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INTELLECTUALLY DISABLED OFFENDERS

Edited by
Dennis Challinger

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CONTENTS

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OVERVIEW

Dennis Challinger
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Normalisation programs, in which intellectually disabled Australians are housed in the community instead of being isolated in institutions, have had an impact on the criminal justice system. This seminar allowed for discussion of that impact, and for consideration of ways in which that impact might be lessened. Normalisation programs require intellectually disabled persons to learn and develop many social skills, not least of which is that of heeding the law. In the event of their breaking the law, witnessing criminal events or being victims of crime, agents of the criminal justice system need to learn and develop appropriate ways of dealing with them.

The first speaker at the seminar, Mr Ben Bodna, outlined the many problems that were faced by intellectually disabled people coming into contact with the criminal justice system. His presentation was based on his recent report, Finding the Way: The Criminal Justice System and the Person with Intellectual Disability which made various recommendations for the benefit of intellectually disabled Victorians. They included; provision of a crisis accommodation facility, better education of criminal justice personnel, and improved support services from relevant government departments particularly for those intellectually disabled people who had committed offences. The ways in which such offenders were dealt with provided the focus for most discussion at the seminar.

POLICING

An example of the need for police officers to develop skills for dealing with intellectually disabled persons was provided by Ms Dianne Beckey of the Queensland Health Department. She described the confusion of some police just after normalisation programs were introduced in an area where intellectually disabled persons had previously been housed in a large institution. After discovering people whom they believed to be residents of the institution apparently wandering, some police had taken them back to the institution only to be told they were no longer residents there.

Such events caused Ms Beckey to develop formal documented arrangements with the police so that police personnel could

appreciate health professionals' activities, and those professionals could understand the duties and responsibilities of the police. Generally speaking, this initiative was seen by seminar participants as a valuable procedure.

Dr Peter Bush, the Victoria Police Surgeon, told the seminar of the way in which medical practitioners who acted as police surgeons were frequently called by Victoria Police personnel when they were confronted by unusual behaviour. On the face of it, that medical expertise should lead to intellectually disabled persons being identified and dealt with in an appropriate way.

However, as Dr Bush pointed out, police surgeons often have to make diagnoses without any background history of the person concerned, and often in an inconvenient place at an inconvenient time. How to identify an intellectually disabled person was an important theme that persisted through the seminar.

During the seminar, participants split into small groups to discuss particular issues. The 'police group' decided that communication was the key to police interaction with intellectually disabled persons. That, they suggested, should be part of a general training course for police in effectively communicating with different groups within the community. That training should discourage the use of jargon, indicate possible effects on communication of particular environments like police stations, and encourage police to deal with people in an age-appropriate way.

The training should also emphasise the folly of preferring charges while there is doubt that effective communication has occurred between a police officer and any alleged offender. It was important for the police to not treat intellectually disabled people differently from others, as that action could lead to escalation of their offending, for instance, from petty to serious theft. The group thought that, most desirably, training in communication with the intellectually disabled should extend beyond the police to all who work in the criminal justice system.

LEGAL ACTIVITIES

When an intellectually disabled person is charged by the police then it is lawyers and court personnel who have to ensure they deal with that person reasonably and fairly. Two lawyers, Mr Lu Papaleo and Mr Mark Ierace, spoke of the problems that lawyers faced with intellectually disabled clients. Each of these gentlemen had considerable experience with such clients and outlined the difficulties taking instruction from them, and also in ensuring that the Court was sufficiently well informed about the disabilities of their clients and the way in which those would affect their behaviour. Mr Papaleo indicated that

educational programs for lawyers, magistrates and judges were necessary, particularly to explain the differences between mental illness and intellectual disability.

The Courts were represented by magistrates, Mr Ron Cahill and Mr Ray White, who told the seminar of the difficulties they faced on the Bench. Not least of these was the shortage of options available to the Court, although Mr White indicated that the Victorian Children's Court was well placed in having psychiatric and psychological experts available for both assessment and continuing treatment of offenders.

In a joint presentation Mr Richard Llewellyn and Mr Peter Millier outlined a social systems perspective of intellectually disabled persons involved in court hearings. They provided examples of intellectually disabled people being disadvantaged by, and exploiting the courts, and strongly suggested that an appreciation of society in its broadest sense was necessary to understand the particular problems of the intellectually disabled and to implement programs to help them.

Implicit in Ms Marie Little's presentation to the seminar was the possibility for Courts to make participation in a formal sporting club, a condition of, say, a probation order, as there were really positive benefits in sport and recreational participation by the intellectually disabled. Ms Little gave examples of the way in which such participation could enhance an intellectually disabled person's self-image and sense of recognition.

The discussion group on the legal system believed that it was necessary to enhance awareness throughout the system of the special problems of intellectually disabled persons. At an individual level, that involves preparing an intellectually disabled person for their court appearance in whatever role, and the responsibility for that education falls principally on their legal advocates.

The group also felt that legal procedures should not be altered or made less formal for intellectually disabled defendants except in very special circumstances. Overall, there were important legal protections in existing procedures, and possible disadvantages in attempting to protect defendants. If disability was relevant to the court hearing, it should be raised without prejudice, and be made available as evidence in a manner that ensures all relevant facts are provided.

With respect to sentencing, the groups thought that the best advice the court could be given would come from a 'service person' who knew the convicted intellectually disabled person well. Ideally, that adviser should have knowledge of both available options available to the court and services available for the intellectually disabled. However access to such services

should obviously not only be available to the intellectually disabled person who is convicted of an offence.

CORRECTIONS

The post-court treatment of intellectually disabled offenders that most concerned seminar participants was that of imprisonment. The courts' use of community-based options was seen as more useful, and more likely to be beneficial or instructive, than a prison sentence.

Dr Bill Glaser spoke of his experience with intellectually disabled prisoners, indicating that psychiatrists themselves may have some difficulty identifying and dealing with the intellectually disabled. Then Dr Susan Hayes outlined the ways in which the lot of intellectually disabled prisoners could be improved, recognising that that group of prisoners were very vulnerable and often victimised by other prisoners.

One participant pointed out that it was necessary to clarify whether programs for intellectually disabled offenders should be aimed at helping them avoid re-offending or, to 'be better adjusted'. It was pointed out that after long periods of institutionalisation, many intellectually disabled people had developed survival skills, but if they were offenders those skills would seem not to have helped them in the community.

That participant suggested that if intellectually disabled persons were to end up in prison, then they should surely be provided with at least those (useful) skills, they would need to survive in the prison environment. Plainly, difficulties could well occur with determining which prisoners would need that sort of assistance.

One community program for intellectually disabled people that might be useful for offenders was described to the seminar by Mr Geoff Jones. The actual program that was described involved six intellectually disabled men whose disruptive or violent behaviour appeared to be maintained in their previous environments. They had all agreed to participate in an open program that aimed to promote pro-social behaviour.

Some seminar participants were not enthusiastic about this program and argued that consent in particular was a very difficult issue in that context. Mr Jones indicated that those in the program who changed their minds and did not want to continue in the program could 'vote with their feet', or otherwise behave disruptively (a technique they had used in the past) in order to be moved from the program. Discussion ranged on this matter which was agreed to be crucial for prison-based programs as well as for community-based programs whether they involved offenders or not.

The issue of whether prisoners should be subjected to compulsory or voluntary comprehensive assessment for intellectual disability was discussed. The extent to which an intellectually disabled prisoner might be cowed, intimidated or manipulated by authority figures complicated the issue. One participant suggested that such prisoners would prefer to see themselves categorised as 'crims' rather than as intellectually disabled. And another said that a prisoner had to believe that participation in any assessment or treatment would be to his or her benefit. Dependence on the prison grapevine was seen by another participant as an important consideration in this regard.

The group of participants who discussed prisons and intellectually disabled offenders were split almost equally between those who thought sending an intellectually disabled offender to prison was 'cruel', and those who did not. The group produced 14 different descriptions of an intellectually disabled person, agreed that more such people were entering the prison system and agreed that assessment was necessary.

The development of closer links between the prison and outside organisations such as education and health departments as well as service providers was seen as vital in order to ensure intellectually disabled prisoners did not deteriorate in prison. That might require individual programs for each prisoner which should take into account the prisoner's protection and safety, even though there should be no compulsion for a prisoner to accept any special program.

The suggestion for an entirely separate prison for the intellectually disabled was not accepted by most participants. Many in the group thought that a special unit in the prison could teach skills necessary for safe existence within the normal prison community, and agreed that prison itself was not necessarily an inappropriate penalty for an intellectually disabled offender. Re-offending was recognised as a real problem and it was thought that some form of support systems should be developed prior to an intellectually disabled prisoner's release.

The group endorsed the recommendations from The Missing Services report with respect to the importance of surveying the extent of intellectually disabled persons within the correctional populations, and engaging in action research to develop and monitor more services and programs in the community.

ASSISTING INTELLECTUALLY DISABLED PEOPLE

The Queensland Intellectually Handicapped Citizens Council provided one example of legislative action intended to positively assist intellectually disabled people. Dr Paul Gannon, a member

of the Council, outlined its activities and spoke of the 'legal friend', and the 'volunteer friend' whose roles are defined by the legislation.

Ms Heather Hindle described citizen advocacy to the seminar and it became plain that advocates from those sorts of programs undertook roles similar to that of Queensland's volunteer friends. The support that such a person could supply to his or her intellectually disabled friend or protege was indubitably invaluable, and that relationship should certainly be able to be continued throughout a prison sentence if that situation arose.

Mr David Gant, provided the seminar with considerable food for thought by describing the way in which intellectually disabled people could help themselves. He pointed out that the intellectually disabled learnt a great deal from the example of others, and consequently a prison sentence could be a particularly negative experience for them.

An interesting perspective on intellectually disabled persons was brought to the seminar by Ms Michele Castagna who described some related problems in the Northern Territory. She pointed out that one feature of the Territory that seems likely to bring real problems there in the future is petrol sniffing, the cumulative effects of which practice produce brain damage that considerably impairs intellectual function. Efforts being made in the Territory to deal with the intellectually disabled were outlined by Ms Castagna, and included research into the ways in which Aboriginal people perceive and respond to disruptive behaviour within their own culture.

Another Territorian, Mr Barrie Barrier, in commenting on Dr Hayes' paper indicated that a small unit for housing intellectually disabled prisoners had been established but, with six staff and only two prisoners, was at risk of closure. These views from Central Australia indicate how services are restricted and therefore how problems are compounded, in isolated areas of Australia.

In summary, this seminar established that difficulties with intellectually handicapped offenders were fairly much the same throughout Australia. They include police difficulties in identifying those with intellectual disability, the importance of acquainting the court with the relevant features of disability, and the necessity for sensitive and considered treatment of intellectually disabled prisoners. However relieving the plight of the intellectually disabled in the criminal justice system is most restricted, not by the lack of possible responses, but by the lack of resources to enable action to be taken.

WELCOMING ADDRESS

David Biles
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It is my pleasant duty to welcome you all to this seminar on the subject of intellectually disabled offenders. It is a great pleasure to me personally to note that such a large number of friends and supporters of this Institute are in the audience and also are among the people listed as speakers on the seminar program.

The subject of intellectually disabled offenders and the criminal justice system is one of increasing interest and concern. As I see it, the subject not only embraces what needs to be done in relation to offenders who are intellectually disabled but also embraces the needs of victims with similar disabilities. Our principal speaker this morning, Mr Ben Bodna, the Public Advocate from Victoria, recently released a major report which drew attention to the specific needs of intellectually disabled victims. That report has already been the subject of considerable public discussion in the Victorian media.

As far as the offender side of the equation is concerned, a book published some three or four years ago entitled 'Simply Criminal' by Susan Hayes and Robert Hayes pointed out that the best estimates available suggested that intellectually disabled persons were grossly over-represented at every stage of the criminal justice system, including in our prisons. That book argued very strongly for a policy of 'normalisation' as far as the treatment of these persons is concerned. The book also argued forcefully for special training for police, court personnel and corrections staff in order to enable them to recognise the difference between mental retardation and mental illness. This book, funded by the Criminology Research Council, was a milestone in Australian criminology.

It seems to me that there are a number of fundamental dilemmas in this area that I hope this seminar will endeavour to resolve. For example, support for a policy of normalisation seems to be very strong and yet there is also support for special consideration and special facilities being made available for both offenders and victims who are intellectually disabled. It seems to me that there may well be some degree of contradiction if, on

the one hand one is arguing that intellectually disabled people should be required to accept the consequences of their own actions and yet at the same time one is arguing for special treatment and special consideration.

To put this possible contradiction in a specific context, it seems to me to be difficult to suggest that intellectually disabled youngsters who might engage in shoplifting or other petty theft should on the one hand be treated as normal kids and dealt with by police and the courts as any other young shoplifter would be, while at the same time suggesting that their intellectual disability should result in their being treated differently. Perhaps this seminar will help me to resolve that problem.

I also hope that this seminar will devote some of its attention to ways and means that might be developed of reducing the incidence of crime against persons with intellectual disability. It seems clear that many of the assumptions which underlie our criminal justice system are hardly appropriate for crime victims who are either severely or moderately intellectually disabled. For example, the ability of victims to formulate complaints and give coherent evidence in court may be very doubtful in some of these cases.

I would also like to make the observation that if the general findings of the two national crime victimisation surveys that have been conducted in Australia can be extrapolated to the specific element in our society which is intellectually disabled, then we may well find that there is a considerable overlap between the two groups of offenders and victims. From these surveys it has been established that the typical crime victim is young rather than old, male rather than female, more likely to be ill-educated, untrained and unemployed, and more likely to be resident in a city rather than the country. That profile of the typical crime victim is identical with the profile of the typical offender, and it may well be that a similar overlap of profiles would be found with intellectually disabled offenders and victims. If that is the case, it is apparent that some of the new policies that are needed might be appropriate for both groups of people.

Finally, I would like to make a plea for more accurate and comprehensive data on the incidence of offending and victimisation within this group. To date, at best we have had only guesstimates and anecdotal evidence which have led to the conclusions that intellectually disabled persons are more likely to be involved in the criminal justice system on either side of the equation. I am sure that most people here would agree that guesstimates and anecdotal evidence are not a sufficient basis for the development of sound and rational policy. In order to overcome this gap in our knowledge you will no doubt be

interested to know that the Criminology Research Council has recently listed this topic as one which deserves high priority for funding at this time.

It is now my great pleasure to introduce to you the person who is to deliver the opening address to this seminar. As I have said, Mr Ben Bodna is the Public Advocate for Victoria. In other words, he is a sort of Ombudsman for those people who are in special need. He was formerly the Director-General of the Department of Community Welfare Services in Victoria and has had a long history of involvement with the helping and caring as well as the criminal justice professions in Australia. Also, for many years Mr Bodna was a member of the Board of Management of this Institute and a member of the Criminology Research Council.

It is my great pleasure to ask Mr Bodna to deliver his opening address.

PEOPLE WITH INTELLECTUAL DISABILITY AND THE CRIMINAL JUSTICE SYSTEM

Ben Bodna
Public Advocate
Victoria

INTRODUCTION

Last year Victoria became the first Australian state to create the position of Public Advocate. I took up this position, with responsibility for promoting the provision of services to people with disabilities so as to enable them to fully enjoy their rights as members of the community.

Among the first cases brought to my attention as Public Advocate was that of a young man with intellectual disability who had been held on remand at Pentridge Prison for some time. As I became acquainted with this young man's background, and other similar situations, it became evident to me that our system of justice was failing badly in dealing with people with intellectual disability.

It was clear that these people were in some fundamental sense a 'problem' to the criminal justice system, whether in their contacts with police, courts, welfare agencies or within prisons.

What was happening to people with intellectual disability in these instances often seemed both inappropriate and unfair. Police felt that they were unable to access resources to help them resolve crisis situations involving people with intellectual disability, magistrates were disturbed at having no options available to them other than prison sentences for convicted individuals with intellectual disability where a community based order was not appropriate, and prison officials and welfare workers were disturbed by the lack of provision within the prison system for the person with an intellectual disability.

As a result of these concerns I set up a steering committee with representatives from the Police, Office of Intellectual Disability Services (OIDS), Community Services, Victoria (CSV), the Office of Corrections, the Legal Aid Commission, the Chief Magistrate's Office, and a lawyer with extensive experience in representing people with intellectual disability. This steering committee took on the task of overseeing a report on the issues in relation to people with intellectual disability within the criminal justice system. This report Finding the Way: The Criminal Justice System and the Person with Intellectual Disability (1987) has recently been published.

