey of the arraignment, examination and confinement of defective delinquents in the United States.<sup>44</sup> They state in the article that

it comes as something of a surprise . . . to learn that there is no agreement as to a definition or description of the defective delinquent. A perusal of the literature indicates that little or no agreement regarding a definition and interviews with persons in the field confirm this intention. . . . Much of the controversy regarding treatment, place of confinement, etc. has resulted from this confusion.<sup>45</sup>

They go on to state that given the absence of a clinical definition, their survey was basically designed to determine whether there exists any "legal basis . . . for defining the defective delinquent, confining him, etc. If such a legal basis did exist, it would be easier to isolate his clinical symptoms and then try to treat him in the light of present-day knowledge."<sup>46</sup>

<sup>43</sup> C. H. Martin, "The Defective Delinquent", photostat copy of paper delivered at the meeting of the National Institute on Crime and Delinquency, Seattle, July 24, 1962, p. 3.

<sup>44</sup> C. S. Chandler, et al., "Arraignment, Examination and Confinement of the Mentally Defective Delinquent", *American Journal of Mental Deficiency*, 63 (Jan. 1957), pp. 723-729.

<sup>45</sup> *Ibid.*, p. 723.

<sup>46</sup> *Ibid.*, p. 724.

#### THE DEFECTIVE DELINQUENT—CHANGING DEFINITIONS

As a result of the replies to their survey questionnaire, the authors concluded that very few states had made any attempt at the passage of specific statutes dealing with this offender, and that "even among those [states] who do, there is a difference of opinion as to whether the defective delinquent is chronologically a minor or an adult. Questions regarding the upper and lower limits of intellectual attainment have not been adequately resolved. Moreover the legal responsibilities of the adult defective who has committed criminal acts have not been clearly determined."<sup>47</sup>

Current statutory definitions relating to defective delinquency do not significantly contribute to increased precision in this definitional area. Many of the legally formulated definitions relate primarily to sexual psychopath statutes. For example, in California a sexual psychopath is defined as "any person who is affected, in a disposing way to the commission of sexual offenses, and in a degree constituting him a menace to the health or safety of others, with any of the following conditions: (a) mental disease or disorder, (b) psychopathic personality, (c) marked departures from normal mentality."<sup>48</sup>

In Vermont, the statute defines a "psychopathic personality" to "mean those persons who by a habitual course of misconduct in sexual matters have evidenced an utter lack of power to control their sexual impulse, and who, as a result, are likely to attack or otherwise inflict injury, pain or other evil on the object of their uncontrolled desire."<sup>49</sup> This statute is applied to mentally defective delinquents who are mentally deficient or psychopathic.

There are, however, statutes referring to defective delinquents which do not confine themselves to sexual offenders. For example, Ohio refers to psychopathic offenders who are defined as persons who exhibit psychopathic personalities. Such an offender is defined by statute as one who manifests "criminal tendencies and who by reason thereof is a menace to the public. Psychopathic personality is evidenced by such traits or characteristics inconsistent with the age of such person, as emotional immaturity and instability, impulsive, irresponsible, reckless, and unruly acts, excessively self-centered activities, deficient power of self-discipline, lack of normal capacity to learn from experience, marked deficiency of moral

<sup>47</sup> *Ibid.*, p. 728.

<sup>48</sup> For a concise description of the California definition, see F. T. Lindman and D. M. McIntyre, *op. cit.*, p. 314.

<sup>49</sup> *Ibid.*, p. 317.

## THE MENTALLY RETARDED OFFENDER

sense or control”<sup>50</sup> The statute has been applied to mentally deficient offenders since these do exhibit “traits or characteristics inconsistent with the age of such person,” and also show a lack of normal capacity to learn from experience. In Oregon, the statute is applied to persons convicted of rape, murder or manslaughter or other crimes at the discretion of the court, providing the court finds that such person “has mental or emotional disturbance, deficiency or condition predisposing him to the commission of a crime to a degree rendering the person a menace to the safety of others.”<sup>51</sup>

The approach taken by Maryland differs significantly from those of other states mentioned in that a specialized institution for the defective delinquent—Patuxent Institution—was established after the enactment of the so-called “defective delinquency statute” in 1951. There is possible under this statute an indeterminate commitment of convicted adult offenders (convicted of a variety of specified offenses) in this institution. A defective delinquent is defined by the statute as

... An individual who, by the demonstration of persistent aggravated anti-social or criminal behavior, evidences a propensity toward criminal activity, and who is found to have either such intellectual deficiency or emotional unbalance, or both, as to clearly demonstrate an actual danger to society so as to require such confinement and treatment, when appropriate, as may make it reasonably safe for society to terminate the confinement and treatment.<sup>52</sup>

It is interesting to note that this specialized institution, which is unique on the American scene, receives offenders for confinement and treatment who clinically may be subdivided into those who are mentally retarded and those who tend to be sociopathic (anti-social type). The staff of the Institution has published numerous articles describing the operation of the Institution as well as defining the clinical characteristics of the inmates. The definition as derived from most of these articles is clearly one of sociopathic personality disturbance (psychopath under the older nomenclature), and no clear distinction was made in the early articles between inmates who are primarily “emotionally unbalanced” and those who are mentally retarded. From these earlier articles, one might say that one of the most recent innovations in the treatment

<sup>50</sup> *Loc. cit.*

<sup>51</sup> *Loc. cit.*

<sup>52</sup> Article 31D, *The Annotated Code of the Public General Laws of Maryland*, §5.

#### THE DEFECTIVE DELINQUENT—CHANGING DEFINITIONS

of the defective delinquent represented a return to the much earlier tendency in the field to categorize a wide variety of deviants into one diagnostic entity. More recently, however, the staff of the institution has focussed its attention both for research and treatment purposes on the mentally retarded offender.<sup>53</sup>

<sup>53</sup> For some of the earlier articles by the Patuxent staff, see H. M. Boslow, et al., "The Maryland Defective Delinquent Law", *British Journal of Delinquency*, 10 (1959), p. 7; H. M. Boslow and S. H. Manne, "Mental Health Approaches to the Treatment of the Adult Offender", an address by H. M. Boslow to the Institute on Crime and Delinquency, Boston, June 23, 1964; H. M. Boslow, et al., "Methods and Experiences in Group Treatment of Defective Delinquents in Maryland", *Journal of Social Therapy*, 7 (1961), p. 69. A more recent paper dealing with the mentally retarded segment of the population is H. M. Boslow and A. Kandel, "Psychiatric Aspects of Dangerous Behavior: The Retarded Offender", *American Journal of Psychiatry*, 122 (1965), pp. 646-652.

#### IV. A SURVEY OF THE INSTITUTIONALIZED MENTALLY RETARDED OFFENDER

The review of the literature upon which the comments found in the first two parts of this paper were based revealed that no comprehensive data are currently available regarding the numbers, problems and treatment of the retarded offender incarcerated in penal and correctional institutions in the United States. Consequently, the authors set out to systematically survey a portion of the mentally retarded offender population beginning in December of 1963. For this survey, all penal and correctional institutions in the United States were asked to supply information about the IQ distribution of their populations, types of offenses committed by inmates with low reported intelligence, treatment programs available, and management problems and practices related to retarded offenders. The penal and correctional institutions surveyed did not include the approximately 3,000 local jails and workhouses where short-term offenders are confined. The combined populations of the institutions surveyed totalled 217,280 as of December 31, 1963. The great majority of these inmates were serving sentences of one year or longer.

A second phase of the research, dealing with the administration of criminal justice in cases involving retarded offenders and non-retarded persons, was carried out in the summer of 1966 under the auspices of The George Washington University Institute of Law, Psychiatry and Criminology. This phase will be discussed later in this paper.

Completed questionnaires were received from over 80% of the institutions surveyed, representing some 200,000 incarcerated offenders. I.Q. scores were reported on 90,477 of these inmates. While findings relative to the proportion of retardates in the total prison population of the United States must be qualified by the fact that the scores received represented a non-random sampling of the total incarcerated population, an analysis of incomplete questionnaires together with instances in which no replies were obtained revealed no biasing factors such as type of institution for which no I.Q. data were available, geographical location of such institutions, etc.

In generalizing from the data obtained, one must be aware of the problems involved in the determination of operational criteria

## SURVEY OF THE INSTITUTIONALIZED OFFENDER

of mental retardation. The survey results depended upon intelligence testing administered by the responding institutions as the only readily available basis for making decisions regarding retardation on a nation-wide scale. As such, the results, therefore, must be examined in the light of the fact that various correctional and penal institutions throughout the country employ different testing instruments, and dissimilarities in testing situations must be taken into account. Given these limitations, it was decided to operationally define mental retardation for the survey as measured intelligence falling below I.Q. 70. It should be noted that the I.Q. 70 cut-off point is in accord with the criteria established by the American Association on Mental Deficiency.<sup>54</sup> Other elements of the Association's criteria, namely the impairment in adaptive behavior, were, of necessity, impossible to examine given the scope of the survey. From a general perspective, impairment in adaptive behavior is implied by the very fact of institutionalization for anti-social behavior. Adaptive behavior is being more carefully examined for a sampling of incarcerated offenders in the second phase of the study which will be mentioned later in this paper.

### A. GENERAL FINDINGS OF THE MAJOR SURVEY

Summarized below are some of the more significant general findings from the survey:

1. Based on over 90,000 cases of reported I.Q. scores, a mean I.Q. of 93.2 with a standard deviation of 17.1 was computed. Using I.Q. 69 as the upper limit of the mentally retarded range, it was found that about 9.5% of the reported cases could be classified as mentally retarded. If we were to make some tentative generalizations about all incarcerated adult offenders in the United States, we would estimate that there are currently somewhat over 20,000 inmates in penal and correctional institutions (excluding local jails and workhouses) with I.Q. scores below 70.

Further, it was determined that approximately 1.6% of the surveyed population (1,454 inmates) had I.Q. scores below 55. Making another tentative estimation, this finding would indicate that over 3,300 inmates in our correctional and penal institutions fall below I.Q. 55, and may be moderately to more severely retarded (based upon the AAMD classification scheme).

<sup>54</sup> "A Manual on Terminology and Classification in Mental Retardation", *American Journal of Mental Deficiency*, monograph supplement, Sept. 1959, pp. 58-59.

## THE MENTALLY RETARDED OFFENDER

In terms of the percentage of inmates found to fall within the retarded range, the survey did not reveal a return to some of the more outlandish conclusions of the early testing phase discussed at the beginning of this paper. However, in terms of absolute numbers, the problem of the incarceration of mentally retarded offenders may be seen as a significant one with 20,000 possible retardates serving sentences in the United States as criminally responsible adults.