From data collected for our Victorian report and estimates made by Hayes and Hayes in their book Simply Criminal (1984), it would appear that although people with intellectual disability make up only half to one per cent of the general population, they appear to form three to four per cent of those within the correctional system. In Victoria, approximately 12,000 people pass through the corrections system in one year, including both those on community based orders and those serving prison sentences. Three to four per cent represents 360-480 individuals with intellectual disability.

No special provision is made within the prison system or the community corrections system for people with intellectual disability. People with intellectual disability who do come to public attention are recognised by those within the criminal justice system to represent only the tip of the iceberg. Police, prison welfare officers and community workers all had numerous anecdotes describing individuals who had passed in and out of the courts and correctional system, recognised as having intellectual disability but with no special provision made for them.

VICTIM OR OFFENDER

There are two major types of involvement of the person with intellectual disability within the criminal justice system - as a victim or as an offender.

As a victim, the person with intellectual disability is vulnerable to physical and sexual abuse. For the Victorian report, case notes of 100 randomly selected people registered with the Office of Intellectual Disability Services were examined. Five of these people had significant experiences as victims. In fact, although this had not yet been realised by the staff of the regional office concerned, one of these people had been murdered some six months previously, by his mother's de facto husband. That regional staff were not aware of this situation illustrates that contact and information exchange between clients, disability services staff and other agencies is not always ideal.

Sexual abuse of women with intellectual disability was also highlighted in this random selection of Intellectual Disability Services clients. In the case notes for a woman who had been assaulted it was clear that no charges had been brought against the non-disabled man involved, and it was only recommended that he not be brought into contact again with the individuals in the program in which the incident occurred. This case illustrates the problem for some women with intellectual disability being perceived as unable to bring charges.

As offenders, it was clear from the cases examined that the person with intellectual disability is most likely to be a minor offender with a history of petty crime, re-offending while on probation, bail contravention and so on.

It is fairly evident that there is still a strong tendency for the general public to regard people with intellectual disability as inherently dangerous and violent, and to confuse intellectual disability with phsychiatric illness. It was equally clear from examination of the average case of offenders with intellectual disability that the stereotype of the 'mad bad mental defective' is no more common among offenders than is the 'mad bad non-mental defective'. However, what was clear was that if an offence was major, and particularly if it was a sexual offence, it was much more likely to become apparent when an individual had an intellectual disability, because far more extensive assessment would be carried out in such cases.

Rather than the most characteristic behaviour of the individual with intellectual disability being violence or aggression, the most common pattern shows repeated minor offences.

In summary, the offender with intellectual disability is likely to:

- be male
- be in late/early twenties
- have been in institutions for a significant part of his childhood, and
- lack permanent accommodation or stable living arrangements.

CONTACT WITH POLICE

Police and community welfare

A large proportion of day to day police work is now concerned with providing welfare oriented services to individuals with whom police come into contact. An individual may come into contact with the police as a victim, a possible offender, or as a person apparently distressed, disturbed or ill.

Police involvement may range through questioning and interrogation, charging, informal cautioning, referral by the police to some other agency seen as appropriate, or examination by a police surgeon.

If someone appears distressed, disturbed, confused or in some sense not 'normal', police action is likely to involve contacting some assisting agency. This is probably likely to be either a police surgeon or the Community Policing Squad. The aim of this contact is essentially to divert the individual from the standard course of police procedure.

Diversion

The submission of the Office of Intellectual Disability Services to the current Victorian Committee on Sentencing, defines 'diversion' as usually involving 'the exercise of prosecutorial discretion to dispose of a matter by ignoring the offending

behaviours or alternatively by administering a caution. Where the offender is intellectually disabled, diversion may involve the application of involuntary commitment procedures.' That is, an individual is diverted when he is not charged, but some other custodial action is taken in relation to him.

The submission points out that likelihood of diversion for individuals depends on the perception by police of 'the availability of alternative forms of disposition, the characteristics of the individual offender, and the nature of the offence.'

Diversion can be considered as occurring at at least two points: very preliminary 'resource seeking' diversion, for instance where police are seeking to find someone who can provide information to identify the person they are questioning, and diversion at a later stage as a 'charging alternative'. A failure to find appropriate identification resources can lead to a 'charging alternative' diversion, as in the following case:

> An elderly man walked out of the women's toilets in Richmond with his zip undone and shirt hanging out. Police stopped and questioned him, at which point he tried to run away. He was taken to the station for questioning where he was unable to provide any rational responses. He began to cry. Police arranged for him to be taken to a psychiatric hospital. His family were unable to trace him for five days (Butterworths and Valios, 1986).

When the police are confronted with a case of this type, the model for action, and resource guidelines available to them are provided through the police manual but that manual treats 'mental illness' as synonymous with 'intellectual defect'.

The current guidelines do not provide any information which would assist police to distinguish between mental illness and intellectual disability. The appropriate action, from the guidelines, is for the police to treat cases of apparent disturbance or disability as potentially psychiatric cases. It can thus be seen that in terms of the guidelines available to them, police acted 'appropriately' in the above case. Unless police have developed informal contacts and knowledge in relation to intellectual disability they will inevitably be guided by the mental illness orientation of the police manual.

Diversion at this early level then will tend to be first directed towards contacting a relative or friend of the individual in contact with police, or, if this is not possible, diverting individuals into the mental health system. This type of diversion may or may not result in formal involuntary commitment. However, in relation to formal commitment of people with

intellectual disability it should be noted, that when the new Mental Health Act is proclaimed in Victoria it will no longer include the intellectually disabled.

There are no sections of the Mental Health Act 1986 or the new Intellectually Disabled Persons Services Act 1986 which allow the former power of the police to commit an intellectually disabled person as a recommended person to an institution, without evidence of psychiatric illness in addition to intellectual disability.

Community Police are concerned that they will thus lack any legal powers to place individuals in need of institutional care. There are two urgent problems.

Firstly, the lack of crisis institutional or supported accommodation for the individual with intellectual disability who is not mentally ill, secondly, the lack of legal power of the police, under the new Acts to make involuntary emergency placements.

Although a Guardianship order may be applied for in relation to an intellectually disabled person, and, if granted the guardian may apply to the Director-General of CSV for entry of the individual to an Office of Intellectual Disability Services institution, there are no direct powers available to the police in crisis situations.

It may be argued that the police should not have powers to commit a person with intellectual disability to an institution. One of the problematic aspects of diversion is its relationship to social control of people who have disabilities. A theme of those concerned with the consequences of diversion is that disabled people may be penalised more severely than the non-disabled for similar behaviours.

It would appear equally undesirable that a person with intellectual disability should be charged and remanded to Pentridge Prison because there is no alternative provision available for him or her.

From police and welfare workers comments it is clear that there is an urgent need for crisis accommodation for disabled people. Some provision should be immediately made. A further need exists for collection by police of statistics to enable further planning of crisis accommodation for intellectually disabled people.

However, appropriate diversion also needs the provision to police of information on appropriate positive resources. Unless adequate and properly resourced information for police about intellectual disability is provided they will not be aware of relevant resources. They should at least have a knowledge of OIDS itself.

So far, contact between police and OIDS has been on an ad hoc basis. For instance, in 1985 a Working Party was set up in the North Eastern region of the Department of Community Services, with members from the Police, Office of Intellectual Disability Services, Office of Corrections, Community Services, and non-governmental agencies. This Working Party was developed as a consequence of a joint DCS/Office of Corrections funded project on issues with respect to offenders with intellectual disability. A workshop was organised for involved agency workers as part of this project although this Working Party has now ceased to meet.

Questioning and Interrogation

No specific reference is made in Victoria Police Standing Orders to the interrogation of persons with intellectual disability. There are specific recommendations for police contact with the hearing disabled, interviews with juveniles are required to be carried out in the presence of a parent, guardian or independent observer and for aborigines, guidelines have been judicially laid down which recommend the presence of a 'prisoners friend'.

Section 87 requires police to:

> take into account the literacy and intelligence of the person being questioned, his knowledge of the English language, his present physical and mental state and the length of the interview.

In NSW the Police Commissioner's Instruction 7(3) requires that the Police should attempt to have a parent, guardian, friend or other responsible person present if they suspect that the person they are questioning is of 'feeble understanding', whilst Instruction 6(3) states that special steps should be taken to ensure that an intellectually disabled person or person who does not understand English is treated fairly.

In the United Kingdom, the following police guidelines exist:

> Interrogation of mentally disabled persons
>
> (a) If it appears to a police officer that a person (whether a witness or a suspect) whom he intends to interview has a mental disability which raises a doubt as to whether the person can understand the questions put to him, or which makes the person likely to be especially open to suggestion, the officer should take particular care in putting questions and accepting the reliability of answers. As far as practical, and where recognised as such by the police, a mentally disabled adult (whether suspected of crime or not) should be interviewed only in the

presence of a parent or other person in whose car, custody, or control he is, or of some person who is not a police officer (for example, a social worker).

(b) So far as mentally disabled children and young persons are concerned, the conditions of interview and arrest by the police are governed by Administrative Direction 4 above (which is no different to interrogation of non-related children and young persons).

(c) Any document arising from an interview with a mentally disabled person of any age should be signed not only by the person who made the statement, but also by the parent or other person who was present during the interview. Since the reliability of any admission by a mentally disabled person may even then be challenged, care will still be necessary to verify the facts admitted and to obtain corroboration where possible (Mitchell, 1979, 902).

It is clearly possible to build safeguards into questioning procedures for intellectually disabled people, even though in practice they may not always be observed.

Identification of Intellectual Disability

In order to act appropriately in relation to individuals with intellectual disability correct identification of intellectual disability is necessary. However, a simplistic categorisation of individuals can actually lead to a diminution of their personal rights, for instance, where people with disability find difficulty in bringing charges and being accepted as potential witnesses in criminal cases.

The main issues in relation to identification in practice, in relation to initial contact with police in the Victorian system are, firstly, that identification should be used to enhance rights of people with intellectual disability, secondly, that means of identification should be practical and early used, and thirdly, that identification should distinguish between intellectual disability and mental illness.

Some straightforward indicators that the police could use are invalid pensioner status, and attendance at special school or sheltered workshop. The Los Angeles police have guidelines which read as follows:

SOME INDICATORS OF MENTAL RETARDATION:

> An important clue can be obtained by asking the person what school he attends or attended. As a police officer, you undoubtedly know the special schools in your area that are designed to educate people with disabilities. It may also be helpful to ask the individual what kind of classes he was in. An answer such as 'special classes', 'EMR' or 'TMR' classes, or other indications that education was of a special nature should be noted. If he is retarded he may have trouble with the following tasks: identifying himself, reading, writing, identification of money by denomination, telling time, finding his number in the telephone book, giving you directions to his home, school or work. He may know how to get there on his own, buthave difficulty telling someone else how to do so. He may be slow in his verbal or physical responses or have a speech defect.

The revision of the Victoria Police Manual guidelines, and development of resource material for police by the Office of Intellectual Disability Services would act to increase the awareness of police that a distinction exists between the psychiatrically ill and the intellectually disabled person. The suggestion that persons with intellectual disability could carry some form of identification card could assist police with crisis situations.

Training of Police

Victoria Police training incorporates almost no material with regard to intellectual disability. The Constables' Advanced Course includes one seminar on disability but this deals primarily with communication with the physically disabled. Police training currently lacks general information to help police distinguish the intellectually disabled person from the psychiatrically ill person, and does not provide basic information as to the structure of services available to the intellectually disabled person through OIDS regional offices. That information should also be included in sergeants' and senior sergeants' training courses.

The Office of Intellectual Disability Services should provide information in pamphlet form for reference by station police. This should be short, providing brief information on the nature of intellectual disability and an updated list of regional offices and contact phone numbers for Office of Intellectual Disability Services workers.

Bail and remand

If a person has been arrested bail may be provided by the police officer in charge of the station, or by a magistrate. There is a presumption in favour of bail for most offences. Bail through the police is offered on the person's own recognisance. Bail obtained from a magistrate's order may be on an individual's own recognisance, or may require surety.

Bail will normally be set with conditions. For instance, individuals may be required to report weekly or more often to their nearest police station. In practice homeless individuals are less likely to be offered bail and bail may be refused if for instance there is an unacceptable risk that the accused on bail would abscond, commit new offences, or endanger the public.

In the cases examined for the Victorian report it was apparent that difficulties existed in obtaining bail for the intellectually disabled person charged with an offence. Police and courts were reluctant to offer bail to individuals with intellectual disability without conditions of supervised accommodation on the bail order.

Re-offending, albeit minor, is a characteristic pattern for individuals with intellectual disability, for instance, continued petty theft. Agencies and individuals involved with and affected by this behaviour will tolerate it, to a point beyond 'normal' tolerance. At some point however, the behaviour exceeds its 'acceptable social nuisance' level. At this point police intervene, the individual is charged and brought before the court.

If then the court wishes to return the individual to the institution on a supervised bail order, the institution will be reluctant to re-accept him, since the very bringing of the charge reflects the fact that the institution has found the behaviour of the individual intolerable.

The problem of inappropriate remand for the intellectually disabled person then is likely to really stem from, firstly, the consistent tendency of institutions and police and community service agencies to 'let off' the intellectually disabled person, so that when finally charged with an offence there are few or no non-remand opportunities left for the individual, who is unwelcome at all possible supervised accommodation options.

Secondly, the tendency of the person with intellectual disability to re-offend whilst on bail, resulting in a legal requirement that he or she be remanded, and thirdly, the lack of suitable supervised accommodation.

Normalisation and Charging

Does normalisation not imply that the person with intellectual disability should be charged, and take the consequences, as with any other member of the community? It is clear from the case histories examined for this report, that the person with intellectual disability is likely not to be in the same position as other individuals charged with an offence. He or she is likely to have been resident in an institution for some or most of his or her life. He or she is likely to have had a history of small offences and instances of social nuisance behaviours for which he or she has been continually 'let off'. He or she is likely to be seen as difficult and as having exhausted the services available.

If the person with disabilities is expected to take the consequences of illegal or offensive behaviour, then he or she must be consistently made aware of the limits that exist.

Just as programs exist to assist the disabled person to develop his or her full vocational potential and to develop independent living skills, so too are programs needed which will come to grips with the issue of nuisance behaviour, particularly in late adolescent individuals with intellectual disabilities.

Certain behaviours should be taken as indicators that attention and possibly program intervention are needed. These behaviours are:

- sexually aggressive behaviour or inappropriate sexual overtures;
- petty theft;
- general aggression; and
- car theft.

Individuals who behave in this way need development within a general program plan and an individual program plan dealing with these areas.

The Police and OIDS

The relevant instances of behaviour which the police may encounter are:

- the distressed/disturbed person with intellectual disability;
- the person with intellectual disability who has apparently committed a minor offence, but where

recognition of intellectual disability leads to a re-interpretation of the action and an acceptance that it should not be treated as an offence;

- the person with intellectual disability and an 'acting out' behaviour disorder;

- the 'social nuisance' person with intellectual disability; and

- the person with intellectual disability who has in fact committed an offence.

In the first four of these categories police may feel it inappropriate to charge the individual. As has been pointed out, their most likely course of action is to turn to the Mental Health system for assistance. However, the appropriate agency for the police to approach for assistance is the Office of Intellectual Disability Services. The questions then raised are:

- How will the police know this is appropriate?

- Where in practice do they turn when in this situation? and

- What resources will the Office be able to provide of assistance?

In the past, particular OIDS workers have given of their own time, on a personal basis to emergencies outside usual working hours, but there is no formal provision within OIDS for this service.

A crisis support service, instituted on a 24-hour basis, with staff from general Community Services and the Office of Intellectual Disability Services, is clearly necessary.

If clients are to be referred to OIDS when they come into contact with the police, guidelines are needed for regional OIDS workers as to the rights of clients when being questioned by police, and how OIDS workers can access legal information and advice for their clients.

Advocates and Independent Observers

Citizen Advocate groups are currently being established in Victoria. They aim to bring together individuals with disability and non disabled individuals who act as friends and advocates. The model currently adopted is one of long term, semi-permanent, one-to-one matching of advocates with disabled people. It is clear, however, that the need for crisis, short term advocacy should also be addressed.

Support for individuals with intellectual disability being questioned by police could then be provided through: OIDS staff, Citizen Advocacy Groups, trained crisis advocates, and other skilled persons.

In all cases, the setting up of guidelines would entail the provision to police of contact sources for the recommended observers/advocates. It is desirable that a working party of police and other agencies draw up both guidelines for the police manual and procedures for contacting supporting persons.

LEGAL ASSISTANCE AND REPRESENTATION

General Provision

Legal assistance and representation may be needed at any point of an individual's contacts with police or courts in relation to a criminal offence as victim, witness, or offender.

Legal assistance options available to an individual in Victoria are legal counselling and assistance through community legal services, legal aid through the Legal Aid Commission, private solicitors, legal counselling and advice services obtained within or through other advice and support agencies for people with special needs, and legal counselling, advice and representation through special services operating within a general legal service.

The Legal Aid Commission has priorities for the provision of legal aid and assistance. Among the categories of people for whom priorities are set are:

- Persons who would be more severely disadvantaged than others if aid was not provided (this group includes those with disabilities);
- Persons whose mental or physical health will be seriously affected if aid was not provided or who have a special need for it because of a physical or mental disability;
- Low income earners. In particular people whose income is no more than that provided by income securities legislation; and
- Children, criminal defendants and persons involved with family law matters.

Persons with an intellectual disability therefore are members of a category with particular rights to legal aid assistance. The

question then arises as to whether they need additional assistance if they do need or seek legal help.

Telephone contact with a number of community legal services indicated that service providers felt that they would not be able to identify clients as intellectually disabled and that they would not be aware of sources of supplementary advice to which they could turn if offering advice to an intellectually disabled individual. A lawyer at the Fitzroy Legal Service pointed out the need for this information on supplementary services to be provided to the community legal services.

The Legal Aid Commission encourages its lawyers to be aware of the special needs of disadvantaged groups, and of the community resources available to lawyers working with disadvantaged groups, but has no specific service directed to individuals with intellectual disability.

The individual with intellectual disability may lack knowledge of the general community legal services. He or she may not realise that one can approach a service of this kind. A lack of awareness of legal aid options is probably general in the community, not limited to intellectually disabled people and individuals will often have come to contact legal services through referral or direction from welfare workers who perceive this as an appropriate action. Alternatively, a disabled person may turn first to their usual support agency.

Legal Aid for Individuals with Intellectual Disability

In Sydney, the Redfern Legal Centre has set up a specialist Intellectual Disability Unit as an expansion of work already done at the Centre in this field. The Centre now provides 30 hours per week of rostered solicitor time, 20 hours of legal assistant time, and eight hours of social work time specifically directed to legal assistance for the intellectually disabled, called the Intellectual Disability Rights Service.

Criminal cases do not form a large part of the legal service provided, with only an average of two requests a month. A major function of the Redfern Centre is to act as a referral service directing applicants to regular legal services. The majority of queries come from disability workers and organisations, and are referred on to other lawyers.

Provision of legal services to individuals with special needs requires that:

- the professionals giving the service be experienced in communicating with individuals with special needs;

- they have the specialised knowledge likely to be needed in dealing with issues arising, i.e. the legislation and case precedents relevant specific to intellectual disability rights; and

- they are aware of the network of supporting agencies, services and programs to which they can refer.

These requirements are most likely to be satisfied with a specialised referral service, because individuals with special needs will be a small minority within any lawyer's experience.

> Lawyers often know little about intellectual disability and how the law relates to intellectually disabled people. Like other members of the broader community, lawyers have often had little contact with people with intellectual disability (Simpson, 1986).

This is not to say that it is necessary that legal services only be provided to intellectually disabled people within and by specialist services. What is needed is some point at which relevant knowledge and expertise is concentrated, which can refer, and be referred to, by those providing general legal services when a particular instance arises.

The Redfern Legal Centre therefore represents an ideal service as a specialist referral point and resource unit within a general community legal service. This approach enables a wider spread of knowledge among professionals who have not yet come into contact with persons with intellectual disabilities.

> The service will then generally provide an appropriate referral, rather than carrying the case through. The aim of the service is to build up the capacity of mainstream lawyers to act for intellectually disabled people rather than seeking to provide a comprehensive casework service. The service provides ongoing consultancy to recipients of referrals and other lawyers and agencies representing intellectually disabled people (Simpson, 1986).

In Victoria, a legal advice service has been recently set up under the auspices of STAR, the Victorian Action on Intellectual Disability Association. This has been providing approximately one hour per week of legal advice through a lawyer working from STAR offices. This service is at present seeking funding for a more extensive legal service to be provided by them.

The intended service differs from the Redfern model in that it would be a service based within a non-legal special needs

service, as is the Deaf Society's service. In terms of relevant action in Victoria in 1987, the setting up of a more comprehensive service through STAR could act to provided a focus for legal assistance in this area.

However, the proposed Victoria service does not follow the Redfern model, in that it is not functioning within a general community service. The drawbacks to the provision of a specialist service within or linked to another special needs service is the encapsulating yet again of a service to the disabled away from the general community services. This means that knowledge is not shared among general legal services of the needs of intellectually disabled people.

THE COURTS

Individuals coming before the court as defendants may have already obtained legal advice, and been provided with legal services, or they may obtain the services of a duty lawyer at the court on the day of the hearing. The duty lawyer may represent them then or may seek an adjournment in order to allow fuller representation of their case. However, it may be difficult for a duty lawyer, meeting his or her client at short notice, to prepare a proper defence.

In addition, the provision of adequate instructions to the lawyer depends on the initiative and understanding of the defendant. The problem of adequate instruction is of course not limited to representation by duty lawyers, but it is likely to be exacerbated where first contact between lawyer and client is made immediately before the hearing of the client's case.

The major areas of concern for the intellectually disabled person are unfamiliarity with a court environment which is bewildering to the majority of individuals coming into it whether intellectually disabled or not, ignorance of how to obtain legal representation and advice if they have not had legal contact before arriving in court, and lack of ability of legal representatives to identify their special needs.

The quality of general non-legal support for individuals in the court system is good where it is provided. The Salvation Army provides Court Welfare Services to City, Prahran, Preston and Broadmeadows Courts. The Court Information and Welfare Network also operates at a number of metropolitan courts. It, in particular, is alert to the needs of people with intellectual disability.

Because not all courts provide general support services, resources are needed to enable the expansion of service provision to all courts. In addition, the existing named support services could provide OIDS with advice and training for their officers

on the support of intellectually disabled individuals coming into the court system.

The second area of need, that of individuals coming to court without prior legal contact, raises the question of individual capability to access the duty lawyer system in those courts where duty lawyers are provided, and to be dealt with fairly in those courts in which no duty lawyer is present.

Individuals must either be aware of the availablity of the duty lawyer system or be referred to it. If the individual is obviously 'special' or the Magistrate feels that the person should be represented, the Magistrate will adjourn the case and refer the charged person to Legal Aid. Referral to Legal Aid does not of itself necessarily mean that the court becomes aware that the person has an intellectual disability, if this is not strikingly apparent.

The minor offender without obvious disability may well proceed without representation, or with representation based on brief contact with the duty lawyer immediately prior to court appearance. Concern has been expressed that this category of defendant is vulnerable. If OIDS support were provided to clients who are appearing in court, this possibility would be minimised.

The third area of need is that of increasing the ability of legal representatives to identify special needs clients, when contact may be at short notice immediately before a hearing.

Information programs for Legal Aid Commission lawyers could alert duty lawyers to indicators of special need in clients, and could provide information on appropriate sources of assistance for clients with intellectual disability. In addition there need to be guidelines for OIDS staff on procedures which should be followed, when an OIDS client is summonsed for an offence.

A Friend in Court

It has been suggested that intellectually disabled individuals should have the right to assistance in court, as defendants or witnesses. For defendants, this assistance would enable them to present their case fully to the court. Opinion is divided on this issue. It can be argued that it is the responsibility of the lawyer representing a client with intellectual disability to interpret the proceedings of the court to his or her client, and that a defendant must ultimately give his or her own testimony.

For witnesses, the aim of a friend in court is primarily emotional support in presenting their evidence (particularly where the witness is the victim).

However, Magistrates already can and may allow support to an individual appearing before them. This support may be provided by a relative or friend of the individual charged, or a welfare worker from, for instance, the Salvation Army. The provision of support in court is influenced by the knowledge of the Magistrate that the charged person has special needs.

The major need then is for procedures to notify Magistrates that special need exists for the individual appearing before them. The Magistrate can then take this into account in a number of ways, one of which may be the acceptance of a supporting person accompanying the individual charged. Again, this emphasises the importance of a referral system outside the court, which can be triggered to act in relation to individuals with special needs by notifying the agencies with whom that individual will come into contact.

Dispositions of the Court

When any defendant appears before a court, two major outcomes are possible. Either the case does not proceed after initial indictment. This occurs when an individual is found Unfit to Plead or the case proceeds to judgment which can include the person:

- being found not guilty on the grounds of insanity;
- being found guilty and receiving a prison sentence;
- being found guilty and receiving a Community Based Order, Bond or fine;
- having charges proven and being placed on a bond no conviction);
- being found not guilty; and
- under the Intellectually Disabled Persons Services Act 1986 the court may also, following conviction, discharge a person who is eligible for OIDS, on condition that he or she receives specified services.

The dispositions of 'unfit to plead' and 'not guilty on the grounds of insanity' are rare, and are unlikely to occur on the grounds of intellectual disability.

Guilty or Not Guilty

The most likely outcome for a person with intellectual disability is that their trial will proceed to a 'guilty' or 'not guilty' outcome in the usual way, and that the issue of intellectual disability will be raised only insofar as it is of relevance to questions of degree of responsibility, possible sentencing options, and reliability of evidence. Intellectual disability may therefore be relevant to a finding of Not Guilty in some cases where it can be argued that there was:

(i) no intention to commit an offence, or

(ii) that an apparent confession or admission of liability is of dubious worth in the light of the person's capacity to fully comprehend what they have admitted.

For persons with intellectual disability before the court the main issues of concern are:

(1) that they not invalidly be found guilty when they are in fact innocent, and

(2) that they not receive sentences which for them are functionally more harsh than for non-disabled individuals.

Underlying these issues is the need for mechanisms which can notify the court prior to the commencement of trial of an individual with disability.

Court Reports

If intellectually disabled persons come before a court, full information on relevant aspects of their disability, and on services available to them, must be given to the magistrate or judge, if they are to receive appropriate sentences.

The court can request reports from the Forensic Psychiatric Services of the Health Department, or receive other reports from professionals called as witnesses.

After conviction, if the court is considering a Community Based Order, a report must be provided by the Court Advisory Service of the Office of Corrections.

The court will usually ask for a psychiatric report from Forensic Psychiatric Services if the accused appears to be mentally ill, or to be alcohol or drug addicted. The court's purpose in requesting such advice may be to determine the degree of 'intent' of the accused, his fitness to plead, and possible treatment recommendations.

The court's interest in asking for a psychiatric report is directed basically towards the question of whether the defendant is mentally ill. The mentally retarded person is not mentally ill: that is, he or she does not suffer from a specific condition which can be treated. The person with intellectual disability is developmentally delayed or disabled: this condition is permanent, not treatable by drugs etc., and means that the person in question will take longer to learn the everyday rules and realities of life than the person not developmentally disabled.

The appropriate assessment for the person who may be eligible for services under the Intellectually Disabled Persons' Services Act is psychological assessment. However, these are currently not available to courts because no statutory option or resource currently exists.

A study of psychological reports has demonstrated that at present psychological assessments of persons with intellectual disability are not carried out when the charge is minor. However, an assessment unit within OIDS would enable psychological assessment of eligibility for OIDS services to be carried out as a matter of routine even when the charge is minor.

The Court Advisory Service reports as provided through the Office of Corrections are part of the normal process of sentencing, which must be accessed when a magistrate or judge is considering a community corrections order.

Under the Penalties and Sentences Act 1985, the consultation with Community Corrections Advisory Service before making a Community Based Order is intended to establish:

- that appropriate facilities exist for the implementation of the order, and
- that the offender is a suitable person for that order.

Court Advisory Service reports may take the form of a written report, prepared during an adjournment, prior to sentencing, or a presentation to the court by a Corrections Officer, based on an on-the-spot assessment.

The present assessment carried out when a report is requested falls into two sections: a statistical information section, which collects basic socio-economic data for the offender, and a 'risk profile' section, which collects information which has been shown in overseas studies to be relevant to predicting successful completion of community based orders. Characteristics which would indicate higher risk would be:

- lower education,
- poor literacy level,
- unemployment, and,
- pattern of offence.

Individuals with higher risk profiles are likely to be recommended for higher levels of supervision within any community based order. Considering the criteria, higher risk groups are likely to include more individuals with intellectual disability. Intellectual disability is one of a number of relevant personal characteristics, and there are no grounds for excluding it from the range of factors relevant to sentencing options. Therefore,

in relation to the Court Advisory Service report, it is desirable that it collect information which can act as a trigger to action on the part of the Court Advisory officers. Such triggering information would then enable Court Advisory officers to contact OIDS for assessment and advice in relation to the individual in question.

Such trigger questions could be:

- is the offender receiving an Invalid Pension, and if so, on what basis? and
- has the offender attended a Special School, Special Development School or Day Training Centre?

Unless recognition of intellectual disability as a significant factor is established, it is likely that the intellectually disabled offender will suffer either:

- by continuing to be subsumed as a sub-category of the mentally ill, with court attitudes directed towards action not of maximum benefit to this group, and
- by being unrecognised as having special needs.

In either case a vicious cycle is perpetuated in which the intellectually disabled person is not identified as having special needs, and hence no need is perceived to establish programs which would be of benefit to the disabled offender.

AFTER SENTENCING

Normalisation and Sentencing

The Victorian report holds strongly to the principle that the offender with an intellectual disability should not be 'excused' or diverted from the legal consequences of their behaviour. In the overwhelming majority of cases involving persons with intellectual disability, the offender will not be incompetent, is responsible for the actions involved, and is capable of appreciating the nature and consequences of their act.

The correctional outcomes relevant to the offender with intellectual disability are not categorically different from those available in relation to non-disabled offenders.

The American correctional system demonstrates two alternative approaches to sentencing program planning for individuals with intellectual disability. These are:

- A special supervisory unit for such individuals.
- Specialised program planning, but no separation from other offenders in the administration of the program.

The second of these approaches is most in keeping with the principle of normalisation.

Community Based Orders

The Penalties and Sentences Act 1985 specifies that case management in community based corrections emphasise:

- Developing and monitoring goals directed towards lawful and socially constructive behaviour in the community,
- Assisting the offender to resolve problems in a way which benefits him or her without being detrimental to others in the community, and
- Assisting the offender wherever possible to develop his or her potential.

These principles are compatible with the development of needs based programs for individuals with intellectual disability.

The purpose of the Court Advisory Service assessment is to enable planning of correction orders which will meet the needs of individuals and the requirements of the courts, in relation to those principles. In America, a great deal of work has been carried out in relation to specific needs of individuals with developmental delay, within community based systems. Arizona has run a program for adult offenders with developmental disabilities since 1972. In that program,

> Perhaps for the first time the individual is helped to understand that freedom, or lack thereof will depend directly on his or her decisions to behave ... within accepted limits (Walters, 1982, 373).

An important element in the programs developed for offenders with developmental disability is an individualised plan, usually with initially high levels of supervision which are gradually reduced as the order proceeds, in relation to achievement of special sub-goals.

Those involved in these programs emphasise the importance of co-ordination across services in developing such plans. In particular, suitable accommodation is a crucial element in the successful operations of such projects.

No specific programs are currently being provided for the developmentally disadvantaged in the Victorian Community Based Corrections Programs. However, a pilot project proposal has been drawn up by the Glenhuntly Office of Corrections. This project would use volunteer support for specified offenders. It is estimated that there are four-five offenders currently on Community Based Orders in the Glenhuntly region who would be suitable for such a program.

Any development of programs geared to such a special needs group would rely heavily on the advice of workers with specialist experience in relation to intellectual disability. If the clients were already OIDS clients, or were eligible for OIDS services, the development of an Individual Program Plan, as required by the new Act, would necessitate co-ordination between OIDS and Corrections staff in incorporating the requirements of the Community Based Order within the Individual Program Plan.

Security Residents

Under Section 52 of the former Mental Health Act 1959 individuals with intellectual disability could be committed to institutions following conviction for an offence, or could be transferred from prison to an institution. Such individuals had the status of security patient.