An intensive follow-up of a sample by our own psychologist indicates that 75% of those selected by the institutional criteria of mental retardation fall below I.Q. 70 on careful retesting. This followup is discussed more fully in a later section.

2. The range of reported I.Q. scores for the 90,477 inmates was determined to be from a low of 17 to a high of 145. However, as mentioned earlier, one must reckon with the variety of instruments used to measure intelligence, personnel employed to administer these tests, etc. For example, we found a rather bewildering array of tests used by the institutions to measure intelligence. It must be pointed out, though, that the most frequently employed tests (used in about three-fourths of the institutions reporting) were the Wechsler Intelligence Scale for Children and the Wechsler Adult Intelligence Scale. Although about 75% of the institutions reported that intelligence tests were administered by psychologists, it was found that other institutions used social workers, a few reported the use of classification officers, and five institutions reported using inmates in the administration of testing under the supervision of a psychologist.

3. The proportion of incarcerated offenders falling below I.Q. 70 varies rather sharply as one controls for geographical region. For instance, the highest percentage of retarded (again using reported I.Q. scores of 69 as the upper limit) among incarcerated adult offenders was found to be 24.3 in the states designated as East South Central (including Kentucky, Tennessee, Alabama and Mississippi). Following closely behind this region was the West South Central area with a percentage of I.Q.s below 70 of 20.6 (this region includes Arkansas, Louisiana, Oklahoma and Texas). The lowest percentage of retarded offenders among incarcerated criminal adults was found to obtain in the Mountain States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah and Nevada) where only 2.6% had I.Q.s below 70. The next lowest percentage was found to obtain among the Pacific States (Washington, Oregon, California, Alaska and Hawaii) with a percentage of 5.4.

## SURVEY OF THE INSTITUTIONALIZED OFFENDER

These variations, indicating the operation of socio-cultural variables, are consistent with other findings regarding general intelligence throughout the United States. For instance, Thorndike and Gallup report similar differences with respect to verbal intelligence, and more recently Ginzberg and Bray, in analyzing rejection rates of registrants for military service during World War II, clearly show that such rejection rates vary by geographical region. This variation conforms quite closely to the variation in intelligence testing scores found in the survey of penal and correctional institutions. Particularly, in the Ginzberg and Bray study the states designated "Far West" had the lowest rejection rates with states designated as "South East" and "South West" having the highest rates.<sup>55</sup>

4. It is perhaps quite significant to note that several institutions reported their inability to determine what the I.Q. distribution was for their populations. These institutions do not routinely test inmates and their records of inmate histories are incomplete at best. However, somewhat over 70% of all reporting institutions did indicate that testing was routine for all admissions.

5. Included in the questionnaire form sent to each institution were questions relating specifically to the offenses committed by those inmates with I.Q. scores below 70. Equivalent information about offenses of the general inmate population was obtained for comparison purposes. Each institution was requested to rank the first, second and third most frequently committed offense among retarded inmates. After analyzing the replies, it was found that 38% of the institutions ranked the offenses breaking and entering and burglary as most frequently committed by the retarded. About 13% of the institutions reported homicide as the most frequently committed offense. The crime least frequently reported was the combined category of rape and other sexual offenses, this being recorded in only 5% of all institutions responding to this portion of the questionnaire. The findings clearly indicated that, based upon the information supplied by the institutions, the property offenses falling into the general category of larceny—breaking and entering—burglary were by far the most commonly committed offenses by inmates with low reported intelligence. A surprising finding was that homicide was reported as more frequently com-

<sup>55</sup> For the Thorndike and Gallup findings, see "Verbal Intelligence in the American Adult", *Journal of General Psychology*, 30 (1941), pp. 75-85. The Ginzberg and Bray study is from *The Uneducated*, Columbia University Press, New York, 1953.

## THE MENTALLY RETARDED OFFENDER

mitted by the institutionalized retarded than among the non-retarded segments of the institutional populations. Later in this paper more data regarding crimes committed by retarded inmates will be reported.

One must bear in mind in interpreting offense data that such crimes reported in this survey relate only to offenses committed by incarcerated retardates and do not justify any superficial generalizations made to the rank ordering of criminal offenses committed by retardates in the total distribution of crimes committed in the United States.

6. Each of the surveyed institutions was asked to supply information about ongoing programs specifically designed for retardates. Fifty-six percent (N=75) of those institutions responding to this question reported that no specialized programs of any kind were available. Six responding institutions provided a full range of individual and group psychotherapy, academic and vocational as well as special education programs. Of all institutions reporting some special programs for the retarded, special and/or vocational education was by far the most frequently reported program.

A most significant factor in the general lack of specialized programming for retarded inmates is the general lack of mental health manpower resources available to responding institutions. On the questionnaire form information was requested from each institution concerning the numbers of psychiatrists and psychologists employed by them on full-time or part-time bases. A total of 166 institutions replied to the relevant questions. These institutions housed 153,491 inmates, representing approximately 79% of all inmates incarcerated in state adult correctional and penal institutions. These institutions indicated that they employed a total of 54 psychiatrists full-time, with an additional 165 psychiatrists employed on various part-time bases—the most frequent part-time status being quarter-time and less. This makes a grand total of 219 psychiatrists employed by 166 institutions throughout the country. Examining the category psychologist, it was found that these 166 institutions employed a total of 93 full-time psychologists and 95 on various part-time statuses.

In considering these raw data relative to the employment of psychologists and psychiatrists, one must bear in mind that the 166 responding institutions included specialized facilities for emotionally disturbed and/or mentally retarded offenders as well as general correctional and penal institutions. When the specialized

## SURVEY OF THE INSTITUTIONALIZED OFFENDER

facilities were considered separately from the others (these constituting 6 of the 166 institutions), it was found that they accounted for 40 of the 54 full-time psychiatrists, and 19 of the part-time psychiatrists. This leaves a total of only 14 full-time psychiatrists being employed by 160 institutions in this country. Examining the category psychologist 11 of the 93 full-time psychologists were employed by these 6 specialized facilities. This results in a total of 82 full-time psychologists being employed by the 160 general penal and correctional institutions.

Looking at these resources in terms of numbers of inmates, the 6 specialized facilities, housing a total of 6,825 inmates, employ 40 full-time and 19 part-time psychiatrists; 11 full-time and 10 part-time psychologists. We thus have a situation in which a total of 146,662 inmates were confined in non-specialized facilities with access to a total of 14 full-time psychiatrists and 82 full-time psychologists.

An attempt was made through the survey to elicit data from the institutions regarding the numbers of specially trained educational personnel who work exclusively or primarily with retarded inmates. However, the responding institutions included in the tabulation all sorts of educational personnel, including inmates acting as teachers so that it was impossible to arrive at any meaningful finding regarding this important aspect of institutional programming. It should be noted, however, that in the questions relating to the types of programs provided by the institutions, over half of all institutions replying indicated that no special programs (including special education) were being offered.

### **B. A FOLLOW-UP SURVEY OF INMATES WITH I.Q.s BELOW 55**

After analyzing some of the general data from the institutions it was decided to send follow-up questionnaires to each responding institution with at least one inmate with an I.Q. lower than 55. It was hoped in this way to obtain some supplementary information specifically geared to offenders with high probabilities of being retarded, given the limitations in generalizing on the basis of the I.Q. 69 cut-off point in light of the problems inherent in the use of variety of instruments and administrative procedures for determining intelligence scores. Through these follow-up questionnaires, data were obtained on a total of 964 adult offenders with I.Q.s below 55 located in 26 different institutions. Some of the

### THE MENTALLY RETARDED OFFENDER

findings from this follow-up questionnaire are of significance for this paper and are summarized as follows:

1. Almost 87% of the 964 offenders with I.Q.s below 55 fell into the range of I.Q. 40—54 with approximately 8% falling in the range of I.Q. 25—39, and about 5% (52 cases) falling below I.Q. 25.

2. The race and sex distribution of this group of offenders was found to be as follows: approximately 58% were noted as being non-white and 6% were female (for this latter category, the finding is not out of line with the general proportion of the total incarcerated population in this country made up of females).

3. The offense patterns of this grouping of 964 inmates were found to reveal approximately 57% incarcerated for what might be termed crimes against persons, including homicide, assault and sexual offenses. It is important to note here that statistics compiled by the Federal Bureau of Prisons indicate that for the total population confined to adult institutions in the United States, approximately 27% were committed on the basis of these personal offenses. Significantly, of the group of inmates with I.Q.s under 55 reported on in our follow-up survey, about 15.4% (90 cases) were committed for criminal homicide offenses. Federal Bureau of Prison statistics show that commitments generally to institutions in the United States for criminal homicide account for only 5.1% of all commitments.<sup>56</sup>

It was found that the most frequent single offense category for which this grouping of offenders was committed to institutions was burglary—breaking and entering, accounting for about 29% of all cases. This compares closely with the national statistics compiled by the Federal Bureau of Prisons revealing that 28% of all commitments in the United States are for such offenses.

Interpretation of these findings regarding intelligence and criminal offense is difficult. We have no data as to the length of stay for a given offense by a retarded inmate and other variables which may explain the findings. We suspect that retarded offenders sentenced for criminal homicide may have been relatively easier to convict, and tend to remain in the institutions for longer periods of time than those committed for other offenses; and that parole practices and policies may vary. Thus, some of our results in this area may be accounted for by the "loading-up" factor of length of sentence and reduced parole opportunities. What does seem clear,

<sup>56</sup> Federal Bureau of Prisons, *National Prisoner Statistics*, No. 36, United States Department of Justice, Dec. 1964, p. 3.

## SURVEY OF THE INSTITUTIONALIZED OFFENDER

however, is that of the retarded offenders now institutionalized, we found a higher proportion of serious personal offenses than had been previously recognized.

4. As a part of the follow-up survey, institutions were asked to report on any psychiatric or medical diagnoses made as a result of special testing or examination of inmates with I.Q.s under 55. Most significantly, it was found that in only 11 of the over 900 cases was such additional testing done and reported on in the survey (the most frequently reported diagnosis being epilepsy in 3 cases). Penal and corrections institutions do not frequently administer supplemental tests and examinations to inmates with low reported intelligence, and often confine themselves to routine admissions examinations.

5. In addition, each institution was requested to indicate whether a search of their records revealed that the intelligence factor was raised at any time in the trial or post-trial legal histories of these particular offenders. It should be stated here that many institutions were unable to trace this through their records, but in those instances where such searches were made (in 9 institutions), all were unable to determine whether the mental condition of the offender was a significant issue. This facet is being examined in detail by The George Washington University Institute of Law, Psychiatry and Criminology as part of its *Mentally Retarded and the Law* study.