At Caloola Training Centre, for example, there are currently four individuals held under Section 52 of the Mental Health Act 1959. The lengths of time for which they have been held range from five years, where charges were of burglary and assault, to twenty years.

As with individuals committed under Governor's Pleasure orders, concern has been felt at the indeterminate detention that security patients could experience. Currently a review is being carried out of all Governor's Pleasure and Security Patients. Removal of security patient status does not mean that the individual can no longer reside in the institution, but that his status becomes that of a voluntary patient. This means that a number of restrictions are removed, and that it is no longer necessary to give six weeks notice to the Minister for Community Services before any movement outside the institution (e.g. recreational trips) can be permitted.

Under the new Acts, intellectually disabled people may have the status of security resident in an institution. Such an order cannot be made by the court. They may only have this status as a consequence of transfer from a prison to an 'appropriate residential institution'.

The matters which are to be taken into account in making the security order are:

that the individual is eligible for services under the Intellectually Disabled Persons' Services Act 1986, and

(a) any physical, mental or emotional risk to which the individual is or may be exposed in prison is greater than the risk to which non-intellectually disabled persons may be exposed,

(b) the eligible person is more appropriately placed in a residential institution than a prison,

(c) whether programs are offered by a residential institution which are designed to reduce the likelihood of the eligible person committing further offences.

Questions which arise in considering the provisions of the new Act are:

- who will initiate the transfer of individuals from prison, under the security residents' provisions?
- what guidelines assist for acceptance of security resident transfers by the Director-General of Community Services? and
- what plans exist for the development of facilities and appropriate individual programs for security resident transfers?

Plainly, there is a need for:

(1) An Office of Intellectual Disabilities co-ordinating unit, with responsibility

(a) for notifying corrections when an eligible person is convicted and receives a custodial sentence,

(b) for assessment of individuals within prisons as to eligibility for transfer as security residents;

(2) Developing guidelines for acceptance of eligible individuals as security residents;

(3) A review of the appropriateness of OIDS facilities for security residents and the development of facilities and programs through which individual program plans can be implemented as required under Section 21(7) of the Act;

(4) A review of the appropriateness of Community Residential Units for security residents.

Prison

If prisoners are eligible for OIDS services, but not accepted for transfer as security residents, they must remain in prison. The report The Missing Services from the New South Wales Department of Corrective Services outlines a lack of provision for the intellectually disabled prisoner and this is paralleled in Victoria. There are no special services provided within Victorian prisons for intellectually disabled prisoners and there are no specific policies relating to their management.

In practice, in Victoria, if prisoners are identified as being at risk, which may include some prisoners identified as having intellectual disability, they may be removed from the general prison population and placed in special wings or protection units.

The effect of this special treatment may be to disadvantage them since prisoners who are housed in special units may have less access to vocational or educational opportunities within the prison.

All prisoners remanded or receiving a prison sentence receive an initial short reception assessment. Further assessment for classification is made depending on the length of sentence received by the prisoner.

Those sentenced to twelve months or more go before a Classification Committee, resulting in a report which takes into account overall functioning, social history and educational requirements as well as the offence and the length of sentence. The report then recommends placement in the most suitable prison. Any prisoner with apparent disabilities or psychological problems may be referred for further assessment, if he or she has not already been assessed, with that information available to the Classification Committee.

There is a good chance of an intellectually disabled prisoner who is serving a sentence longer than 12 months being identified and some provision being made which takes into account these special needs. However, prisoners serving less than 12 months are unlikely to be seen by psychologists or welfare workers unless referred by staff members. The person with intellectual disability is more likely to be a short-term prisoner. At all points in the various assessment and classification procedures there is a need for specialist input in relation to prisoners with intellectual disabilities.

The current state of overcrowding for short-term prisoners in the Pentridge Metropolitan reception centre has resulted in severe lack of educational and rehabilitative programs for all prisoners. However, most of those providing services within the

prison system suggest that the intellectually disabled short-term prisoner is particularly vulnerable and at risk. The general opinion seems to be that this type of prisoner should not be held within a prison system.

Transfer as a security resident would remove individuals from the prison system, but the Director-General of Corrections has no over-riding powers to make such transfers.

As previously pointed out, in order that this alternative should be available, security resident facilities must be provided by OIDS.

One possible means of alleviating intellectually disabled prisoners' present plight is their participation in external programs under temporary leave provisions. This is not an option which exists at the moment, due to lack of assessment capacity and lack of appropriate external programs.

The welfare and mental health teams within the prison system include psychiatrists, psychologists, social workers and teachers. At present the Office of Intellectual Disability Services does not have any officers represented within the prison system. The Office of Intellectual Disability Services should be represented within the welfare team or the mental health team at least in Pentridge and the Metropolitan Reception prisons.

It has been pointed out by the Pentridge welfare team that one severe gap in the provision within prisons to persons with special needs is the lack of follow-up services. An additional advantage of an OIDS worker liaising with the Pentridge welfare and mental health teams would be a development of the capacity to follow up such prisoners on their release, particularly short-term and remand prisoners. The central OIDS officer responsible for prison services would then liaise with regional OIDS officers in relation to post-release support.

CONCLUSION

A constant theme through the Victorian survey has been the need to ensure that the criminal justice system - police, lawyers, courts, corrections - have an adequate perspective on people with intellectual disability. Normalisation - that is people with intellectual disability using the usual agencies and services of the community - must be a leading principle. But if these agencies and services are not attuned to the special needs of these people then the end product may well be injustice and another lost opportunity for ensuring development including an increased appreciation of social responsibility.

The different branches of the criminal justice system are unlikely to adjust unless there is a special capacity created by the leading agency responsible for the well-being of people with intellectual disability. This capacity need not be large - two or three people in Victoria. But it would provide invaluable consultancy and education for police, lawyers, courts and corrections, so that new perspectives and practices are developed. It would also provide advocacy for individual situations where necessary but more particularly would train and encourage these agencies, and especially the regionally based Office of Intellectual Disability Services, to provide advocacy for individuals with intellectual disability in relation to the various activities of the criminal justice system.

Two or three people may be seen as a large investment in these days of financial stringencies. However, it is a meagre outlay if the resource stops even a small percentage of people sinking further into the correctional system and out of society.

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POLICE OFFICERS, POLICE SURGEONS AND THE INTELLECTUALLY DISABLED

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There are numerous instances in which police are called to events which involve people whose behaviour is somehow 'different' enough for them in turn to call for assistance from a police surgeon. These include:

- disturbed behaviour in a public place;
- criminal or offensive behaviour observed or reported;
- reports by family, neighbours, etc.;
- reports from other agencies, e.g. psychiatric hospital or clinic, accommodation house, Schizophrenia Fellowship, etc.

The persons involved in these sorts of events may be exhibiting disturbed behaviour which may be the result of:

- mental illness (a clear cut psychosis with disorders of perception, thought, behaviour, insight);
- criminal activities;
- depression or despair;
- eccentricity;
- intellectual impairment.

None of these categories are mutually exclusive.

Between July 1984 and June 1986, Police Surgeons in Victoria were called by police to incidents involving 2,562 people whose behaviour was 'different'.

It is highly probable that the small number of persons recorded as mentally retarded (intellectually impaired) in Table 1 is a false under-estimate. A significant number of people who may have been mentally retarded could be included in the other three rows in the table.

The vast majority of persons seen by police surgeons will have been looked upon as patients or persons requiring specialised care. Many of them may have been classified by police as offenders, but it seems that the vast majority of them will have

TABLE 1

VICTORIA POLICE SURGEONS' CASES, 1984-86

Police Surgeon's Response	1984-85	1985-86	TOTALS	%
Recommended to psychiatric hospital	873	977	1850	72
Arrangement for voluntary admission to psychiatric hospital	35	19	54	2
Not recommended to hospital	319	325	644	25
Assessed as Mentally retarded	-	14	14	<1
TOTAL	1227	1335	2562	100

been responsible for minor offences, or street offences; be apparently without support or permanent place of abode; or have caused private or public nuisance and inconvenience by their behaviour which fell short of being criminal or mad. It is for these reasons that they are likely to have been brought to the notice of the police.

POLICE SURGEONS

For clarification, Police Surgeons in Victoria are medical practitioners engaged by the Victoria Police to assist in any matters in which a medical opinion is required. Their official function and responsibility does not include attention to police officers' health, sickness or injury although because of their involvement in police activities, it is inevitable from time to time that matters of police health are brought to the notice of Police Surgeons.

There are currently four full-time Police Surgeons (three during 1984-86), fifteen Police Surgeons who receive an annual retainer from the Police Department and twelve medical practitioners in country Victoria who have an official or un-official association with the Police Department as Police Surgeon.

A more accurate but incomplete description of their role would be clinical forensic physician.

MANAGEMENT OF INTELLECTUALLY DISABLED OFFENDERS

The manner in which intellectually disabled offenders are currently dealt with by police surgeons include referral to:

- a specialised institution;
- court, which might involve imprisonment;
- special accommodation;
- family or other support;
- Salvation Army or similar institution;
- psychiatric hospital.

These patients/persons require considerable time to assess, manage and place. A decision on placement or disposal will be influenced by the severity or seriousness of the alleged offence. It is likely that the doctor may recommend or make different arrangements for an offender charged with an indictable offence from a similar offender who is charged with a minor non-violent street offence.

As many of those with an intellectual disability may also suffer from a minor form of mental illness, it is not possible with a brief assessment to differentiate between the two causes for their disturbed behaviour.

In an emergency situation, when no alternative procedure is available, a significant number of these persons have in the past been referred to psychiatric hospitals as mentally ill. On fuller assessment it has been sometimes recognised that their behaviour is a manifestation of a permanent intellectual disability and following resolution of the crisis which precipitated their presentation to the police with disturbed behaviour, it has been possible to release them into the community again.

ASSESSMENT

The difficulties of the assessment of the mental health or intellectual status of a person are exaggerated by a number of factors which operate when a person is presented to a Police Surgeon -

- there is rarely any knowledge of past behaviour or history;

- there is frequently a concurrent presence of alcohol or other drug;
- there is usually difficulty in communication with the patient;
- communication with the Department or any institution is frequently difficult if not impossible;
- these assessments often have to be made at inconvenient times of the day, e.g. evening and night where there is no possibility of obtaining any past records;
- the concurrence of violence or a threatening manner.

ATTEMPTS AT IMPROVEMENT

Attempts have been made to manage and improve this problem. In 1979 a Police Mental Health Services Liaison Committee was established to consider and monitor mutual problems in the care of persons with mental illness who presented to police and the personnel of the Mental Health Services. Later that year a representative of the Mental Retardation Services was invited to join the committee because of the interwoven nature of the problem of management of the mentally ill and mentally retarded from the point of view of the police.

In addition, in matters relating to the presentation, identification, understanding and management of the mentally retarded have been included in the agendas for the Annual Seminar for Police and Mental Health Services personnel. Opportunities for mutual information exchange and education are provided by these seminars.

Obstacles

The fragmentation and the inadequacies of Mental Health services in Victoria available for the management of the mentally ill and mentally retarded have added difficulties to this problem. Examples of this type of situation are:

Case 1

A twenty-two year old unmarried Greek man with mild mental retardation and a personality disorder with sociopathic traits telephoned my office seeking help following a self-referral to a psychiatric hospital where he stated that he was suicidal. He was admitted to hospital for two days but on his request was discharged against the advice of the hospital authority. A discharge note stated:

> it was felt that the psychiatric hospital had very little to offer and that admission was not advisable. Mental Retardation was contacted and they too said that they had no facilities to offer him.

Not long after this, following representation by myself, the Minister of Health included in a letter to the Minister for Police and Emergency Services the comment -

> I regret that the case is an insoluble problem.

Some months later a communication from the Minister for Health did state that the Acting Director of the Mental Health Division agreed that:

> even if a psychiatric hospital is an unsuitable place for a person to have a refuge, it is a place that should receive such a patient in an emergency.

Case 2

A twenty-five year old unmarried woman with a history of disturbed behaviour including assaults on a number of elderly persons ran away from home on several occasions, and absconded from various accommodation homes. She had on numerous occasions assaulted other inmates of various institutions. Recently, following an assault in a special accommodation home, she absconded into the scrub but was retrieved by police.

Attempts to obtain some appropriate restraining accommodation for her involved two doctors in several hours' telephone communication before she was eventually accepted by a training centre. She remained two nights in this accommodation and was again later returned to Sunbury Institution.

Case 3

A twenty year old unmarried girl was seen in September 1983 after being arrested for being 'drunk' and her complaint was that too much force had been used. It was stated that she had drunk a quarter of a bottle of scotch, but she said 'it takes me two bottles to get drunk and I drink scotch straight'. She had been banned from Young and Jackson's Hotel, opposite Flinders Street Station.

She admitted that she had cut her wrist in the City Watch House, using her ring. There were a number of lacerations on her wrist and bruising on her arms consistent with injuries by her own split ring. There was a history of self-mutilation extending over four years and she had been seen by a number of

psychiatrists who had diagnosed a personality disorder with self-destructive behaviour.

I considered that her problem was not primarily psychiatric but rather an untreatable personality disorder, superimposed upon a limited intellectual capacity.

Case 4

A twenty year old male arrested and charged with sexual offences involving a ten year-old boy. The offender had been living and attending a training centre for the past twelve years; he had never attended anything but special school, was taking no medication and denied the use of alcohol. He admitted to being illiterate but appeared to have a reasonably good recall of current events and was well orientated in time, place, and person. He presented as a sullen, dishevelled boy who looked his stated years. His clothes were grubby and he appeared not to have washed for some time. He seemed disinclined or unable to answer questions and frequently replied in grunts or in a barely audible fashion. He was quite reticent when asked about the events that led to his arrest.

The police surgeon's assessment after a brief interview was a suspicion that he was moderately intellectually impaired and after a long period in a training centre 'it is quite likely that his social skills are quite inept and that his sexual experiences are equally poorly developed. In this context I would view the alleged assault as a blundering attempt by the subject to develop some sexual experiences.'

Case 5

A young intellectually disabled male borrowed his brother's car and went for a drive. The police view was that he was intellectually disabled, or mad, or both. He had numerous prior convictions; it appeared useless recharging him with stealing his brother's car and road offences - he needed sorting out. The police surgeon assessed him as intellectually disabled with a possible psychotic component - he certainly presented a management problem.

The view of the psychiatric hospital was that he was intellectually disabled only and that it was an abuse of the system sending him to the psychiatric centre, who rang the referring police surgeon and wrote 'telling him off'. The patient was released within half a day. Subsequently, as a result of his twelve hour stay he developed a 'crush' on a female psychiatric nurse and became threatening over the next four months. The hospital then begged the same police surgeon to re-certify him.

He was definitely intellectually disabled, but was he mad, or bad, or both?

The results of this problems are that a number of intellectually disabled persons are quartered, restrained or constrained in institutions which are unsuitable for them and without proper supervision. The offensive behaviour of the intellectually retarded is sometimes precipitated by a lack of inhibition leading to the aggressive and violent outbursts or continuing behaviour.

The offences or acts not necessarily amounting to criminal behaviour may be precipitated or caused by different emotions or intentions or indeed a lack of intent. Because of the varied etiology of the behaviour, the management and treatment of these persons frequently has to be ad hoc.

OTHER PROBLEMS

One of the problems is that minor offences may go unchecked and that even minor violence can lead to major offences. Assault and arson can result, and they may even cause death.

The severely disturbed are an obvious danger to the community and under similar circumstances when a Police Surgeon is requested to examine a disturbed person who may be aggressive and violent because of, or in association with, mental retardation, it is likely that this person will be retained in custody. If appropriate, the management of such a person could be considered under the security patients' provisions of the Mental Health Act.

Further problems and obstacles to any improvement in the services in Victoria relate to the total unwillingness of officers in the Office of Intellectual Disability Services of Community Services Victoria to co-operate, and particularly to accept the reality of the urgency which present in the crisis situation.

The intellectually disabled may be vulnerable in police interrogation and give answers which are in fact incorrect. There is no easy answer to this problem but it requires an appreciation of the situation by the courts as well as individual police officers if a miscarriage of justice is to be prevented.

Victims

Intellectually disabled persons are doubly disadvantaged when victims. They have increased vulnerability to exploitation, and communication difficulties associated with their disability and the description of their victimisation. These are two obvious areas which need constant attention.