### C. MANAGEMENT PROBLEMS AND PRACTICES

In addition to the statistical data obtained from the survey, special attention was given to the penal administrator's problems and practices in managing retarded inmates, and his recommendations as to the most appropriate handling and treatment strategies he would like to see instituted. Questions related to these matters were open-ended, and a large proportion of the institutions returning questionnaires failed to complete these particular items, or gave incomplete answers. The replies received may be divided into two major parts, management problems and recommendations.

#### 1. Management Problems

The most common complaint of the institutions regarding management problems posed by retarded inmates was that such inmates require constant and individual staff attention. The institutions stated that staffing arrangements are often stretched to the limit and that the needs of retarded inmates are such that they

## THE MENTALLY RETARDED OFFENDER

require an undue amount of staff time, thus taking away, in some cases, essential personnel services to the larger non-retarded segments of the institutional populations. The second most frequent problem encountered by the surveyed institutions was the danger that retardates are often victims of exploitation by their more intelligent peers.

Going beyond these two most frequent problems listed by the respondents, one sees in the comments of institutional officials a complex administrative and ethical problem. Each of the responding institutions has a small minority of inmates who may be classed as mentally retarded. In attempting to manage and treat this minority with the manpower and physical resources available, the prison administrator is faced with the possible consequences of inadequately covering the majority of his population. Two prison officials in responding to the questionnaire stated clearly that they could not be placed in the position of showing partiality to the small minority of retarded offenders in setting up programs and management policies.

In discussing disciplinary problems posed by retarded inmates, for example, some institutions reported that they realized the retarded offender may have great difficulty in comprehending what is expected of him in terms of institutional rules and regulations. However, these officials felt it was not possible to apply separate criteria to this group of inmates, and because of this the rule violation rate among the retarded was substantially higher than for other offenders.

In the general area of program management, it is valuable to quote one prison superintendent who rather carefully spelled out the problem he faces:

As we see it, an institution such as ours has a choice of alternative operational policies. The first is the possibility of pitching our program to the needs of the two-thirds majority of normal inmates, in which case the one-third minority of retarded inmates would suffer. A second alternative is to lower our standards and alter our programs as required by the one-third minority, which would deprive the majority group. The third alternative would be to run two separate programs in the same institution, which would require at least a 50% increase in budgeted staff if we are to do justice to both segments of our population.

This particular prison administrator has defined the role of his institution (a state reformatory) as the provision of specialized and individual treatment for youthful offenders. In his words:

Our institution is one designed to deal with the relatively hopeful youthful offender, and our procedure of choice has been to develop a program

## SURVEY OF THE INSTITUTIONALIZED OFFENDER

which presents selective alternatives from which our inmate body are asked to choose on an individualized level. This is deliberately done in the effort to individualize and to humanize the treatment process, as well as to avoid dangers of infantilization and institutionalization. Mentally retarded inmates are in no position to take advantage of such a program by reason of their poor judgment, inadequate concentration and lack of ease of understanding.

Another institutional administrator likened the situation in his institution and others around the country to the situation obtaining during the development of mass public education in the United States. He stated that the public educational systems of our society tend to be geared toward the average student to the detriment of those falling below as well as significantly above the average. He as an administrator, is faced with the choice of diluting the general handling and treatment strategies employed by his facility in order to provide more correctional opportunities for retarded offenders, or to neglect the retarded offender in favor of the vast majority of his population.

What seems to result in the forced choice made by prison officials is that the retarded in these institutions are essentially deprived of specialized treatment and handling measures. The consequence of this deprivation as indicated by the officials themselves is that retardates tend to "vegetate." This is particularly true in those institutions classified as maximum security facilities. One administrator, for example, stated that "we are totally unable to do anything except protect these individuals [retarded inmates]. . . . Some no doubt, could make better progress, but when forced to compete in school or work against [those inmates with higher intellectual ability] they become embarrassed and discouraged."

### 2. Recommendations of Institutional Administrators

By far, the most frequent response when institutional administrators were asked to recommend ways of dealing with retarded offenders was that special and separate institutional facilities should be provided for this class of offender. Usually, this recommendation involved the creation of a completely separate facility within the correctional system. In a few cases, the recommendation was for a facility which would not be incorporated in a correctional department, but, rather, would be a part of a department of mental hygiene. In such cases the administrators recognized that substantially different legal means of defining such offenders would be called for. This seemed to some to require that

## THE MENTALLY RETARDED OFFENDER

retarded offenders be not convicted as criminals, but subjected to civil commitments.

Another infrequent response was the suggestion that a special unit be set aside within the ordinary prison for the retarded inmate. Most administrators, in giving their response, however, recognized the difficulties involved in establishing and staffing such a unit.

Beyond the recommendations for special handling of retarded offenders, many administrators had suggestions or recommendations in other areas which are quite significant and worthy of careful consideration. Three such areas can be identified: classification and diagnosis; treatment; and the area of pre-release planning and parole supervision.

### a. *Classification and Diagnosis*

Several administrators urged the development of far more superior classification and diagnostic facilities than are currently available. These facilities would enable correctional departments to accurately identify retarded offenders, the degree of retardation, and the involvement, if any, of emotional problems. In addition, after such diagnosis has been made the administrators felt that much more rational classification into treatment typologies could be accomplished and effectuated. One administrator was particularly concerned in this area about the usual procedure followed in his state resulting in his institution's receiving an inmate from the state diagnostic clinic with no more information than an I.Q. score. He stated that it was impossible to arrive at any meaningful treatment program with such incomplete data, and that he did not possess adequate resources to perform the task which should have been handled by the state clinic.

Another institutional superintendent suggested that in the area of classification and diagnosis, corrections be merged with mental health or mental retardation services in the state. It was his opinion that only with such a merger could the correctional facility be in a position to have adequate diagnostic evaluations made of their clients. Also, he felt that such an organizational arrangement would make possible a substantial amount of research which is now impossible to undertake because of such limitations as manpower, funds, expertise, etc., characteristic of corrections.

### b. *Treatment.*

In the area of treatment recommendations, most institutions called for the development or extension of special education serv-

## SURVEY OF THE INSTITUTIONALIZED OFFENDER

ices in prisons, together with a greater emphasis in existing as well as planned vocational training activities so that they would be more appropriate in terms of the needs of retarded offenders. In the course of making these recommendations, institutional administrators naturally requested additional funds so that professionally trained educators and vocational personnel could be employed.

A few institutions made additional recommendations in the treatment area. Most of these additional recommendations had to do with the provision of group therapy or counselling services where none exist at the present time. For example, one institutional superintendent recommended the introduction of guided group interaction on the Highfields model for retarded inmates as well as a program involving role-playing for small groups. Another official recommended expanded counselling and therapy activities for the retarded segment of his population, and the development of a "psychiatric team" (consisting of a psychiatrist, psychologist and social worker) which would be assigned to work full-time with the retarded inmates. This official, however, qualified this recommendation since, in his words, "we have equally pressing needs in other areas . . . and we would not want to favor one special group over another from an administrative viewpoint." One sees in this comment another example of the administrative concern expressed by many that no "favoritism" be permitted to enter into institutional programming.

One quite interesting comment concerned the inhibition of the development of psychotherapeutic strategies for retarded inmates made by the head of a psychology department in a large state reformatory. He was trying to indicate the problems involved in developing such strategies for retardates. He stated, in part:

The current thrust of the psychotherapeutic research and treatment program is being directed toward the inmate who is at least dull normal in intelligence. . . . Limited personnel currently prevent any extension of psychotherapy or psychotherapy research with the inmate possessing intelligence below this level.

### *c. Pre-Release Planning and Parole.*

It is in this area that many of the respondents presented several recommendations. As a background to such recommendations it must be noted that a very heavy majority of all institutions surveyed do not have any specialized pre-release planning programs for retarded inmates. They also reported having little, if any, programming in this area for non-retarded offenders, although this is improving with the development of work release programs throughout the country.

## THE MENTALLY RETARDED OFFENDER

A frequent recommendation of the institutional administrator is for the establishment of halfway houses through which retarded (as well as other inmates) would pass on their way from inmate status to parole status. The makeup of these halfway houses varies somewhat from respondent to respondent, and some seem to feel that such a facility would, for the retardate, be, most appropriately, a rural-farm setting of one kind or another. This recommendation for the use of a farm setting in order to prepare the retardate for parole is rather interesting since a few of the correctional camps and farms surveyed throughout the country indicated rather clearly that they are just not in any position to deal effectively with retarded offenders. Staffing and treatment facilities are almost non-existent, and as one administrator put it "we expect our men to be able to do a good day's work"—the implication being that a retardate is unable to perform adequately, thus not paying his way in the facility.

Almost all of the institutional administrators responding to the questions regarding release recommendations urged strengthened parole services. Most of these were directed toward the development of specialized parole caseloads to which retardates would be assigned. In addition, the respondents stressed the need for specially trained parole officers to manage these caseloads.

### D. A CASE STUDY OF AN INMATE SAMPLE ANALYZED FOR SOCIO-PSYCHOLOGICAL AND LEGAL VARIABLES

Because of the rather large number of incarcerated offenders falling into the low I.Q. levels identified from the survey, it was felt necessary to expand the scope of the research to trace, in effect, the administration of criminal justice in those cases with low reported intelligence. As indicated earlier, approximately 9.5% of all reported I.Q.'s from institutions throughout the country were below 70, and that over 1,000 currently incarcerated adult offenders have I.Q. scores reported below 55. The design of this extended study deals specifically with offenders incarcerated in penal and correctional institutions with I.Q.'s reported by these institutions as below 70. It is being conducted under the auspices of The George Washington University Institute of Law, Psychiatry and Criminology as one aspect of a project already being carried out by that staff dealing with the mentally retarded and the law.

The procedure for this study involved the selection of institutions recorded by the original survey as housing inmates with

## SURVEY OF THE INSTITUTIONALIZED OFFENDER

I.Q.'s below 70. A sample of such inmates was selected and was retested by a consulting psychologist using the Wechsler Adult Intelligence Scale, Draw-A-Person and the Thematic Apperception Test. It was felt that through the use of these instruments it is possible to identify those cases functioning within the retarded range, using criteria based upon psychometric testing independent of the I.Q. scores reported by the institutions.

Five adult penal and correctional institutions in five different states were selected for the study. The field research plan was as follows: one field worker visited each of the five institutions in order to compile a listing of all inmates incarcerated with I.Q. scores falling below 70. From this listing he selected a random sample which was then retested by the clinical psychologist. The institutional field worker was also responsible for collecting detailed socio-psychological, socio-economic and criminological data on each of the inmates in the sample. A third field worker, an attorney, analyzed the legal data for each case in the sample. This entailed visiting courts to examine transcripts and court records, interviewing responsible personnel in court clinic and probation departments, and conducting other interviews with judges, attorneys (prosecuting and defense) and police personnel. The field study was carried out in the following states: Maryland, Virginia, Florida, Colorado and Illinois.

The field work phase of the study was completed on September 1, 1966 and only a few tentative findings can be reported from the preliminary analysis of the data.

### 1. Results of the Testing

In the five states analyzed, the institutions reported a total of 395 inmates with I.Q. scores below 70, based upon their own testing. The mean I.Q. computed for this institutional testing was 62.4. The clinical psychologist, retesting a total of 60 of these inmates using the Wechsler Adult Intelligence Scale, Draw-A-Person, and the Thematic Apperception Test, obtained a mean I.Q. score of 66.0. He determined that 74% of the sample were mentally retarded, with another 8.7% considered to be borderline retarded (with I.Q.'s ranging between 70-74). Generalizing from these findings to the 395 inmates from which the sample was selected, we can tentatively state that 293 are retarded, with another 34 in the borderline retarded range. These results reveal that institutional testing is in general considerably more reliable as an indicator of mental retardation than has been recognized.

## THE MENTALLY RETARDED OFFENDER

Slightly over 88% of those found to be mentally retarded on retest were classified as non-white inmates.

At the time of the retesting, the mean age of the sample was 35.4 years, and it is interesting to note that the average lapse in time between the last test given by the institution and the study retest was 25.3 months. In one state, the average lapse of time was found to be 9 years. This finding quite clearly reveals that often in penal and correctional institutional practice the only testing programs undertaken are as one part of the routine admissions process. These facilities do not have the personnel and time required to administer tests to inmates at varying intervals during their confinement.

The mean age of the retardates, at time of criminal conviction, was found to be 28.5 years. The youngest, again at time of conviction, was 14; the oldest was found to be 50.

### 2. Criminological Findings

The preliminary analysis of the criminological characteristics of that portion of the sample found to be retarded as a result of retesting must be qualified by the fact that most of the sample was taken from penitentiary-type institutions which, in a majority of the states studied, house more serious offenders. Penitentiaries were selected in two states which also have institutions with lesser degrees of security and thus less serious offenders. In two other states, the penitentiaries selected tend to be general purpose institutions for the incarceration of a more heterogeneous offender group. The fifth institution was a reformatory.

With this qualification in mind, it was found that the most frequent crime committed by the incarcerated retardate was first-degree murder, accounting for slightly less than 21% of all the retardates. Other criminal homicides accounted for 17.6% of the sample, and the offense category breaking and entering—burglary accounted for an equal percentage of the sample. Together, inmates sentenced for all classes of criminal homicide made up nearly two out of five of all offenders included in the sample. When the various crimes committed by the retarded group were combined into the general categories of crimes against persons and crime against property, the former category accounted for almost 59% of the cases.

One must recognize that the findings above refer only to the offense for which the retardate is currently institutionalized, and does not take into account the characteristics of his criminal career. Attempts were made to examine this career aspect through

## SURVEY OF THE INSTITUTIONALIZED OFFENDER

the study. Some significant findings in this area are: over two-thirds of the retardates committed their crimes alone; they average 2.9 previous convictions for adult crimes (only 20.6% of the retardates had no previous adult convictions); the group, as of the time the data were collected, had spent an average of 7 years in penal and correctional institutions. Examining the past criminal convictions of the retarded group, it was found that in over 60% of the cases, the total criminal career could be classified as property-offense in character.

### 3. Findings Related to the Administration of Criminal Justice

An attempt was made through the study to ascertain the distribution of certain significant variables in the total process of the administration of justice for those found to be retarded on the basis of the study retesting. Some of the preliminary findings are as follows:

#### *a. Representation by counsel.*

In only 7.7% of the cases in this sample was there evidence that the retardate was not represented by an attorney. For the cases where representation was found, such representation was court-appointed in slightly over 69% of the cases.

#### *b. Pleas*

Of the total group of retarded inmates in the sample, almost 59% entered a plea of guilty. Analyzing the court and other records in order to determine the extent of plea bargaining, it was found that in 80% of the cases the original charge on which the retardate was arrested was the same as that for which he was tried and convicted. In no case was there evidence of a lower charge being the basis of arrest when compared to the final charge for which tried.

#### *c. Confessions*

An analysis of the available records revealed that a confession or incriminating statement was obtained from the retardate in two-thirds of the cases studied.

#### *d. Pre-trial and Pre-Sentence Examination of the Accused Retardate*

Analysis of the records indicated that in almost 78% of the cases no pre-trial psychological or psychiatric examination of the accused was made, nor was a social history taken. In those cases where such examinations did occur, 11% were examined as a result of a commitment for observation to a mental hospital; ap-

## THE MENTALLY RETARDED OFFENDER

proximately 8% were the subjects of routine probation department examinations in which some mention was made of low intelligence; and in 3% of the cases a routine probation examination was made, but intelligence was not mentioned in the report submitted to the court.

In no case was an examination requested or ordered during the course of the trial. Pre-sentence examinations were made in only 20% of the cases, and these were routine probation department examinations in which no psychometric or psychiatric examinations were administered. In only one such probation department pre-sentence report was mention made of the low intelligence of the convicted person.

### e. *Trial*

The issues of competency to stand trial and criminal responsibility were not raised in 92% of the cases under study. In two cases where the retardate was committed for psychiatric observation prior to the trial, a portion of the report submitted to the court indicated that the persons were competent to stand trial, and in a third case (the case of a person who pled not guilty by reason of insanity), a statement appeared indicating that the individual was sane at the time the offense was committed. In only two cases was expert testimony given during the trial (the experts being psychiatrists). In these two cases the experts testified only for the state.

Examining those cases in which pleas of not guilty were entered, it was determined that 40% of the retardates specifically waived jury trials.

### f. *Appeal and Post-Conviction Relief Proceedings*

In 88% of the cases of these retardates no appeal was made, and post-conviction relief was not requested in 84% of the cases. In those few cases where appeals for post-conviction relief proceedings were undertaken, the mental condition of the retardate was not given as one of the grounds upon which relief was sought. In the seven cases involving one or both forms of relief, the grounds seemed to be rather evenly divided between inadmissible confessions and the lack of an attorney.

## V. CURRENT STATE PLANNING FOR RETARDED OFFENDERS

No discussion of the mentally retarded offender vis-a-vis corrections would be complete without examining current state planning for such offenders. Under the terms of Public Law 88-156, Federal funds were provided on a matching basis with state and local funds to support planning of comprehensive state and community action to combat mental retardation. As of the time this paper was prepared, 34 states had submitted their comprehensive plans. The authors examined these plans in order to determine to what extent the states were planning to incorporate action recommendations with regard to retarded offenders into their overall program plans. The review of these plans revealed that 11 of the 34 states had in their proposals at least one specific recommendation in the general area of mentally retarded offenders. These recommendations may be divided into two broad divisions with several sub-divisions.

The first of these divisions is related to the provision of specialized facilities and/or programs for mentally retarded offenders. From the previous review of the literature concerning the handling of criminal retardates one might think that a large majority of states would include in their planning, recommendations such as the establishment of a defective delinquency institution. However, only five of the states whose plans were reviewed included recommendations dealing with special facilities or programs. New York, for example, goes substantially further than the other states in its recommendations for specialized facilities for the mentally retarded offender in that it suggested a specific type of institution.<sup>57</sup> The Task Force on Law and Psychiatry devoted considerable space in the report to an analysis of the Maryland Defective Delinquency Statute and recommended "that an extensive study of the Maryland Defective Delinquency statute be undertaken by a suitable group to devise a modification to accomplish the same purpose in New York State."<sup>58</sup> The Task Force went on to suggest:

<sup>57</sup> "A Plan for a Comprehensive Mental Health and Mental Retardation Program for New York State", Vol. VI, "Reports of Task Forces on Mental Health". The other 4 States are: Connecticut, Iowa, Texas and Utah.

<sup>58</sup> *Ibid.*, p. 176.

## THE MENTALLY RETARDED OFFENDER

... a regional facility resembling Patuxent Institution in Maryland be established in each of the ten mental health regions in New York State, close enough to a state hospital to take advantage of the administrative and housekeeping services of the parent state hospital but far enough away from it to avoid confusion of the roles of the new institution and the parent state hospital.<sup>59</sup>

Most of those portions of the state plans regarding mentally retarded offenders seem primarily interested in various aspects of criminal law procedure. In particular, two major subdivisions in this area relate to the issues of criminal responsibility and the detention of retarded persons found to be incompetent to stand trial. Looking first at the problem of determining criminal responsibility in cases involving alleged retardates, two states, Connecticut and Florida, suggest through their Plans that the M'Naghten Rules are inappropriate in dealing with accused persons who are retarded. Connecticut recommends that the American Law Institute test be substituted for M'Naghten (such ALI formulation being as follows: "A person is not responsible for criminal conduct if at the time of such conduct or as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law").<sup>60</sup> Florida's does not go so far as to specifically recommend a substitute for M'Naghten, but they do state that in Florida

There is no provision for determining the "mental age" of an offender. Determining the criminal responsibility of an accused, the present test used by the courts is the "right and wrong" test, which does not always give proper consideration to the condition of mental retardation. There is need for the courts to take a broader view of the mentally retarded offender. He may know the difference between right and wrong but still may need special help, perhaps in a hospital rather than in jail. The court should take the lead in encouraging a more liberal interpretation of the law as it relates to mentally retarded offenders.<sup>61</sup>

The New Jersey Comprehensive Plan recommends that the "courts should recognize the chronic character of mental retardation as well as individual differences among retarded. Such recognition should be reflected in the regulations regarding criminal

<sup>59</sup> *Ibid.*, pp. 178-179.

<sup>60</sup> For the statement of the American Law Institute test, see *Model Penal Code*, (proposed official draft), the American Law Institute, Philadelphia, §4.01, p. 66.

<sup>61</sup> The Interagency Committee on Mental Retardation Planning, *The Florida Plan for Comprehensive Action to Combat Mental Retardation*, Tallahassee, 1965, p. 77.