CONCLUSION

I was recently invited to attend and be part of a panel for a Geoffrey Robertson type 'Hypothetical', presented by the one member of the OIDS staff who understands and with whom we can communicate. I am concerned at the lack of appreciation of the reality of the crisis nature of the presentation by many of the 'theoretical' members of the staff of the office of Intellectual Disability Services. They talk in terms of the availability of services and strategies without any recognition of the fact that available resource capabilities have to be acceptable to the patient, and that the patient has to have some insight into his or her condition in order to benefit from the treatment, management and continuing medication.

In some respects I can only see improvement in the future but regrettably this relates more to my frustration with the existing service than any realistic anticipation for the future. The only shining light is the appointment of the Public Advocate upon whom we place a great deal of hope, and anticipation of a continuing professional relationship which can only be for the benefit of our patients and his clients.

DISCUSSION

In answering questions Dr Bush indicated how important it was for all criminal justice personnel to understand the differences between mental illness and intellectual disability.

He pointed out that, in the Victoria context, police called police surgeons in cases where they were in doubt as to the mental state of a citizen. In his opinion, deciding whether such a person was mentally handicapped or not was a more appropriate task for a medical practitioner than a police officer. However, he suggested that, in the future, a police psychologist might do it in the first instance.

A further benefit of medical practitioners considering the mental state of a person under police attention was that they could arrange admission of the citizen to a psychiatric hospital if they thought it necessary. Agreeing that such action might be damaging for someone who was not psychiatrically ill, Dr Bush said that admission was preferable to a night in the police cells.

Dr Bush did not see his role as a diverter from formal police action. His advice was sought, he said, not about whether the court process should be implemented, but about the mental state of some person. The police used a police surgeon's advice on that matter, to decide how to exercise their discretion.

The difficulty faced by NSW Police, who have access to no medical advice, was raised and the way in which police could be equipped to make such a distinction was not easy to define. In country towns where a police officer knew local residents well there was not a problem.

The possibility of people with intellectual disability carrying a small identification card which could be shown to police officer if necessary was suggested in discussion. However, that suggestion was not universally accepted because it would tend to emphasise that such people were 'different' with possible negative results.

WORKING ARRANGEMENTS WITH THE POLICE AND THE INTELLECTUAL HANDICAP SERVICES BRANCH OF THE QUEENSLAND DEPARTMENT OF HEALTH

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Intellectual Handicap Services Branch (IHS) of the Queensland Department of Health is committed to a philosophy which recognises the right of each disabled person to live as normal a life as possible. One aspect of 'normal' living, taken for granted by most of us, is living in a suburban street as a member of the community.

ALTERNATIVE LIVING SCHEME

An IHS program, the Alternative Living Scheme (ALS), supports intellectually disabled people in situations in the community which provide options additional to the family home and to institutions. The term 'alternative living' is used to encompass a range of accommodation options available to intellectually disabled persons. In most cases, alternative living means sharing a house or flat with a group of people, but there are other options such as renting a room in a boarding house or hostel.

In the city of Ipswich, the clients of the ALS are private citizens living in their own homes in the Ipswich area, as distinct from the residents who live under the care of branch staff at Challinor Centre. The general criteria for intellectually handicapped adults to be offered the professional support services of the ALS are that the person:

- is over the age of eighteen (18) years;
- has no known unacceptable anti-social behaviour at time of referral to the Alternative Living Service;
- is receiving the Invalid Pension; and
- has potential for further development of independent living skills.

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THE WORKING ARRANGEMENT

The 'Working Arrangement' was embarked upon specifically in response to a need of the Alternative Living Service in Ipswich. Most clients of the ALS are discharged from an institution so that they may live independently in the community as ordinary citizens. ALS staff provide consultation, advice, counselling, training and direct residential care support but do not exercise full control over their clients.

However, like other citizens of the community, the ALS clients must live within the boundaries of the law. To avoid confusion over matters concerning the intellectually handicapped clients of the ALS and the police, a procedural agreement was developed to educate both the police and the staff of the ALS about each others respective duties and responsibilities.

The procedural agreement specifies guidelines and procedures in relation to basic legal requirements. Special legal procedures were not devised. Information and requirements of police in a number of situations are described, and the procedures which ALS staff and police officers should then follow are outlined.

The situations in the procedural agreements were stated by ALS as having been encountered in the past by intellectually disabled clients, staff and police. The situations included missing clients, public nuisance, accident and/or minor injury, noise, sexual offences, theft, death, abduction, cautioning, recording of complaints and search of premises.

By way of example, the procedures relating to sexual offences read:

Wilful Exposure

- depending on circumstances, investigating police officers may require to take the client to the police station for further questioning;

- if staff are aware of the investigation, they should inform the ALS;

- if police officers find it too difficult to communicate with the client to be able to carry out an effective investigation without a residential care 'interpreter', then ALS should be contacted;

- police officers concerned may decide the client was not responsible for his actions and charges may not be laid;

- In the case of a client suspected of committing a sexual offence of a more serious nature or a person suspected of assaulting a client, normal police investigation procedures would be carried out. Police should contact ALS and inform them of the matter.

The procedure relating to cautioning is a good example of the information about police activities made available to ALS staff.

Cautioning/Counselling

A caution is a warning from a Police Officer about a law that has been broken. Counselling refers to advice given following that warning detailing the consequences of any further criminal offence;

An offender may be cautioned if the offence is of a minor criminal nature or if that person has the status of a juvenile or is a juvenile. (This may include both intellectually handicapped people and senior citizens). When a person receives a caution his or her name may be placed on a Criminal Offence Report (a police record) for the purpose of record keeping as the person may receive a maximum of two cautions before they are required to appear before a court, depending on the degree of seriousness of the offence. The decision to caution is made by the District Inspector of Police;

When cautioning/counselling is required, it is provided either by members of the Juvenile Aid Bureau, the Officer in Charge of the Criminal Investigation Branch (CIB) or the CIB Charge Officer co-ordinating the case, or the Officer in Charge of a Police Station;

Staff of the Intellectual Handicap Services who wish that a client be counselled must make that request through the Community Liaison and Development Officer or Principal Residential Officer/Alternative Officer/Alternative Living Service Co-ordinator. Then arrangements can be made with the contact Officer at Ipswich Police Station.

The formal working arrangement that was devised between the Ipswich Police, the Community Liaison and Development Officer for the Ipswich region and the ALS comprised the following (verbatim) requirements:

A senior Ipswich police officer agrees

1. To arrange and co-ordinate with the Community Liaison and Development Officer; Awareness seminars for educating the Ipswich Police about people who are intellectually handicapped and the functions of the Intellectual Handicap Services' Ipswich Alternative Living Service;

2. To arrange and co-ordinate with the Community Liaison and Development Officer some seminar input to the community training of residential care staff so as to encourage a reciprocal awareness about a police officer's duties and responsibilities;

3. To co-ordinate with the Community Liaison and Development Officer to arrange meetings at period of no longer than six (6) months to review the Procedural Contract;

4. To act as contact police officer if police counselling to a particular client is required;

5. To act as police mediator between police officers, ALS staff and clients when appropriate.

The Community Liaison and Development Officer agrees

1. To arrange and co-ordinate with the Ipswich Police; Awareness seminars for educating the Ipswich Police about people who are intellectually handicapped and the functions of the Intellectual Handicap Services' Ipswich Alternative Living Service;

2. To arrange and co-ordinate with the Ipswich Police some seminar input to the community training of residential care staff so as to encourage a reciprocal awareness about a police officer's duties and responsibilities;

3. To co-ordinate with the Ipswich Police to arrange meetings at period of no longer than six (6) months to review the Procedural Contract;

4. To co-ordinate with the ALS so that procedures outlined in the Procedural Contract be disseminated to the administrative and residential care staff of the ALS;

5. To co-ordinate a meeting with the ALS at least once within a six monthly period to discuss any changes to the Working Arrangement and/or Procedural Contract which may require to be negotiated;

6. To negotiate any changes to the Working Arrangement and/or Procedural Contract with the Ipswich Police and/or the ALS.

And a representative from the Alternative Living Service agrees

1. To work co-operatively with the Community Liaison Development Officer to ensure that staff are informed of the procedures outlined in the Procedural Contract and of the Working Agreement;

2. To provide the Community Liaison and Development Officer with Information necessary for reviews of the Working Arrangement and Procedural Contract within each six (6) monthly period;

3. To co-ordinate co-operatively with the Community Liaison and Development Officer when negotiations over any changes to the Procedural Contract and/or Working Arrangement are being carried out.

DISCUSSION

As part of her presentation Ms Beckey screened a training videotape illustrating various incidents involving police and intellectually disabled people. It indicated the ways in which the working arrangement she had discussed would work in practice.

Seminar participants were generally impressed by the videotape although a number of lawyers were concerned about some aspects of it. In particular they were worried that the suspect in the police interviews situation was not seen to be formally cautioned, and the 'interpreter' shown assisting the police interview was taking other than a passive role. Ms Beckey responded by pointing out that the video was five years old, it had been designed to illustrate not to train, and viewers were generally debriefed after it. Notwithstanding that, Ms Beckey agreed that it was necessary to cover legal aspects in any remake of the video.

A police participant pointed out that Ms Beckey's presentation and videotape emphasised that the integral issue was a people-people problem. The videotape showed police being called to an intellectually disabled person loitering in a residential street. Once a citizen requests police presence a such an event, the officer pointed out, they were required to attend and define the situation as best they could. That required considering the legal rights of both the individual and the complainant.

In response to a related question Ms Beckey indicated that there had been a gradual integration of intellectually disabled people into the Ipswich community over recent years as a result of inter-agency co-operation and this working arrangement with the police is part of this integration.

COURTS AND THE INTELLECTUALLY DISABLED

A discussion of the particular problems that arose when an intellectually disabled offender attended court were the subject of a panel discussion involving:

> Mr Ron Cahill, Chief Stipendiary Magistrate, ACT
> Mr Mark Ierace, Barrister at Law, Sydney, NSW
> Mr Tony Lynch, Solicitor, Mental Health Advocacy Service, NSW
> Mr Lu Papaleo, Barrister and Solicitor, Melbourne, Victoria
> Mr Ray White, Childrens' Court Magistrate, Melbourne, Victoria

The two privately practising lawyers discussed the difficulties they faced in preparing defence material for intellectually disabled persons who had to appear in court. Mr Papaleo pointed out that some difficulties with such persons could be avoided in the first instance if police were able to identify people with intellectual disability. He argued then for special educational programs for police, lawyers and judges to allow them, in particular, to understand the difference between mental illness and intellectual disability.

Both Mr Papaleo and Mr Ierace referred to particular cases on which they had worked to illustrate the difficulties they faced. Mr Ierace's paper appears hereafter and summarises the areas covered. Both agreed that it was most important to familiarise intellectually disabled clients with the actual court setting and procedure. They also agreed that due process was far preferable to diversion from the criminal justice system, as the latter could lead to a more repressive or damaging outcome.

The difficulty with due process was however the fact that the court had no real sentencing option for the intellectually disabled offender. Both Magistrates emphasised this point and Mr Cahilll pointed out that it was a lot easier to devise legal mechanisms for dealing with such offenders than it was to find the resources to implement these mechanisms.

Mr White drew comparisons between the treatment of young offenders and the intellectually disabled and extracts from his presentation follow Mr Ierace's paper. At least for the young some attempt is made to tackle long-term difficulties when a young person is made a ward of state. Mr Cahill bemoaned the fact that for adult offenders any court sanction was of a short-term nature, the offender eventually being free of any court oversight.

Mr Lynch spoke to the seminar specifically about recent amendments to section 428W of the Crimes (Mental Disorder) Amendment Act 1983 in New South Wales. That new section covers 'developmentally disabled' persons who may be charged with offences. While there is not yet a legal definition of that phrase, Mr Lynch argued for broad interpretation of it. The new section then allows a Magistrate on being satisfied that a person could be thus described, to dismiss the charge and discharge the defendant (with or without assessment or treatment) or to 'adjourn the proceedings, grant bail, and make another order'.

The spirit of the Act which allowed for more sensitive handling of an intellectually disabled offender appearing before the court was generally seen to be a positive move despite its current lack of precision.

109712

UNDERSTANDING WHAT'S HAPPENED AT COURT

OR

IF YOU'RE NOT PART OF THE SOLUTION YOU'RE PART OF THE PROBLEM

Richard Llewellyn
Disability Adviser to the Premier
South Australia

Peter Millier
Director, Client Services
Intellectually Disabled
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South Australia

INTRODUCTION

It is necessary to question the assumption that the problem of understanding what is happening in court lies with people who are intellectually disabled. Consider the propositions that:

- The criminal justice system has failed to come to grips with changes that are occurring within the field of disability generally, and intellectual disability in particular.
- Whilst a number of people with intellectual disabilities are disadvantaged by the court system, a significant number are also exploiting it.
- There needs to be a comprehensive approach to dealing with these problems, not merely better representation for intellectually disabled offenders.
- Some of the changes proposed might actually benefit society generally, not just people who are intellectually disabled.

There is also need to distinguish between issues in understanding the nature of an offence (right or wrong), and the way in which police and criminal justice systems operate. Many intellectually disabled people have the capacity to understand that they have committed an offence. However, like most of the population, they are completely perplexed by the way in which the courts operate.

Anyone who has anything to do with the law knows how complicated it is. It is necessary to develop a clear analysis of where the problems occur and why they are occurring. That requires

awareness of the assumptions and forces operating, which further distance people from understanding the legal process.

1. For most people, contact with the criminal law process is not an everyday occurrence. Society, through education and the media, does little to train us or provide this information when it is needed.

2. The legal profession has an inbuilt financial interest in broadening and making legal activities more complex. The more complexities, the more legal services are needed. It is not in the financial interest of lawyers to have simple, streamlined procedures, which people can deal with in a self-help manner. Consider, for instance, the Family Law Court experience, or the recent outcry by the profession at the introduction of Accident Compensation legislation in South Australia.

3. Language which is useful as a short-hand for professional understanding creates a mystification and alienation from the public.

4. Institutional thinking and lack of role definition among service providers produces confusion. In fact, the various institutions, both legal and human service, are often as confused by their own systems as is the general public.

A SOCIAL SYSTEMS PERSPECTIVE

To provide a context in which to examine the above propositions, it is necessary to briefly outline, from a social systems perspective, the issues confronting people who are intellectually disabled, the society in which they are living and the human services and professionals who are purportedly serving their interests.

Consider a social definition of deviancy that a person becomes perceived or defined as deviant:

- by being different from others
- in one or more dimensions
- which are perceived as significant by a majority or ruling segment of society
- who value this difference negatively.

If that definition is accepted then it is clear that people who are intellectually disabled are just one group in our society who are perceived or defined as deviant. Others include those who are mentally ill, commit crimes, come from racial, ethnic and religious minority groups, or are elderly and infirm.

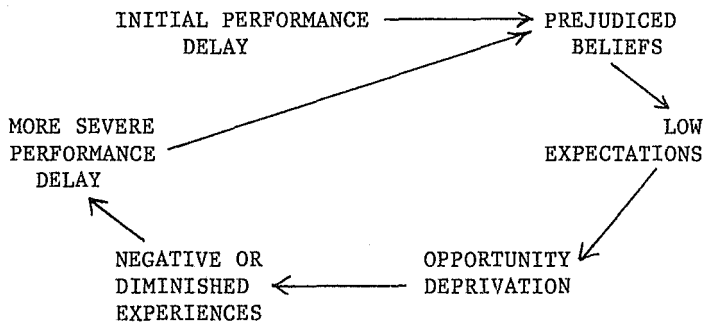
All these groups experience discrimination or suffer from prejudiced beliefs. In the case of people who are intellectually disabled, Wolfensberger (1972) has pointed out the major socio-historical role perceptions of different, devalued, minority or disabled individuals are where they are seen as:

- a menace;
- a sub-human organism;
- unspeakable subject of dread 'other';
- object of ridicule;
- object of pity;
- burden or charity;
- holy innocent;
- eternal child;
- sick person.

The process of devaluation tends to occur as indicated in Figure 1.

FIGURE 1

THE PROCESS OF DEVALUATION



One outcome of this process of devaluation is that generally, people with an intellectual disability are likely to be treated badly by society. Another is that they are likely to be treated as less than competent, or considered to lack the capacity to understand the consequences of their behaviour.

From the perspective of the wider society and its institutions, people who are intellectually disabled, and the issues in relation to disability generally, do not have a high priority. Wolfensberger (1972) has pointed out that most people focus on their family or local area and a time scale of tomorrow or next week. Very few are concerned with issues about the nation or the world and their children's lifetime, although the nuclear debate may be changing that.