## CURRENT STATE PLANNING FOR RETARDED OFFENDERS

responsibility."<sup>62</sup> That part of the recommendation calling on courts to recognize that there are individual differences in the general category of retarded offenders, was carried significantly further by the State of Illinois. Their plan for combatting mental retardation includes, in the section dealing with criminal law, the position that it is inappropriate to consider all mentally retarded offenders to have a total lack of criminal responsibility. In the words of the Plan:

If in every other area touching the lives and training of the mentally retarded we are attempting to treat them, within their own limitations, like other persons, we defeat our purpose in setting them completely, in all situations and for all times, apart from the rest of society in matters of responsibility. This disservice is done not only to society but, more seriously many times, to the retarded as well. If the retarded person is to "be like other persons", should he not, like the rest of us, accept that degree of responsibility for his actions which he is, under statute, able to understand and control? This Section, in good conscience, cannot say there is never any instance where institutions' retention or punishment is proper for the retarded person found guilty, or accused of a crime.<sup>63</sup>

A closely related issue in criminal law procedure regarding mentally retarded persons has to do with the disposition of cases found to be not competent to stand trial. The major concern most of the states exhibit in this area relates to the problem involved in applying a general procedure to mentally ill and mentally retarded accused persons which, in effect, disposes of such cases until such time as the individual defendants regain competency to stand trial. While this procedure may be appropriate for those persons found to be so mentally ill as to be unable to comprehend the proceedings involved in a criminal trial, the states recommending changes agree that one must be aware that mental retardation is a chronic condition. In the opinion of the state planning groups what tends to happen with mentally retarded offenders found incompetent to stand trial is that they are committed to institutions where they stay, theoretically, until such time as their condition improves, or as the New York Task Force on Mental Retardation and the Law stated in the New York Comprehensive Plan, the usual procedure in the state is to hospitalize such a person "until he is no longer in such a state of idiocy or imbecility." In practice this may mean a lifetime commitment. The Task Force recom-

<sup>62</sup> *The New Jersey Comprehensive Plan to Combat Mental Retardation*, Trenton, June 1966, p. 91.

<sup>63</sup> Illinois State Advisory Council, *Patterns for Planning: The Illinois Approach to Mental Retardation*, Springfield, August 1, 1965, p. 57.

## THE MENTALLY RETARDED OFFENDER

mended that there be a study made of more appropriate dispositions of such cases.<sup>64</sup>

West Virginia in its Task Force report, stated that

If a mentally retarded person is found incompetent to stand trial, it does not necessarily follow that he is also incompetent to be at large or that he must automatically be committed to an institution for the so-called "criminally insane", or any institution. Therefore, it is recommended that procedures which result in automatic commitment to a mental institution of mentally retarded defendants found incompetent to stand trial should be critically reviewed.<sup>65</sup>

Two states, Illinois and Pennsylvania, recommend in their Plans rather sweeping changes in the procedures and institutions dealing with retarded offenders. Illinois recommended that hearings on competency to stand trial as well as the trial itself in cases of persons alleged to be retarded be held in some court other than the criminal court. They specifically recommend the Family Court Division of the Circuit Court. In their words,

We believe firmly that all legal proceedings concerning a retardate, civil or criminal, should be had in a single court. We believe it would be more relaxed, perhaps more sympathetic, than our overburdened criminal courts, which deal most frequently with repeaters and hardened criminals.<sup>66</sup>

Pennsylvania, in its *Comprehensive Mental Retardation Plan*, proposes a draft of a new mental health act, and certain of its provisions deal with retarded or allegedly retarded persons accused of criminal offenses. Under this draft statute a Mental Health/Mental Retardation Referral and Investigation Service is to be organized by the county commissioners through the appropriate county directors of mental health and mental retardation programs. Under the provisions of this draft statute when police officers take into custody a person who is thought to be mentally disabled and who is considered to be a danger to himself or to the community, the Referral and Investigation Service would be empowered to order a mental health examination. Such persons examined and found to be in need of care in an appropriate "mental health establishment", shall be delivered to the mental health establishment for commitment. If the examination by the Service

<sup>64</sup> See Vol. V, p. 126 of the New York Comprehensive Plan for this discussion by the Task Force on Mental Retardation and the Law.

<sup>65</sup> The Commission on Mental Retardation, *Task Force Reports*, Charleston, Oct. 8, 1965, p. 20 of "Protective Services" section of the report. Oregon and Connecticut made parallel recommendations.

<sup>66</sup> *Patterns for Planning*, *op. cit.*, p. 60.

#### CURRENT STATE PLANNING FOR RETARDED OFFENDERS

finds that the accused person does not need care in a mental health establishment, then the legal process proceeds according to the criminal law.<sup>67</sup>

From the review of the state plans it can be concluded that the majority of states having submitted plans to date are essentially silent on the subject of mentally retarded offenders. Those with recommendations seem primarily concerned with legal issues related to criminal responsibility and determinations of incompetency to stand trial and the aftermath of such determinations. Only a few states have made recommendations regarding improvement of treatment and management alternatives for offenders found to be mentally retarded.

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<sup>67</sup> The Governor's Advisory Committee for Comprehensive Mental Retardation Planning, The Comprehensive Retardation Plan, Harrisburg, Dec. 1965. See pp. 60ff. for a discussion of the model statute. This law with some modifications.

## **VI. CRITICAL ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH**

### **A. AN OVERVIEW OF THE CRITICAL ISSUES**

We see the following as some of the critical issues we face today in the general area of society's response to the mentally retarded offender:

1. There is a serious lack of awareness of the complex legal, sociological and psychological problems of the mentally retarded offender on the part of both lay and professional persons. To cite only a few of the deficiencies in this area we find that:

- a. The magnitude of the retardate's involvement with the criminal law is almost unknown at the present time. Related to this is:
- b. Epidemiological data on mentally retarded offenders are not now available. Many courts, probation agencies and residential institutions for offenders do not keep accurate statistics on the number of clients who are found to be retarded.
- c. Knowledge of the offense patterns of retarded offenders is at best vague.

2. Currently, there is a striking lack of empirical data clarifying the relationship between intelligence and anti-social behavior. There are virtually no sociologic or psychodynamic formulations to elucidate this relationship.

3. We find that there is a tendency for the rejection of responsibility for retarded offenders on the part of many mental health and correctional professionals. They reject, for different reasons, the retardate as being unsuitable for their respective treatment and handling programs and facilities. Thus, the mentally retarded offender is doubly disadvantaged. There are many instances in which training schools for retardates, mental hospitals and correctional institutions seek to disclaim responsibility for the mental retarded offender. Mental hospitals claim such an offender is not mentally ill, the traditional institutions for the retarded complain that they do not have appropriate facilities for the offender and that the inclusion of such persons in their populations tends to disrupt programming for non-offending retardates. Correctional institutions would like to remove such persons from their populations on the grounds that the programs available in the correctional setting are totally inadequate and in many cases inappropriate for application to retarded persons.

#### ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH

4. There is a definite lack of adequate socio-psychological definitions for the effective diagnosis and treatment of this offender group. One aspect of this is the concept of the mentally retarded offender as culturally deprived as distinct from mentally retarded persons with organic involvement. Based upon the information supplied by the correctional institutions reported on in the survey described earlier in this paper, there is a definite confusion in terminology used. What one institution may call retardation is not so defined in another.

In addition, the techniques and tools employed to arrive at some operational definition of retardation are so varied and ill-defined as to make generalization at best exceedingly difficult if not impossible.

5. Related to the above critical issue is the lack of adequate definitions relative to the legal identification and management of the mentally retarded offender group. Included in this crucial area are problems inherent in the various defective delinquent and sexual psychopathy statutes. In addition, little data are available concerning the effectiveness of these specialized statutes in the handling of mentally retarded persons committing anti-social behavior.

6. There is a very serious shortage of services to this offender group. Here we are thinking in terms of both intramural and extramural services. This deficiency in services is related to several sub-areas:

- a. There is disagreement as to the most appropriate strategies for handling retarded offenders (e.g., segregation versus non-segregation, etc.).
- b. There is a lack of mental health and manpower resources in the areas of special education, psychiatry and psychology. If one could arrive at a general agreement as to the most appropriate treatment and handling strategy for retarded offenders, one would still need to confront the basic shortage of professional personnel in this field.
- c. The lack of adequate facilities in the community until recently may be directly related to the placing of mentally retarded offenders in penal and correctional institutions. This lack of facilities may also mean that mentally retarded persons who are pre-delinquent and pre-criminal have a greater probability of becoming offenders than if adequate facilities for the retarded in the community were available.

## THE MENTALLY RETARDED OFFENDER

7. There seems to be a distinct lack of coordination between and within the agencies having some contact with mentally retarded offenders. This results in problems relating to transfers between institutions and agencies; the relationship between the court disposition of particular cases and treatment available in custodial facilities; and difficulties involved in attempts to coordinate the institutional program of an offender with the services available in the community upon his release.

8. There are several crucial legal issues readily identifiable:

a. Arrest and interrogation.

One must recognize that the "treatment" of mentally retarded offenders begins with the first official contacts by police. The entire area of the mentally retarded suspect's rights at the time of arrest and during interrogation, and the admissibility of statements and confessions made by such persons need careful study. We know from an analysis of a small sample of cases that a substantial majority of retardates make confessions or incriminating statements during the pre-trial period of the administration of criminal justice.

b. The retention of counsel for mentally retarded accused persons. This would seem to be an acute problem area. A factor to be investigated here would be the effect of the *Gideon* decision with regard to the mentally retarded offender. This decision, greatly expanding the right of indigent accused persons to obtain court-appointed counsel, will result in a significant increase in the involvement of lawyers in criminal law work. Thus, many more lawyers will, perhaps for a first time, be representing defendants who are or are alleged to be retarded.

c. The competency of mentally accused persons to stand trial is at best unclarified at this time. Related to this is, of course, the issue of the disposition of retardates found to be incompetent to stand trial. As mentioned earlier, several states in their plans to combat mental retardation are severely critical of the current procedures under which mentally retarded persons incompetent to stand trial are committed automatically to institutions until such time as their condition improves.

d. The issue of the determination of criminal responsibility with regard to offenders alleged to be mentally retarded needs further investigation. At this time, it would seem that the legal community is in a state of indecision regard-

## ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH

ing the determination of appropriate rules of criminal responsibility. It cannot be but noted that this indecision severely affects the mentally retarded accused person.