This short-term orientation is perpetuated in human services. Just as society is concerned mainly with short-term issues, so too do all the relevant societal structures perpetuate short-term thinking.

There is also a climate of scarcity and uncertainty in human services as O'Brien (1987) has pointed out. In particular, human service agencies manage scarcity of:

money,
co-operation,
time, and
flexibility

And they manage uncertainty as to:

technical limits and possibilities,
demand,
unintended effects,
attitudes towards difference and dependency

Perhaps the most critical area of uncertainty lies in the differing service and professional attitudes to difference and dependency, as characterised by the rehabilitation and independent living paradigms. These are compared in Figure 2.

According to De Jong (1982b), the present focus in the field of intellectual disability is upon rehabilitation. He defines the rehabilitation paradigm:

1. Problems are seen in terms of deficits in either daily living or employment skills;

2. Problems reside in the individual, and therefore any changes must be made by the individual;

3. Problems must be rectified by professional therapists, such as doctors, physiotherapists, occupational therapists, etc.;

4. Intellectually disabled persons are 'patients' or 'clients';

5. The goal of rehabilitation is 'maximum physical functioning or gainful employment'.

The independent living paradigm which has its origins in the civil rights, consumerism, and self-help movement, offers quite a different perspective. De Jong (1982b) defines the independent living paradigm:

FIGURE 2

COMPARISON OF THE REHABILITATION AND INDEPENDENT LIVING PARADIGMS

	REHABILITATION	INDEPENDENT LIVING
OUR UNDERSTANDING OF THE SITUATION		
What is the problem?	. Physical/mental impairment	. Discrimination . Lack of power . Dependence . Confusion . Lack of practical help
Where is the problem	. In deficient person	. Environment . Service process
What social role fits person using service?	. Patient/client	. Employer . Consumer
HOW WE INTERVENE		
What is the desired outcome?	. Gainful employment . Maximum skills for daily living	. Independent life with others . Choice
What is the solution?	. Assess and classify . Professional intervention . Multi-disciplinary approach . Special facility (building)	. Organise political action to remove barriers . Self help . Practical assistance in own home or place of employment
Who is in charge?	. Professionals	. People who use services

1. The problem is seen as dependence, often upon rehabilitation professionals;

2. Problems reside in the environment and in the process of rehabilitation;

3. Problems must be rectified through advocacy, self-help, and peer-counselling advocacy;

4. Intellectually disabled persons are consumers;

5. The goal is to live independently.

Perhaps the most significant aspect of the independent living paradigm is the focus on environmental factors, rather than on individual factors, which are the focus of the rehabilitation paradigm. Ability to carry out daily living skills, mobility and employment, the focus of rehabilitation, are also considered to be important by the independent living paradigm, but they are not sufficient. Factors also necessary to consider are living arrangements, consumer assertiveness, outdoor mobility, and out-of-home activity. There are many implications of this paradigm for professionals.

One of the major implications according to De Jong (1982a), is the challenge to professional dominance in disability policy and rehabilitation. This is a result of the focus on consumerism, which advocates that, rather than professionals, disabled persons are the best judges of their own interests. The movement questions the power of professionals, and seeks to shift the power back into the hands of consumers. The issue of professional accountability is also one that should rest at least partially in the hands of consumers. Professionals should practice within the ethical guidelines set by their disciplines but the services they provide, where, to whom, and how well, should be open to consumer involvement.

A further implication of the new paradigm is the involvement of other disciplines which have characteristically been uninvolved in the past. De Jong (1982b) points out that legal professionals have a role to play, particularly concerning rights and entitlements, and architects can participate in designing or redesigning buildings which allow access for the disabled.

In summary, the scene is changing rapidly and there are many implications for people who are intellectually disabled, the wider society and it social systems.

Intellectually disabled people are now living and participating in the community in greater numbers than they ever have before. Services are moving away from traditional roles, philosophically and organisationally. There is a much greater emphasis on

rights, both legal and moral with the advent of consumer rights and advocacy groups, including self-advocacy. Correspondingly, more protective services are being established. People with intellectual disabilities are now more at risk of offending and being exploited personally, sexually and financially.

The community on the other hand is uncertain and apprehensive about these changes, at times actively resisting change or trying to enforce traditional roles for people with disabilities and the services/workers providing or advocating for their needs.

The potential for 'blooming, buzzing confusion' is enormous. People who are devalued are usually the victims of this confusion even though it is usually said that it is their own fault.

EXAMPLES OF DISADVANTAGE IN THE COURT SYSTEM

The extent to which people can get caught within systems is well illustrated by the following:

In July 1985, the South Australian Bail Act 1985 became effective. It consolidated various measures into a single piece of legislation and aimed to provide clear guidelines to reduce discrimination against defendants who were poor or lacked social resources, while still providing ample scope to protect the public.

Despite these new provisions, early indications are that the Bail Act 1985 has not achieved its full range of objectives. According to the Office of Crime Statistics (1986) which has been monitoring the new Act, South Australia still has a high rate of prisoners remanded in custody. That Office suggests that a number of administrative problems are undermining the Act's effectiveness. Foremost is a continued preference by bail authorities to impose financial conditions which continue to disadvantage the poor and those with few community ties.

In 1983 researchers had surveyed ninety remand prisoners; fifteen were in custody because they were unable to raise bail or arrange sureties. Of this group, only four were alleged to have committed assaults, robberies, or sexual offences. The rest (eleven) involved driving and property charges. Moreover, although twelve of this group of fifteen were found guilty, only four actually received prison sentences. The researchers' view was that most of these remandees spent considerable time in prison because court legal aid and other authorities simply failed to keep track of their cases once a bail decision had been made.

Assuming defendants offered bail were able to accept, courts tended to set hearing dates weeks or months ahead. Once remanded in gaol, remandees found it difficult to communicate with their legal representatives.

> One 1983 case concerned an invalid pensioner in his early forties, who eventually spent almost two months in custody due to the lack of a surety. Information on his background and circumstances suggested that he was of below average intelligence and illiterate, and that his only permanent social contacts were pensioner parents (with whom he lived) and a brother who was unemployed. Perhaps under the misapprehension that acting as a guarantor involved some cash payment, they had been unwilling to act as sureties. The defendant had requested legal assistance, but when the relevant legal aid body was contacted it was found that due to an error in the application form, it had not realised the applicant was in gaol. The solicitor assigned to this case was still waiting for the defendant to contact him and discuss his defence. Similarly, Correctional Services personnel had been unable to prepare a pre-sentence report because they could not find the defendant at his home address. Eventually, after the Review Team made representations, the final hearing was brought forward and a pre-sentence report dispensed with. The defendant, whose only previous convictions had been twenty years earlier for drunkenness, was placed on probation for twelve months (Office of Crime Statistics, 1986, 6).

This case was perhaps an extreme example of the way poor communication between relevant authorities can result in what can only be described as an unnecessarily lengthy remand in custody. Or is it?

A second case, one of many from a Police Prosecutor, illustrates the problem of using a criminal sanction against behaviour which the institution is charged to protect. This example from the mental health field is used to highlight the fact that the issue concerns devalued people generally, rather than just people who are intellectually disabled.

This case concerns a male diagnosed as schizophrenic when eighteen years old. From 1978 to 1980 he was frequently admitted to a State Mental Health Institution. In 1980, he was admitted and held for Indefinite Detention (Mental Health Act 1976 - 1977) on the grounds of 'suffering a mental illness and that the detention is necessary for the protection of others'.

In July 1983 he tried to strangle another patient and consequently appeared in the Adelaide Magistrate's Court and pleaded guilty to assault. The charge was dismissed and he was placed on a bond of $100 for twelve months. He was still a resident of the institution at that time.

Two years later, he assaulted another patient by striking him with a chair. The injury required twelve stitches. During a police interview the subject was reported as raving, consistent with 'paranoid delusions of his paranoid schizophrenic illness'. Two psychiatrists from the same institution had opposing views on whether the subject understood the full implications of a plea due to his disordered thinking.

The Police Prosecutor was influenced reluctantly, to proceed with prosecution. He felt it was incongruous to remove a person from a place where he was best placed, to involve a criminal sanction for behaviour which could reasonably be predicted because of the person's mental state. Other opinions won and the person was heavily sedated and arrested. The proceedings thereafter would have been totally incomprehensible. He was unable to plead in the Adelaide Magistrate's court and the Crown Solicitor's office arranged an ex officio indictment. It was found that the person was likely never to be able to plead and was therefore liable to be placed in a Security Hospital until the Governor's pleasure was known.

The three options open to the Prosecutor were; to empanel a jury for a finding of unfitness to plead; to remand Sine Die (that is, indefinitely), or to enter a Nolle Prosequi (No prosecution).

The third option was preferred. However, the Institution refused to receive their old client. Eventually, another State Institution agreed to accept this person and a Nolle Prosequi was entered.

This case about psychiatric disability should not be seen as over-simplifying some very complex issues. However, it illustrates the real problem, of an institution defending its own interests rather than its clients. It also illustrates the problems in determining criminal capacity in regard to insanity.

The legal definition of insanity and the M'Naghten Rules are not very helpful in dealing with people who are not mentally ill, but about whom there is a question as to their competency to plead and their capacity to understand the consequences of their behaviour.

It would be better to look to the civil law relating to contracts for guidance. The issues of capacity in the context of consent are well covered by the Consent Handbook published by the American Association on Mental Deficiency in 1977, and is certainly reflected in current Guardianship legislation. There needs to be provision at law for people who have the capacity to understand the nature of their actions, but whose capacity to understand the complexities of the court system is attenuated by their lack of verbal skills and social sophistication.

In many instances, the courts are reluctant to confront these issues, preferring instead to 'divert' offenders into other services or service systems. In earlier times, diversion into mental health services was the preferred option. However, with the advent of intellectual disability agencies, there are now more options available. The dilemma for intellectual disability services is that, although they may wish to accept a moral obligation to ensure the best interest of their clients, they do not wish to become agencies of social control.

Overall, there is the greater issue of whether rights of people are protected by diversion from due process. The evidence from the Mental Health field is that people tend to lose more rights by diversion than by being subjected to due process. If this is the case, the Courts and intellectual disability services need to consider very carefully the implications of diversionary practices.

EXAMPLES OF EXPLOITATION OF THE COURT SYSTEM

Whilst a number of people are disadvantaged by the court system there are also many who exploit the court's ambivalence towards intellectually disabled offenders. Two case examples will illustrate this.

Case 1

> R is in his forties and has lived in institutions most of his life. However, he has maintained contact with his parents who are now too old to care for him. Since moving out of a large institution into the community, R has lived in hostels and boarding houses. He is unable to care for himself because he does not have sufficient independent living skills. However, he knows the difference between right and wrong, is able to manipulate whatever situation he is in to get what he wants, and 'stands over' smaller or weaker people, especially women.
>
> In recent times R has begun to expose himself in public places and to stand over people in public to demand things such as cigarettes and money. He has also assaulted people including female staff in a hostel. He has had a number of appearances in court but always 'acts dumb' in these situations and either no charge is entered or he is not convicted.
>
> R is under Guardianship and the Guardianship Board's view is that the Intellectually Disabled Services Council (IDSC) should exercise its residual responsibility and care for R. Effectively, this means a return to an institution and sometimes, incarceration there.

Case 2

V is in her late twenties and has been living in the community in a boarding house under a Guardianship Order. She asked to move from this place and the Board agreed. Things then started to 'go wrong'.

In January/February, 1987 there were numerous episodes of V 'running away from home' and being brought back by the police. She has created havoc in police stations, at bus terminals and at the railway station, usually screaming abuse (using obscene language) and harassing passers-by.

The police have tried to have her admitted to psychiatric institutions, but the institutions are not prepared to co-operate because V is not regarded as psychotic; merely manipulative.

Following a recent disturbance, V was brought before the court where she abused the Magistrate and 'gave him the fingers', which earned her a night in the cells. When she appeared, the charges were dropped, and V refused to accompany a staff member from IDSC back to her boarding house.

More recently, V was arrested for stealing books from M[illegible]. She had told the IDSC worker she was going to 'pinch' some books. Again the court was reluctant to deal with her and the police reluctant to charge her.

V can be quiescent if the mood takes her, to extremely abusive and physically aggressive. She has learned to discriminate, when to put on an act, and has indicated her awareness that this will enable her to avoid police or court action if she offends.

Clearly the courts and the criminal justice system generally experience great difficulty in dealing with people like this. For their part, a considerable number of people who are supposedly intellectually disabled have learned to discriminate when it is appropriate to act 'dumb' or 'helpless'. The question is, which party is more disadvantaged in this process?

SUMMARY AND RECOMMENDATIONS

The issues involved in understanding what is happening at court are not as clear as they appear on first consideration. To understand what is happening, there needs to be an appreciation of the wider society and its social systems, as well as the

underlying beliefs, assumptions and values in relation to people who are devalued generally, and who are intellectually disabled in particular.

We should not blame other people or services for the problems experienced when people who are intellectually disabled appear before the courts. We are all part of the problem as well as part of the solution. We should take special care not to scapegoat or further handicap people who are disabled by blaming them for problems which may not be of their own making (e.g. our own values base or lack of understanding).

At the same time, we need to appreciate that rights imply responsibilities. In a climate where there is a heavy emphasis upon the rights of people who are intellectually disabled, we cannot allow people who commit offences to avoid the consequences of their actions.

The focus for the future should be on people and their needs, rather than their disabilities. Care should be taken to focus on behaviour rather than labels, which service professionals, the police and judiciary seem to want to attach to people who are devalued.

Clearly, there needs to be training for all human service and criminal justice system personnel, not just police, lawyers and the judiciary. It is also needed for people who are intellectually disabled and their advocates. Part of the training effort should be directed to building a nexus among all these groups, both at the formal and informal level.

Finally, a caution to make haste slowly. The change in the pattern of services for people who are intellectually disabled needs to be accompanied by changes in society and its social systems. In our zeal to make things better for people, let us not make them worse.

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ACTING FOR THE INTELLECTUALLY DISABLED OFFENDER

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INTRODUCTION

The ability of criminal lawyers to successfully represent their clients' interests partly reflects many non-academic factors, including their advocacy skills, the quality of communication with their clients, and their ability to understand their clients' perceptions and reactions so far as they are relevant to the charges they face. Each of these areas involves the application of the lawyer's understanding of general human behaviour.

This understanding is tested when there is, associated with the client, either a barrier to understanding their life experience (such as the need for a foreign language interpreter, or a different cultural background), or a difference in the actual perception of life experience (e.g. due to mental illness, or the effect of legal or illegal drugs), or both.

Nevertheless such people require the services of criminal lawyers from time to time, and although training does not especially equip lawyers with any expertise to understand and communicate with such clients, lawyers must provide the best service that they can.

This article canvasses some legal, and para-legal, issues arising with one such group of people; the estimated 175,000 people in New South Wales who have an intellectual disability.

INTELLECTUAL DISABILITY AND OFFENDING

Intellectual disability is often referred to as 'mental retardation' or 'mental handicap', and commonly described in terms of a sub-average level of intellectual functioning, or, despite its unreliability, a low IQ level. A fuller discussion of the definition of intellectual disability and how to identify, and communicate with a person with an intellectual disability can be found in Simpson (1987).

Most people with an intellectual disability have the capacity to live within the community, if they are appropriately educated and assisted. In recent years, government has recognised this potential by implementing policies designed to 'de-institutionalise' the lifestyles of the intellectually disabled.

The intellectually disabled are as capable as anyone of attracting the effect of criminal law; indeed, as alleged offenders, they are more vulnerable. Paradoxically, as victims of crime, they are in some circumstances afforded less redress by it; most notably as complainants of sexual assault. In such cases there are often no witnesses other than the alleged assailant and an intellectually disabled victim may be found by the court to be unable to swear on oath or make an affirmation and therefore be precluded from giving evidence.

It is likely that as more intellectually disabled people live in the community rather than in an institutional setting, the degree of contact will increase, in both capacities.

Although precise statistics are not available, it is apparent that mildly intellectually disabled people are over-represented in the New South Wales prison population (Hayes and Hayes, 1984). A similar situation exists in other Australian states, and in many overseas countries. Especially prominent in the prison population is the emotionally disturbed, or personality disordered, intellectually disabled person (Santamon and West, 1977). That overseas research also suggests that offenders with an intellectual disability serve longer sentences than non-intellectually disabled offenders, for similar crimes, and they have a higher rate of recidivism.