### B. RECOMMENDATIONS

Based upon the critical issues presented above, several action and research recommendations are offered. We would like to clearly state in advance of these recommendations that we do not feel all programs related to the socio-legal handling and treatment of retarded offenders ought to be viewed as inadequate or ineffective. Many existing programs and social and legal institutions appear to offer substantial possibilities for appropriate and effective action. These programs need to be retained and strengthened. One must, however, recognize that there is much room for innovation in this field. New procedures, institutions, programs, etc. must, in some instances, replace what exists and in other instances are required to fill in missing elements in ongoing legal and correctional systems.

A general recommendation which, we feel, must take precedence over the specific recommendations to follow lies in the urgent requirement for research. Careful operations research, hopefully of an experimental nature, must be undertaken to evaluate the existing statutes, procedures and institutions as well as others which may be developed as replacements. Do defective delinquency statutes and treatment programs related thereto effectively handle the problem posed by certain retarded offenders? Are there specific treatment programs available in correctional and penal institutions which enable these institutions to release to the community retarded offenders who no longer pose a threat to the community and are able to lead satisfying lives outside the institution? What alternatives are available to penal incarceration for the offender and how well do these alternatives protect both the community and the retardate? These are only a very small number of significant questions that need to be answered. It is a relatively simple matter to recommend the strengthening of some existing handling strategies and the development of innovations, but given current conditions in which there is intense competition for the allocation of economic resources to combat various societal pathologies, one must be prepared to justify these recommendations on grounds additional to philosophical and humanitarian arguments. Too often, especially in the field of corrections, programs designed to deal with offenders have been instituted, modified and abandoned based on little more than such considerations as judgments that

## THE MENTALLY RETARDED OFFENDER

these programs conform or fail to conform with preconceived theoretical or philosophical rationales. If we are to deal at all effectively in the area under consideration here, we must be prepared to thoroughly research each step along the way.

With these thoughts in mind we present the following recommendations. We have attempted to present them in keeping with the various critical issues discussed earlier, although in some cases there is an unavoidable overlap between recommendations related to two or more critical issues. In addition, we have divided these recommendations in many areas into those related to action and others related to research.

### 1. CRITICAL ISSUE:

*The lack of awareness of the complex legal, sociological and psychological problems of the mentally retarded offender.*

a) A central clearing house of information on the mentally retarded ought to be established on a priority basis. This clearing house should register mental retardates and assemble data on the registrants from the variety of social and legal agencies having contact with them. In this way, it may be possible to obtain a rich source of material of invaluable assistance to the community in selecting preventive and treatment strategies for pre-delinquent and delinquent retardates. At a minimum, this clearing house might function on a statewide basis, although to be maximally effective it should be organized regionally. It is recognized, however, that the establishment of such a clearing house poses serious civil liberties questions. One must face the problem of determining who shall have access to such information since much of the needed data is often considered to be privileged information. Adequate safeguards against the indiscriminate or improper use of the clearing house information must be built into the program.

b) Correctional and penal institutions ought to be encouraged to develop adequate testing programs so that inmates suspected of being retarded can be tested not only on an initial admissions basis, but also at periodic intervals. The survey results which were reported earlier in this paper indicate that many institutions in this country do not have information regarding the intelligence of their populations. It is especially important that institutions test their inmates in those cases where, for various reasons, such offenders have not been tested as an integral part of the process of the administration of criminal justice. We have a situation today in which many inmates in correctional and penal institutions were administered their first and only psychometric test at correctional

## ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH

institutions. Others have never been tested. For some time in the future, the institution itself may be the only agency able to fill this gap.

In addition to testing inmates, it is further recommended that the result of this testing, together with data on institutional adjustment and program participation should be forwarded to the central clearing house which would then be in a position to maintain a continuing record of individual cases.

### RESEARCH RECOMMENDATIONS:

a) Agencies processing and/or handling retarded or alleged retarded offenders (e.g., court clinics, probation departments, correctional and penal institutions, etc.) must carry out continuing research regarding

- (1) The intelligence of the cases they handle.
- (2) The relationship between intelligence and types of offenses committed.
- (3) The relationship between intelligence and institutional and other program adjustment.
- (4) The relationship between intelligence and success/failure upon release from various programs.

Such continuing research, the results of which we would recommend being deposited with the central clearing house, would permit us to come substantially to grips with such issues as the magnitude of the involvement of retardates in criminal and delinquent behavior and the efficacy of the variety of treatment and handling strategies currently in vogue.

### 2. CRITICAL ISSUE:

*The lack of empirical data clarifying the causal relationship between intelligence and anti-social behavior.*

### RESEARCH RECOMMENDATION:

Particularly in view of the tendency for the relationship between intelligence and criminal behavior to be deemphasized in the last thirty or more years, it is extremely important that research into the causal relationship between intelligence and crime be undertaken using the tools now available in the disciplines of sociology, psychology, psychiatry and criminology.

### 3. CRITICAL ISSUE:

*The common rejection of the mentally retarded offender by mental health, mental retardation, and correctional agencies.*

It is now recognized that there are no hard and fast rules for

## THE MENTALLY RETARDED OFFENDER

determining which kinds of programs will be most effective in dealing with retarded offenders in general. Some of these offenders may respond most effectively to correctional or penal handling; others will require some form of mental hospitalization; still others may be appropriately handled in training schools for the retarded; some can be best dealt with in ongoing community programs now used exclusively by non-offending retardates. What is needed, however, is a greater degree of coordination between and among the various agencies society can muster in responding to the mentally retarded offender. Not only must the agencies be willing to cooperate, but also responsible professional groups such as the American Association on Mental Deficiency, the American Correctional Association, the American Psychiatric Association, American Psychological Association and others must join hands to provide leadership in this area.

#### 4. CRITICAL ISSUE:

*The lack of adequate socio-psychological definitions for the effective diagnosis and treatment of the retarded offender group.*

#### ACTION RECOMMENDATION:

We recommend widespread acceptance of the definition of mental retardation adopted by the American Association on Mental Deficiency:

Mental retardation refers to sub-average general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.<sup>68</sup>

We further recommend that more general use be made in the correctional field of the classification of degrees of retardation proposed by the Association.<sup>69</sup> While the adoption of a common definition of retardation together with a system for classifying degrees of retardation will help immeasurably to bring some order to the rather chaotic conditions obtaining today especially in correctional and penal institutions, it has to be recognized that a part of this recommendation must include the injection of some standardized procedures for the administration of accepted testing instruments. Correctional agencies ought to, at least on a regional basis, join forces, and with the assistance of expert consultative

<sup>68</sup> R. Heber, "A Manual on Terminology and Classification in Mental Retardation," monograph supplement to *American Journal of Mental Deficiency*, 2d ed., 1961, p. 3.

<sup>69</sup> "The Manual on Terminology and Classification in Mental Retardation," *American Journal of Mental Deficiency*, monograph supplement, Sept. 1959, pp. 58-59.

## ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH

services, arrive at appropriate standards for the administration of tests as well as the selection of appropriate instruments.

### RESEARCH RECOMMENDATION:

As a necessary concomitant to the action recommendation indicated above, research should be undertaken by the various correctional agencies to determine the validity and reliability of the instruments currently being used together with the procedures involved in such administration. For an example of the kind of research called for in this connection, one might consult the studies recently undertaken by Russell H. Levy and his associates at the Illinois Youth Commission's Reception and Diagnostic Center. These studies deal with the administration of various group and individual psychometric test batteries and also reflect findings related to test conditions and scores.<sup>70</sup>

### 5. CRITICAL ISSUE:

*The lack of adequate definitions relative to the legal identification and management of the mentally retarded offender.*

a. In any effort to improve upon the legal identification and management of retarded offenders it is imperative that behavioral science and law professionals actively seek improved communication and cooperation. To this end we specifically recommend:

- (1) That legal education be substantially broadened to include course work dealing with basic behavioral science concepts and the accumulation of knowledge through research methods. This can be implemented through three channels, all of which should be actively pursued. The first of these would be in the traditional undergraduate legal education institutions; the second would be through graduate legal education; the third channel includes continuing legal education.

The education of behavioral science professionals should be enhanced, most appropriately at the graduate level, through the introduction of courses concerned with the development of basic legal concepts and institutions.

- (2) As a means for the development of greater interaction between those in the behavioral science and legal professions as well as providing what might be a more appropriate method

<sup>70</sup> R. H. Levy, et al., *Cross-Sectional Psychometric Evaluation of "Court-Labelled" Delinquent Boys*, Illinois Youth Commission, Pub. No. P-100, Aug. 25, 1963; R. H. Levy, *Dimensions of Mental Retardation Among Wards of the Illinois Youth Commission*, Illinois Youth Commission Pub. No. P-500, June 20, 1966.

## THE MENTALLY RETARDED OFFENDER

of identifying and legally handling retarded offenders, we recommend that serious study and, at least on a demonstration basis, implementation of an Exceptional Offender's Court as proposed by Richard C. Allen. Allen's proposal calls for

... a specially constituted court, empowered to assume wardship over any adult person shown to be substantially impaired in his intellectual capacity, who has committed an act which, if committed by an adult without such impairment, would constitute a felony or serious misdemeanor. It is suggested further that jurisdiction be transferred to such court at whatever point the existence of severe mental retardation is suspected—whether prior to trial on a criminal charge, or after conviction, sentence and incarceration for such offense.

Upon referral to such a court, there should first be a determination of the existence of gross intellectual deficit. Such determination should be made by the judge, and should be based on expert evidence presented at a hearing at which the alleged exceptional offender is represented by a guardian ad litem.<sup>71</sup>

Flexibility would be the keynote of this court, and procedures involved would be roughly analogous to those of a juvenile court.

- (3) Another medium for encouraging greater communication and interaction in this area would be the strengthening of existing clinics attached to criminal courts and the institution of such clinics where they do not now exist. Somewhat later more will be said about access to these clinics by criminal defendants.

### RESEARCH RECOMMENDATION:

Statutory definitions and related treatment and handling strategies ought to be the subject of serious study to determine the socio-legal adequacy of the definitions, and to identify the problems inherent in and the success of treatment and handling modalities operationally determined by such definitions. Specifically, we would recommend broad research on the definitions of defective delinquency established by statute in Maryland, and full advantage be taken of the research opportunities inherent in the program of the Patuxent Institution created by the same statute. We might, for instance, be interested in determining if there are any significant differentials in parole outcome of randomly selected offenders who are identifiable as defective delinquents under the statutory requirements who are subjected to ordinary penal incarceration and those committed to Patuxent Institution, or other analogous facilities.

<sup>71</sup> "Toward an Exceptional Offenders Court", *Mental Retardation*, IV (Feb. 1966), p. 5.

## ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH

### 6. CRITICAL ISSUE:

*The serious shortage of services to the mentally retarded offender group.*

A significant contributing factor here is the crucial manpower and training situation in correctional work. We recognize that the recently created Joint Commission on Correctional Manpower and Training will be involved in work designed to identify the problems and suggested solutions in the general area of correctional employment and training. Some of these problems and solutions will undoubtedly relate to such issues as the manpower and training requirements of correctional agencies processing and treating offenders who are mentally retarded and mentally ill.<sup>72</sup> However, we feel that the following action and research recommendations are in order at this time:

#### ACTION RECOMMENDATIONS:

a) Because of the fact that many penal and correctional institutions have substantial segments of their populations made up of offenders with low measured intelligence (in some cases as high as 25%), it is extremely important that correctional personnel at all levels be at least minimally equipped to handle these inmates. We would recommend that on at least an in-service training basis correctional personnel be given instruction in the handling of retarded inmates.

Beyond the in-service training level, it seems imperative that more intensive education of correctional personnel be undertaken in the form of possible combinations of short-term courses as well as more conventional college programs, which would, among other things, be directed toward assisting correctional workers in their interaction with retarded offenders (as well as those with possible mental illness). We cannot stress too strongly the need for involving the first-line correctional officer in institutions in these programs. This category of correctional personnel has the most frequent, continuous and intense contact with inmates, and the impact of these contacts will appreciably weaken or strengthen the institutional goal of correction.

b) Extramural correctional services such as probation and parole need strengthening in order to provide adequate treatment

<sup>72</sup> Of particular interest in this connection is a contribution by D. Blain, "Manpower and Training in Corrections—Suggestions from the Field of Mental Health", in C. S. Prigmore, ed., *Manpower and Training for Corrections: Proceedings of an Arden House Conference, June 24-26, 1964*, Council on Social Work Education, New York, 1966, pp. 176-189.

## THE MENTALLY RETARDED OFFENDER

for the retarded offender. We would recommend here that probation and parole officers be given supplementary education and training designed to assist them in working with retarded offenders; perhaps such training and education could be combined with that recommended for institutional correctional personnel.

In addition, we recommend that retarded probationers and parolees be assigned to special caseloads which would be handled by selected officers trained in the problems of the retarded. These problems would seem to be so different from those of non-retarded offenders that the most effective means for providing adequate supervision would be the assignment of special caseloads where these problems can receive more individual and expert attention.

c) Institutional programs for retarded offenders, especially in the areas of special education and vocational training, require considerable attention. Ways must be found to attract qualified educational personnel in correctional work so that needed programs can be offered. The findings of the survey of the institutions referred to earlier in this paper revealed that over half of all correctional institutions in this country fail to provide any program whatsoever especially directed toward retarded inmates. This is a situation which cannot be permitted to continue.

We recommend that serious study be given to the possibility of establishing regional institutions for mentally retarded offenders. As indicated from the findings of the penal and correctional survey, many institutional administrators feel that they cannot retain specialized personnel and offer unique programs for the small minority of their populations made up of retarded persons. One way of handling this problem would be to create, on a regional basis, specialized institutions for the retarded to which two or more states could commit retardates convicted of criminal offenses.

We further recommend that cooperative efforts be made by the American Association on Mental Deficiency and the American Correctional Association to establish standards for correctional programming for retarded inmates. The AAMD has already become involved in setting standards for residential institutions for the retarded,<sup>73</sup> while the American Correctional Association has, for the past several years, produced a manual for correctional standards. Cooperation between the two organizations could pro-

<sup>73</sup> W. I. Gardner, and H. W. Nisonger, "A Manual on Program Development in Mental Retardation", monograph supplement to *American Journal of Mental Deficiency*, Jan. 1962.

## ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH

vide an excellent basis upon which to build more adequate and appropriate services in penal and correctional facilities. It is doubtful whether such gains can be made without this joint undertaking.

d) Extramural programs for retarded offenders can be dramatically improved through the use of facilities and agencies already operating for non-offending retardates in many cases. The community has, in recent years, experienced an extensive growth in such facilities as day-care centers, sheltered workshops and a variety of educational settings for the non-delinquent retardate. Frequently, such programs are closed to mentally retarded offenders on probation or parole. It may not be practical nor wise to expect a community to invest in the development of similar program facilities exclusively for the offending retardate. The possibility of using already existing non-residential facilities for selected offenders should be thoroughly explored. Much in the way of needed programming in this area might be provided if strong citizens' groups such as the National Association for Retarded Children would take a leadership position in this exploration.

### RESEARCH RECOMMENDATIONS:

We strongly recommend that demonstration research projects be undertaken to test the effectiveness of various intramural and extramural treatment and handling strategies. For example, such institutional programming as complete segregation of retarded offenders versus non-segregation could be examined empirically. Other projects would include studies of institutional special education and vocational training programs. In the extramural area, we feel that much could be learned from research studies of the special caseloads assignments of retarded probationers and parolees, and the placement of such probationers and parolees in extramural facilities for the non-offender retardate.

### 7. CRITICAL ISSUE:

*The lack of coordination between and within agencies processing and treating mentally retarded offenders.*

### ACTION RECOMMENDATION:

We recommend that states organize comprehensive correctional departments or divisions which would embrace institutional and extramural correctional services. Further, it is recommended that these comprehensive correctional departments be organizationally related to the Departments of Mental Health, and to other administrative divisions within the state having responsibility for train-

## THE MENTALLY RETARDED OFFENDER

ing school facilities if this responsibility is not borne by the Department of Mental Health. We recognize that such a recommendation goes beyond the need solely of retarded offenders, but we feel it is only logical that such administrative organization be carried through to the fullest extent possible. Such administrative structuring, we feel, would permit the maximum flexibility in designing appropriate programs and management strategies for mentally retarded offenders.

### 8. CRITICAL ISSUE:

*The administration of justice in cases of retarded persons accused of the commissions of crimes.*

Before proceeding to the recommendations in this area we must state that those involved in the administration of criminal justice in the United States have been dramatically alerted in recent years to the rights of accused persons through various court decisions regarding criminal responsibility (the *Durham* Rule), the right of accused persons to have counsel (Gideon), and in the general area of safeguards to be invoked to insure the privilege against self-incrimination through inappropriately obtained confessions and statements. The latter, referring to the *Escobedo* and *Miranda* decisions, would significantly affect the use of statements made by accused persons as well as police interrogation methods. While these decisions, as well as others, have broad impact in the area of the administration of criminal justice, they do have tremendous implications for retarded accused persons and defendants. In the *Miranda* case, the majority opinion of the Supreme Court refers in several places to the requirement that an accused person must "intelligently" waive his right to remain silent or to have counsel present during police interrogation.<sup>74</sup> We refer here to a most relevant statement by the Task Force on Law of the President's Panel on Mental Retardation which is as follows:

A retarded person, even when not coerced in the usual sense, may be unable to understand police procedures and their consequences, and therefore may be unable to make a genuine decision in relation to them. He is more likely than the average person to be unaware of his constitutional right to refuse to answer incriminating police questions, and of his right to consult with an attorney; even where the interrogator advises him of these rights, he may be unable to appreciate their significance. . . .

We do not say that all confessions by mentally retarded defendants should be excluded from evidence. But we do emphasize that courts should fully consider whether the accused state of mind, in view of his

<sup>74</sup> *Miranda v. State of Arizona*, 86 S.Ct. 602 (1966).

## ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH

mental retardation, was such that he was unable to give a confession that was genuinely voluntary, reliable and that may fairly be used against him.<sup>75</sup>

### ACTION RECOMMENDATIONS:

a) We are greatly impressed with the recommendations incorporated in the Pennsylvania Comprehensive Plan for the establishment, in a model mental health statute of a Mental Health Mental Retardation Referral and Investigation Service which would be empowered to examine persons taken into custody by police officials. We urge that serious consideration be given to the establishment of such a service unit for the examination of accused persons taken into police custody when there is some indication that mental retardation may be present. The organization of such a referral service might be through the local county departments of mental health, as in the Pennsylvania Model Statute, or could be on a statewide or multi-county regional basis. For many states the regional or statewide basis for organizing the unit would appear to be most appropriate.

b) Going beyond the recommendation indicated just above, we suggest that an accused person or someone on his behalf should have the right at any time during the criminal proceedings against him (i.e. prior to the commencement of the trial, during the trial itself, or after trial but prior to sentencing) to request an examination to determine whether he is, and/or to what degree he is, mentally retarded. Such examination would, in the case of indigent defendants, be provided at no cost to the examinee. While this recommendation may appear to be radical to some, we feel that it is a logical and necessary extension of the decision in the *Gideon* case requiring that a defendant's request for counsel be honored.

The examination called for in this recommendation could be carried out by a referral and investigation service discussed above, or through existing or newly established court clinics. In this latter connection, we recommend for consideration the recently established Georgetown University pre-trial clinic which functions in cooperation with the Legal Aid Services in the District of Columbia.

c. In the matter of incompetency to stand trial and the issue of determinations of criminal responsibility, we are in agreement

<sup>75</sup> The President's Panel on Mental Retardation, *Report of the Task Force on Law*, United States Department of Health, Education, and Welfare, Jan. 1963, pp. 32-33.

## THE MENTALLY RETARDED OFFENDER

with the opinion expressed in several state comprehensive plans deploring the practice of automatic commitment, especially in those cases found to be incompetent to stand trial, to a residential facility. Such commitment often results in lifetime segregation from society which is uncalled for in many cases. We would recommend that when a finding of incompetency to stand trial or a verdict of not guilty by reason of insanity is made that the court clinic or referral and investigation service be empowered to recommend to the court the most appropriate, based upon expert knowledge, disposition. This recommendation would not be binding on the court, although it should be given great weight in the final disposition.

d) Given the state of uncertainty regarding the rules to be applied to determine criminal responsibility (e.g. *Durham*, *M'Naghten*, and the American Law Institute formulation), we do not feel it advisable at this time to recommend a specific set of rules.

### RESEARCH RECOMMENDATIONS:

We have come to the inescapable conclusion that it is essential for the strengthening and, perhaps, reform of the administration of criminal justice in those cases involving retarded persons that empirical research into our legal institutions and procedures be undertaken. In general, we are thinking here of empirical legal research such as that being carried out by The George Washington University Institute of Law, Psychiatry and Criminology under a National Institute of Mental Health grant entitled *The Mentally Retarded and the Law*. This research project, dealing with both civil and criminal law, is engaged in compiling statutory and regulatory provisions with regard to the mentally retarded, and examining in the field the operation of these provisions. We specifically recommend research in the following areas:

a) Incompetency to stand trial and criminal responsibility. We need to know the extent to which proceedings regarding determinations of incompetency to stand trial are requested, by whom, and with what result. In such research, we would, of course, require that significant variables such as age, sex, socio-economic status, type of offense, etc. be related to incompetency determinations.