Various reasons have been suggested as to why this is so - a person who has an intellectual disability can expect to experieence many disadvantages in a society which is geared for the norm, and consequently can encounter sources of strong and frequent pressures, thus sorely trying their ability to cope. Not the least of these are poverty, unemployment or under-employment, sub-standard accommodation, social rejection, and a sense of failure. Therefore the intellectually disabled are disproportionately imprisoned, because they are disproportionately poor, unemployed and otherwise disadvantaged, and as such they are most likely to commit crimes or be accused of committing crimes.

Other reasons suggested include that they are less capable of guile and therefore more easily caught, and convicted, and are more frequently imprisoned because they are considered to be unlikely candidates for non-custodial sentences, having poor employment prospects, and perhaps an unsettled living situation (De Silva, 1980).

Clearly these anomalies suggest that the intellectually disabled, especially the mildly intellectually disabled, are a social sub-group requiring particular care on the part of the various agencies and individuals who comprise the criminal justice system, not the least of whom is their own lawyer.

FAILURE TO IDENTIFY THE DISABILITY

People who work in the criminal justice system frequently fail to recognise that an individual in fact has a mild intellectual disability, because they are ashamed of it, or because they perceive that in the past it has caused him trouble. Silence, rote agreement to questions asked, brevity of answers and becoming hostile when asked questions that they can't answer, are various ways in which the cover is laid (De Silva, 1980, 26).

If the disguise is successful, the questioner, whether it be the investigating police, the lawyer seeking instructions, or the probation officer preparing the pre-sentence report, may assume comprehension by the intellectually disabled subject of questions asked, whereas in fact there is little or none, and the answers are thus unreliable. When this unreliability is exposed, in the eyes of the magistrate or judge, or the jury, the credibility of the client suffers accordingly.

WHAT DID HAPPEN?

But even if the person is identified as being intellectually disabled, and the questions are comprehended, the answers may remain unreliable. However, it is very important to emphasis the danger of any general assumption that intellectually disabled people cannot give reliable testimony. Each situation needs to be treated on its individual merits.

The problem

Some persons with an intellectual disability may be especially vulnerable to falsely confessing a crime, even though it is to their undeserved detriment, especially in response to lively and enthusiastic interrogation. There are many instances of such 'confessions' being ultimately set aside (Tully and Cahill, 1984). Similarly, a witness with an intellectual disability could conceivably make a false statement.

It appears that the reason that some intellectually disabled people do this is often because of 'suggestibility'; that is, they are more likely to respond to an answer, or an optional answer suggested in the question, and with seeming confidence, even though that answer is quite incorrect. Some research suggests that questioners, and indeed jurors, are likely to be favourable disposed towards accepting the credibility of answers which are given with confidence. The confidence may well be genuine; there is thought to be correlation between low intelligence and poor memory, so that the person being interrogated genuinely believes that the answers are according to his memory. Other factors are; when the subject's competence or integrity is in question, there is a strong motive to avoid appearing foolish, reluctant or to have been unobservant. If

correct, this has ramifications for the criminal lawyer in three respects: protecting the client's interests when attending a police interrogation; obtaining instructions; and exposing the client to the bench or jury from the witness box.

Police Interrogation

Lawyers attending upon intellectually disabled clients being interrogated by police should ensure that their clients understand their right to remain silent, and that they effectively exercise that choice. In recent months, there has been a dispute between the NSW Commissioner of Police and the NSW Bar Association as to precisely what is the role of a lawyer attending on a police interview with their client. The police commissioner maintains that the lawyer must not 'interfere'.

How then, is the lawyer to respond when the view is formed that the client has not given due consideration to remaining silent, or does not understand the right, or he or she doubts that the client really understands a question asked, or indeed the caution? It is suggested that the lawyer immediately request the opportunity to privately advise the client, and then in the strongest terms advise the client to exercise the right of silence. Any denial of this opportunity by the police should be recorded.

The lawyer might be assisted by reminding the senior interrogating officer of the following excerpts from the 'Instructions to Police on interrogations issued by the NSW Commissioner of Police':

> Instruction 31-2
> 6. The following instructions are designed as a guide to members of the Force conducting investigations ... In addition to complying with these instructions, interrogating officers should always be fair to the person who is being questioned, and scrupulously avoid any method which could be regarded as unfair or oppressive....
>
> 6(3) In the case of persons with apparent infirmity, feeble understanding or special disability and of persons unfamiliar with the English language, such special measures as are practical and appropriate shall be taken to ensure a fair interrogation.
>
> Questions prior to arrest
>
> 7(1) Prior to arrest, Police have no authority to exercise any restraint whatever upon a person being questioned or to detain him in any way, whether upon Police premises or elsewhere, and such a person is free to come and go as he pleases.

7(2) If the person being questioned requests that any other person then in his company or in the immediate vicinity (other than a suspected accomplice) remain within hearing during the questioning, the member of the Force shall not, unless the exigencies of the occasion otherwise require, prevent this, provided such other person does not hinder or obstruct the questioning.

7(3) If the person being questioned is suspected of being of feeble understanding, such person shall, if reasonably practicable, be interrogated in the presence of a parent, guardian, relative, friend or other responsible person not associated with the inquiry.

7(4) If a person being questioned expresses a desire to consult a legal adviser, he should be given every opportunity to do so. If he so desires, further questioning should, except in special circumstances, be deferred, but only for such short period as is reasonably necessary to enable the person to attempt to obtain legal advice by telephone or otherwise....

Questioning after arrest....

9(2) Except in the case of a child or young person, there is no legal right for any person other then the person being interrogated and the necessary members of the Force to be present. However, each instance is affected by its particular circumstances, as for example, those referred to in paragraph 6(3) of this instruction.

Interviewing the Intellectually Disabled Client

Because of the inordinate lengths of time that matters take to come before the courts for hearing, and in view of the poor memory recall of some persons with an intellectual disability, it is strongly recommended that at the earliest opportunity the client be assisted to prepare as full a statement as possible. This involves establishing a rapport before questioning on the relevant matters commences, and then questioning the client on any background information which is known to be true. This way, the lawyer can learn how the client approaches matters of which he has nil or uncertain recollection or knowledge; the lawyer can then seek to reassure the client as to the acceptability of declarations of uncertainty and ignorance, in preference to the client 'filling in' detail, making assumptions and 'shoring up' certainties.

Where an intellectually disabled client does have a poor memory, 'free recall' is recommended as the most accurate way of eliciting information; that is, merely asking them 'what happened', with no prompting questions. Unfortunately, the resultant information is likely to be too sparse for purposes of instructions. Further questioning should be in as open and non-directive a fashion as possible. Prompting is especially difficult to resist with such subjects, even more so when the interviewer has a notion of what happened, and therefore an expectancy of what the witness's account will be. It is, however, especially dangerous.

In a controlled study in England of the memory recall of a play by thirty mildly intellectually disabled subjects, who were interrogated by fifteen detectives, leading questions were found to account for eleven percent of errors, and questions suggesting alternative possible answers accounted for one third.

> Q. What colour hair did the man have?
> A. ... (pause)
> Q. Was it fair or dark?
> A. Fair. (In fact it was ginger).
> (Tully and Cahill, 1984, 26)

Extra time should be allowed for any interview of a client with an intellectual disability. Any perceived or real time pressure will increase the likelihood of inaccurate instructions.

If concentration is strained, the statement should be prepared in short conferences rather than in one lengthy session. The statement should be checked by the client, (read back slowly if necessary), and signed, so that it has the maximum possible weight in any ensuing proceedings. When the statement is checked, the client should be strongly encouraged to dispute any inaccuracy.

It may be useful to enquire as to whether the client should be accompanied by a trusted friend or relative, both to conferences and to court. Of course, one must be careful that this does not operate counter-productively, so that the client feels a reluctance to admit things (and lose face) in the presence of the trusted person. If the client has a Citizen Advocate, this person could be a useful source of support.

The Intellectually Disabled Client as a Witness

Intellectually disabled people do not necessarily make inferior witnesses. Indeed, they can be especially convincing in reliably recounting events without fear of artful manipulation.

A study of jurors as to which qualities most impress them when establishing a witness's credibility found that a confident manner was especially important. If the witness was 'caught out'

on a minor discrepancy, their credibility fell sharply. However, the effects of expert psychological evidence is to lower the jury's reliance on confidence clues, without substantially lowering credibility inappropriately (Tully and Cahill, 1984).

Cross-examination, with its attendant powers for posing leading questions and applying some pressure to the witness, can be especially challenging to the intellectually disabled witness. However, although rarely done, it is possible to object to leading questions, and, it is submitted, questions that are likely to confuse the witness and are otherwise unfair in the circumstances (See Mooney v James 1949).

The best protection for intellectually disabled witnesses is afforded by ensuring that they have ample opportunity, and encouragement, to absorb the contents of their statement as close as possible to when they enter the witness box. Further, if necessary, expert evidence should be called as to the effect of the intellectual disability on the manner in which they deliver their evidence.

Naturally an intellectually disabled client is likely to fear the experience of attending court more so than a non-disabled client; the disparity of knowledge and legal competence is even more pronounced. Lawyers are therefore advised to prepare their clients by explaining in simple language what will happen on the day, ensuring early contact with counsel, and (ideally) 'familiarising' them with the physical surroundings of the court.

BAIL APPLICATIONS

The social situation of many intellectually disabled applicants (unemployed, inability to post surety, poor community ties) does not favour them as candidates for bail. Of course this is the situation with many persons seeking bail. However, there are other factors which may especially disadvantage them if bail is declined, and, if applicable, they should be brought to the court's attention.

Principal among these is their particular vulnerability in the prison environment. Even if held in protection, remand prisoners have contact with others who are similarly classified for a variety of reasons.

Secondly, the difficulties referred to earlier in obtaining instructions are likely to be exacerbated by the confines of glassed interview boxes at the gaol, and the difficulties of having non-legal support figures in proximity.

Finally, the intellectually disabled applicant's social ties, to the extent that they exist, may be especially fragile. Given that an intellectual disability can be a disadvantage in gaining

employment and finding a place to live, a far longer period of time may be required to replace the applicant in his pre-remand position.

With regard to all three matters, reference should be made to section 32 of the Bail Act 1978 (N.S.W.), which sets out which matters the court or authorised police officer will consider, in determining whether or not to grant bail: (inter alia)

> (b) the interests of the person, having regard only to:
>
> (i) the period that the person may be obliged to spend in custody if bail is refused and the conditions under which he would be held in custody;
>
> (ii) the needs of the person to be free to prepare for his appearance in court or to obtain legal advice or both;"

NO-BILL APPLICATIONS

Although the Attorney-General is responsible to Parliament for the Commonwealth criminal justice system, the Director of Public Prosecutions Act 1983 makes the Director responsible for determining whether or not a prosecution should proceed.

In January 1986, the Office of the Director of Public Prosecutions prepared for the Attorney-General (who in turn presented to the Federal Parliament), a document titled "Guidelines for the making of decisions in the prosecuting process". The document expresses guidelines for some decisions to be made by DPP lawyers, and other Commonwealth officers, engaged in law enforcement.

More particularly, it sets out the considerations of the DPP in determining whether or not a matter should be prosecuted. Whilst the document does not specifically refer to what matters are taken into account when a 'no-bill' application is considered, one would expect these factors to be of some importance in the process.

The primary one is whether the available evidence establishes a prima facie case; secondly, whether in light of the provable facts and the whole of the surrounding circumstances the public interest requires the prosecution to proceed. The document then sets out some of these factors. Excerpted below are some of those which are likely to have particular relevance to intellectually disabled persons charged with a Commonwealth offence:

(b) any mitigating or aggravating circumstances;
(c) the youth, age, physical health, mental health or special infirmity of the alleged offender or witness;
(d) the alleged offender's antecedents;....
(f) the degree of culpability of the alleged offender in connection with the offence;....
(j) the availability and efficacy of any alternatives to prosecution;....
(l) whether the consequences of any resulting conviction would be unduly harsh and oppressive;....
(r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court.

The applicability of and weight to be given to these and other factors will depend on the particular circumstances of each case (DPP, 1986,5).

Whilst comparable state guidelines are not publicly available for determining when to prosecute, it is suggested that state 'no-bill' applications should refer to any of the same factors that are appropriate.

COMPETENCE AS A WITNESS

As a result of NSW Statute Law, all witnesses are now 'competent' to give evidence (whether as the accused, the victim, or other witness for the prosecution, or for the defence) provided they possess sufficient understanding, according to common law principles, to partake in the proceedings.

The principles are the same for various factors which may render a witness incompetent; intellectual disability, youth, mental illness, or a disability of the senses, such as suffered by a witness who is deaf and mute. The principles apply equally in both civil and criminal cases.

There are two aspects to consider as to the competence of any witness; firstly, whether a witness is capable of swearing an oath, and secondly, whether a witness is of 'sufficient intellect'. The court must determine whether the witness is competent; if competent, it is then a matter for the jury to determine how much weight to attribute to the witness's evidence. If the court deems the witness incompetent, they cannot give evidence.

Competence: The Ability To Swear An Oath Or Affirm

The present law as to the competence of a person giving evidence in a court of law is that, unless they are a child under twelve years of age, they cannot give evidence unless they swear an oath

(if they believe in God) or make an affirmation (if they don't believe in God) to tell the truth. If an adult witness cannot swear an oath or make an affirmation, then in NSW they are not permitted to give evidence. (In some other states they are so permitted).

Some welfare workers with intellectually disabled clients can readily imagine a situation where an adult with a severe intellectual disability would not meet these prerequisites, and therefore would not be able to give evidence, even though they may be capable of giving a relevant account of what occurred. Subject to future reform, such persons are precluded from giving evidence, and indeed, in view of the present position, doubtless many police investigations into allegations by them that they are the victim of a crime, which would otherwise result in charges being laid, do not.

Competence: Sufficient Intellect

In the South Australian case of Ranieri v. Ranieri the plaintiff was rendered 'mentally defective' as a result of a car accident, in which he was a passenger. He sued the driver for negligence. The question arose as to whether he was a competent witness.

The judge questioned the witness as to his ability to take an oath, and, when so satisfied, allowed examination and cross-examination on the voir dire to establish his general competence as a witness. Although expert witnesses were not called, it appears from the judgment that such evidence would have been admitted, had it been called. Ultimately the judge ruled that the plaintiff was a competent witness to be sworn and give evidence on the issues in the case.

In Demirok v. R. at page 31, Gibbs J. said,

> The question whether a witness is competent is solely for the judge to consider and there is no reason why the jury should be present when evidence is being given on that question. Evidence which is relevant solely to the question of competence should not be used by the jury for some other purpose, such as determining the credibility of the witness ... if evidence which the judge has to consider on the voir dire in deciding a question of competence or admissibility is likely to be prejudicial to the accused, it should be received in the absence of the jury.

THE USE OF EXPERT WITNESSES

Where it is though appropriate to seek an expert witness as to the client's disability, a clinical psychologist is the appropriate professional to call. If the client is mentally ill, one would seek the services of a psychiatrist. If the client has a mix of both conditions (e.g. moderately disabled and also suffering severe depression) then it may be advisable to seek two reports, one from each. In this circumstance, one should ensure that each professional has recourse to the other's report so that each has the benefit of the other's findings. For instance, any data of psychological testing, and the psychologist's findings can then be commented upon by the psychiatrist.

CONCLUSION

This article omits significant other areas of concern, such as the fitness to stand trial, the provisions of the Crimes (Mental Disorder) Amendment Act 1983, sentencing, admissibility of confessional material, and the need for corroboration when the victim is intellectually disabled.

The author is presently preparing a 'manual' for the use of lawyers involved in criminal proceedings where a witness is intellectually disabled, either in the capacity of a victim, accused or other witness, in which these topics will be addressed, and the ones included in this paper discussed in greater detail.

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INTELLECTUALLY DISABLED OFFENDERS: A VIEW FROM THE CHILDREN'S COURT BENCH

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Victoria

It is important that an intellectually disabled person, who is suspected of committing an offence should be brought before a court.

In charges such as assault, or dishonest appropriation of property, a charge may well be dismissed if the prosecution cannot establish that an intentional act or dishonest act was committed. However, the experience of the court hearing might instil into a person deficient in intellect, who did in fact perform that act resulting in the charge, some awareness that he or she was not conforming to society's standards, and a valuable lesson may be learnt by them. The overall cost of the court's time and court officers would, in my opinion, be well spent.