In the area of criminal responsibility, we recommend that studies be made of the frequency with which this defense is raised in trials of retarded persons. More than frequency, however, must be investigated. For instance, we would need to know whether there

#### ISSUES AND RECOMMENDATIONS FOR ACTION AND RESEARCH

are differentials in raising this defense for retarded or alleged retarded defendants in jurisdictions operating under differing rules of criminal responsibility. Further, we must know whether such factors as type of offense as well as the other variables noted above play a significant role in the frequency and outcome of defenses based on lack of criminal responsibility. In both areas, that is, incompetency to stand trial and criminal responsibility, we must relate the statutory and case law provisions regarding determinations in these areas with the operating criteria employed by courts in making their decisions.

b) In cases where accused persons are found either incompetent to stand trial or are determined to lack criminal responsibility, what are the dispositional alternatives established by law? From this point, research is needed to ascertain the relative frequency of each of these alternatives together with the impact of intervening variables on the selection process. In those cases where mental retardation is found to be present but where the accused person is determined to be either competent to stand trial or criminally responsible, research should be undertaken to investigate sentencing modalities, and whether these differ from those cases in which mental retardation is not found.

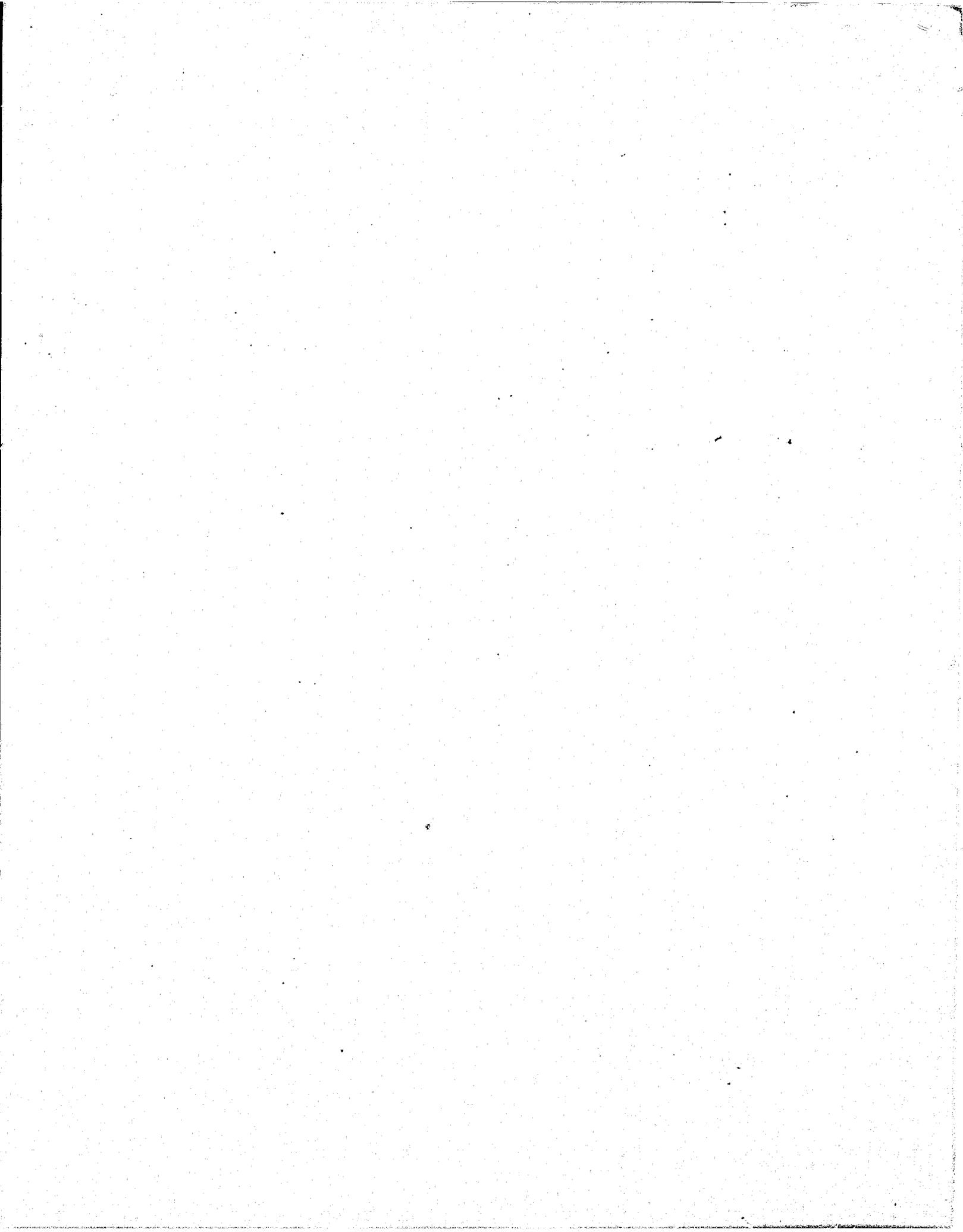
c) An area related necessarily to the issues outlined above is that of empirical determinations of the extent to which criminal trials and convictions of retarded persons are significantly based upon statements or confessions made by such persons. One question to be answered would be whether such statements or confessions are made more frequently by persons of low intelligence when compared with other accused persons. If it can be effectively shown that there is significant abuse of the retardate's condition, this research would permit us to be on somewhat firmer ground when suggesting procedural reforms in the administration of justice.

If the research outlined above would reveal nothing more than the extent to which the issues noted are significant ones in terms of sheer frequency, it would be extremely worthwhile. However, efforts at reforming the administration of criminal justice and of the treatment and handling modalities related to retarded offenders can only be successful if we have the detailed knowledge only research can give us of the actual operational behavior of various statutory, case law, regulatory provisions and decision-makers involved in the total process of providing justice.

The implications of the findings reported in this paper are as complex and controversial as they are frightening. Society must

### THE MENTALLY RETARDED OFFENDER

deal with people who are in ungentle terms seen as both stupid and bad. But our society must be judged by how we deal with the least fortunate amongst us. We cannot hide behind stereotyped, positive prejudice that refuses to face the seriousness and danger of anti-social behavior. We compound the injury by devoting inadequate resources to the pursuit of scientific understanding and possible prevention, and to the practice of humanitarian and enlightened management. The retarded offender is rejected on all sides; by the supporters of mental retardation programs who feel he is primarily criminal and only secondarily retarded—and by the correctional field, who place the retarded offender as low man on the totem pole of those who might benefit from treatment and rehabilitation programs. The problem of the mentally retarded offender calls for our best efforts as professionals and citizens.



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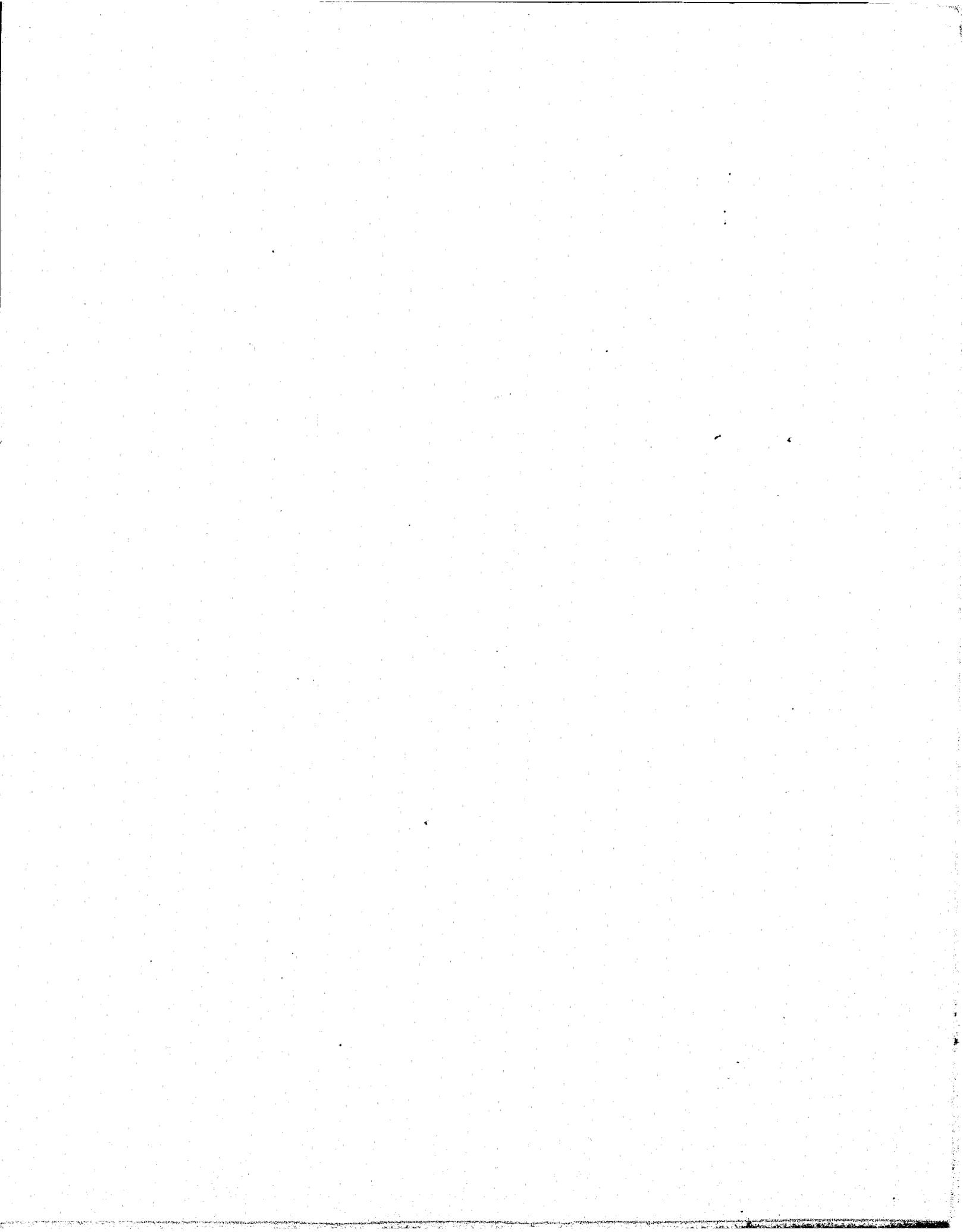
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