I have worked in the Juvenile Court for fourteen years, eight as a Magistrate, so my experience is largely with that age group.

I see two comparisons in our legal system that show protections that exist for a young person which do not exist for the intellectually disabled.

Firstly, the common law presumption of innocence, and lack of capacity to commit a crime. By legislation, a child aged between eight and fourteen years has the protection whereby the prosecution must establish as part of its case, that the child had the awareness of wrongfulness of an act, coupled with an intention to commit it, with offences having intention as essential ingredients. A child under eight years in Victoria is incapable of committing a crime. An intellectually disabled person may have been assessed as having a mental age in one of these ranges - yet he or she does not have statutory protections as does a child.

It would be a mammoth task to draft legislation that would give rights such as these to one who is intellectually disabled.

The second comparison concerns the taking of the oath. If a court finds a prima facie case established and a person is called upon to answer the charge, they may well be prepared to stand cross-examination, giving evidence from the witness box. In

Victoria, persons over the age of fourteen must take the oath, unless they satisfy the court that it is either against their religious beliefs, or that they have no religious beliefs. Perhaps that concept and choice are beyond the capacity of the intellectually handicapped to make; if they make a statement thought to be a deliberate untruth, a perjury charge might be made later. Children under fourteen years old in a similar situation have legal protection in that they shall be permitted to give evidence from the witness box, unsworn if the court is satisfied that they do not understand the nature and consequences of taking the oath. Whilst there remains the possibility of action for making a deliberately untrue statement, it is a lesser penalty than that prescribed for wilful perjury.

With respect to young intellectually disabled offenders the Victoria Children's Court is favoured in that it has its own Psychiatric Clinic to provide assessments and reports to the court on any child found in need of care on a Protection Application, or guilty of any offence. The court is entitled to seek a full psychological assessment, to gauge intellectual ability and capacity, acting in the interests of the welfare of the child or young person.

Under Victoria Police Standing Orders, official interrogation of a child requires, and invariably results in, an independent person being present at an interview, so that the court can gauge later, if necessary, that the questioning was fairly conducted. The overall question of fairness when an intellectually disabled person is being interrogated will place a higher burden on police officers to make sure they are scrupulously fair in such a situation, as the court may use its discretion and not receive some material into evidence.

Any person in custody awaiting a Children's Court appearance has the offer of free legal representation from a Solicitor with the Legal Aid Commission. Also, any child summoned to answer a charge, or who is the subject of a protection application, (and parents or persons involved in the care of that child) can approach a Legal Aid Solicitor at any Metropolitan Children's Court hearing and seek legal representation. This Solicitor will advise on the legal rights of a child or adult with a Protection Application, and if a person presents as intellectually disabled, either help with defending a particular matter or seek adjournment so counsel can be obtained, or generally assist the court by assisting a child or adult who feels threatened by the proceedings, in his or her situation.

The young person who is unfortunately intellectually disabled should receive support appropriate to his or her needs from a children's court, acting in its welfare role. This support could be by way of ongoing counselling from our Clinic, guidance from Youth Welfare Services, hostel placements, or if necessary, an order of Wardship.

An order of wardship places a youth in Police custody and immediate institutional placement, unless alternative arrangements have been made anticipating such an order. If the initial placement is in an institution, it seems some three to four weeks will elapse before forward planning is put into effect, after case conferences.

It has concerned me that the professional view seems to be that very adverse effects can result from placement of a mentally defective person in criminal institutions. A Forensic Psychiatrist put to me in an assessment eighteen months ago, those effects can be the deterioration of behaviour because of the influence of brighter criminals, particularly in relation to sexual considerations. But, if there is a need to be protected from potential risk to themselves, the court has to approach its task with the hope that the Welfare Department can perform its task of planning and supervising with adequate support. In any case it would seem even after discharge of wardship, that this person will probably need ongoing external support to survive in the community.

WHAT CORRECTIONS SHOULD OFFER THE INTELLECTUALLY DISABLED OFFENDER - AN IDEALISTIC VIEW

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INTRODUCTION

The time is ripe for change and development in the procedures and programs designed to assist intellectually disabled offenders within correctional settings. The greater awareness of the problems of these offenders has emerged for a number of reasons - lobbying and advocacy by the voluntary agencies; the push towards deinstitutionalisation and community integration; the emphasis in correctional settings of the need to provide for special groups of offenders, be they Aborigines, non-English speaking, young offenders, protection prisoners, or intellectually disabled; and the very pragmatic reason that appropriate procedures and programs can minimise the disruptive effect of the intellectually disabled offender population.

This paper concentrates upon intellectually disabled adult offenders in prison, although most of the principles which will be outlined are equally relevant to those on probation or parole, and to juvenile offenders.

The aim of this paper is to provide criteria by which governments, correctional authorities, and citizen lobby groups can evaluate the worth of what is being done for intellectually disabled offenders. The term 'ideal' does not mean 'unobtainable' - rather, it provides a framework within which resources can be harnessed to work towards an achievable and realistic goal. With this proviso, six ideals can be identified.

ENTITLEMENT TO APPROPRIATE PROGRAMS

The term 'right to appropriate programs' has been deliberately avoided here because there is no right established for any prisoner to receive programs or treatment beyond a general duty to provide for the training, welfare and after care of prisoners. Nevertheless, corrective services and governments have an interest in providing such treatment which will lead to a change in the intellectually disabled offender's behaviour (to the extent that the disability contributed to the criminal behaviour), permit the release of the person, and make him of her

a productive member of society by improving the ability to cope in society upon release.

Corrective services do not have a good history of providing appropriate services. More than 10 years ago in the United States one author wrote:

> In most states, appropriate institutional, probation, and other treatment facilities are not available for differential treatment of the retarded, and they therefore receive little or none of the special care needed if they are to be ... habilitated. This shortage of programs and services is a result of several factors; disagreement as to whether retarded offenders are most appropriately handled as part of an integrated prison system or in specialized facilities; a lack of (personnel) resources in the areas of special education, psychiatry, and psychology; a lack of alternative resources in the community; and a lack of co-ordination among and within the agencies dealing with mentally retarded offenders.
>
> Undifferentiated handling has resulted not only in neglect of retarded offenders, but in positive damage to them. In these situations they vegetate in institutions, only occasionally participating in any programs at all. They are assigned to menial maintenance tasks having no vocational training potential and are required to conform to standard rules and share work assignments with more intelligent inmates. They tend to react by withdrawing from competition completely, thus making it more difficult to prepare them for life in the community (Rowan, 1976, 673).

This would be a fairly accurate description of the situation in many Australian prisons now.

Implicit in the entitlement to appropriate programs are a number of processes:

- comprehensive assessment: if the offender has not already been assessed prior to the trial or to sentencing then comprehensive assessment must occur, encompassing the offender's physical and mental health, cognitive abilities, and social and adaptive skills.

- range of services and programs: these may include medical, psychiatric, psychological, occupational and/or physical therapy and welfare services, as well as programs addressing educational, vocational, social and sexual relationships, and financial management deficits in the individual's living skills.

Many of the programs required by intellectually disabled offenders will not differ substantially from those offered to non-disabled offenders. In some cases, individuals or groups may need specially tailored programs, but it is important to realise that the range of abilities and needs within the intellectually disabled offender population will be great. Not all offenders will fit into the same program.

- consultation with the offender: this is a significant step in ensuring motivation and co-operation.

- flexibility and change: the offender's needs are likely to change during the course of the sentence and so provision should be made on a regular basis for re-assessment of the individual, and updating of the program.

- no coercion to participate: a corollary of entitlement to services and programs is the individual's right not to participate, without reprisal. Severe doubts can be raised about the efficacy of coerced treatment in any case, but when the treatment or program is intrusive (such as, behaviour modification) or experimental, the nature and effect of the procedure must be explained to the offender and the offender must have the opportunity to discuss the matter with a third person.

CITIZEN ADVOCACY

Intellectually disabled offenders are likely to be multiply disadvantaged within the prison environment by lack of awareness of formal and informal rules and expectations, poor verbal and social skills, likelihood of exploitation, and isolation. Their need for access to trained citizen advocates is at least as great as the needs of individuals in the community or in mental retardation facilities, yet little emphasis has been placed upon citizen advocacy in a prison setting. Official gaol visitors could fill the need, provided that the onus is not on the offender to initiate contact, and provided also that they have appropriate training in the area. The normal reactive grievance mechanisms are unlikely to be able to respond appropriately to the subtle, ongoing, and probably poorly articulated problems experienced by intellectually disabled offenders.

PROTECTION

> Intellectually disabled offenders are particularly vulnerable to the harshly negative aspects - rape, extortion, physical brutality and victimisation - of prison (Hayes and Hayes, 1984, 129).

Protection should not be interpreted to mean segregation on the grounds of intellectual disability. Disabled offenders may need to be protected - so also may young, aged, or first-time offenders need protection. Some intellectually disabled offenders will cope well within the mainstream of the gaol and will not require protection. Any notion of segregating prisoners or establishing a separate facility solely on the basis of intellectual disability (disguised or not as a need for protection) is impractical given the range of abilities and needs within the group. Furthermore, it runs counter to the principles of normalisation (i.e. making available to intellectually disabled people patterns and conditions of everyday life which are as close as possible to the norms and patterns of everyday society) and integration into the community.

INTEGRATION

The ideal of protection against abuse leads into discussion of the ideal of integration. There has been much discussion of whether or not special segregated correctional facilities should exist for intellectually disabled offenders. The American experience leads to the conclusion that:

> It seems they are, even in this 'treatment' facility, once more low men (sic) in the totem pole (Rowan, 1976, 667).

The arguments against special segregated facilities are as follows:

- The wide diversity of abilities and skills amongst intellectually disabled offenders means that a special facility is as likely as a typical prison to fail to meet their needs.
- The history of segregated non-custodial programs and facilities has been one of neglect and lack of funding, and there is no reason to suppose it would be different in corrective services.
- It is discriminatory to prevent intellectually disabled people from interacting with their peers; and has the consequence of depriving them of appropriate models.
- The history of segregated correctional services has been one of custodial, not treatment oriented care.
- Segregated facilities remove intellectually disabled offenders from the mainstream of prison reform.
- Who is going to be classified as intellectually disabled? (Hayes and Hayes, 1984, 139-140)

For certain types of intellectually disabled offenders, e.g. those with concomitant severe behaviour disturbances, special units may be considered in order that the ideals of appropriate programs and protection can be achieved. The offender should be admitted to such units for a specific purpose, for as short a period of time as possible, to achieve the aims of allowing the individual to be integrated into the normal correctional continuum. In other circumstances offenders may be provided with special programs, but reside in the general gaol. No special units should curtail the amenities or privileges which extend to non-disabled offenders.

NO EFFECT ON RELEASE OR PAROLE

The fact that an offender has an intellectual disability or is being provided with special programs or is in a special unit should in no way affect the release date or eligibility for parole. Studies show that intellectually disabled offenders tend to serve longer sentences than non-disabled offenders for the same crimes and are less likely to be released on parole (Sales et al. 1982, 769). In part, this is a consequence of poor social and adaptive skills, the unlikelihood of participating in work or education programs, the propensity to break prison rules, and lack of community facilities (e.g. residential facilities) willing to accept them upon release or as an alternative to gaol.

Appropriate programs will minimise these problems, but intellectually disabled offenders must not be discriminated against solely on the basis of the disability. In particular, the 'intellectual disability means greater likelihood of dangerousness' argument must be vigorously eschewed.

NO PATRONISATION

There is an argument which says that prison is not an appropriate placement for intellectually handicapped offenders. Whilst this is undoubtedly so for some, hard-headed realists would know that some intellectually disabled offenders commit violent and anti-social crimes for which removal from society as a punishment and as protection for the community is necessary. This paper will not dwell on the arguments relating to suitable disposition of a person who suffers from a mental condition such that he or she lacks the capacity to understand the nature of the offence, or the proceedings against him or her. If the intellectually disabled person is responsible for his or her criminal conduct and competent to plead and stand trial, then appropriate sentencing must take place. It is patronising and discriminatory to regard intellectually disabled offenders as child-like and in need of the 'protection' of the law. 'Protection' which involves diversion out of the criminal justice system into security hospitals and effectively into indeterminate

sentences, which involves narrowing the available range of sentencing options, and which involves removal of the checks and balances and review mechanisms which exist in the criminal justice system is not protection but patronisation. It removes from the intellectually disabled offender even the right to make decisions, take risks, and make mistakes.

CONCLUSION

There is no doubt that intellectually disabled offenders do not fare well in correctional institutions. Sometimes the extremes of misery emerge into the light as in the case of the 19 year old intellectually disabled man who hanged himself in a NSW prison in 1984, after having been raped. There is also no doubt that the lot of the intellectually disabled offender could be greatly improved, with greater awareness on the part of corrective services staff, provision of funds for appropriate programs, and adoption of a correctional philosophy which did not doubly penalise the individual for being both intellectually disabled and an offender.

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THE PSYCHIATRIC STIGMATISATION OF THE INTELLECTUALLY DISABLED OFFENDER

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One of the recurrent problems in dealing with so called mentally abnormal offenders is to convince those dealing with them that there are in fact two sorts of offenders involved: the mad and the simple. Psychiatrists must take much of the blame for originally blurring this distinction although their motives were very much humanistic and philanthropic.

In the over-crowded prisons and poor houses of the nineteenth century, it would have been obvious to the visiting medical officer that many of the unfortunate inmates were not criminals or vagrants by choice; rather, they did not have the intellectual skills to enable them to choose another sort of life. They seemed therefore to be suffering from much the same disabilities as the mentally ill and, like the mentally ill, they needed to be institutionalised in sheltered environments in order to protect their vulnerable minds from the noxious influences of an uncaring society.

It has since been recognised of course that the needs of the mentally ill and the intellectually handicapped are widely different and it is the experience in most Australian states that both community and institutional services for the two groups have developed along separate paths. Unfortunately, the law, while preserving much of the humanistic zeal of nineteenth century psychiatry, tends not to recognise the differences. In relatively enlightened legislation which provides for treatment of the mentally abnormal offender, the 'mentally ill' and 'intellectually defective' are often lumped together (see for example the provisions in the still-to-be-repealed Sections 51-53 of the Victorian Mental Health Act 1959).

If the differences are recognised it is usually for very cynical reasons, such as denying the intellectually handicapped access to scarce treatment resources. Despite the existence of relevant legislation it is common for an intellectually handicapped prisoner charged with a reasonably serious offence such as arson, or sex offences, to be denied admission to a mental hospital because he is not overtly mentally ill and also to be denied admission to a residential training centre because he is in need of psychiatric care. Mark Twain's aphorism that 'the human race consists of the dangerously insane and such as are

not' is particularly appropriate for such cases: the offender cannot go to a mental hospital because he is not 'dangerously insane' but neither can he go to a training centre because he is.

THE INTELLECTUALLY HANDICAPPED OFFENDER IN THE SYSTEM

This double stigmatisation - being both mad and bad - follows the intellectually handicapped offender throughout his or her entire criminal career. In a presentation such as this it is not possible to describe in detail all the problems that may arise as a result of this labelling. Nevertheless, the following are a few comments about some difficulties encountered by the intellectually handicapped offender who is labelled 'psychiatric' at various stages of the criminal justice process:

Diversion into the Mental Health System

It was not uncommon until recently for an intellectually disabled offender to be offered psychiatric treatment, particularly hospitalisation, as an alternative to arrest and lodgement in the police cells. Such people, even though not suffering from any mental illness, were often accepted, albeit grudgingly, into hospitals, simply because mental hospitals served much more of a social function than they do now. I was the admitting medical officer of a large metropolitan Melbourne psychiatric hospital where the unwritten criteria for admission included such factors as the temperature outside and whether the last bus had gone for the night.

With the present impetus for 'decarceration' and the shrinking sizes of public psychiatric hospitals, such alternatives to arrest are rapidly disappearing, ostensibly to be replaced by 'community placements'. Unfortunately, in many jurisdictions, particularly the United States and the United Kingdom, such alternatives never seem to materialise despite solemn legislative provisions for them (Scull, 1985).

Legislative provisions to separate the mentally ill from the mentally retarded at the stage of admission to an institution are to be praised for removing the psychiatric stigma (see for example the new Victorian Mental Health Act 1986) but are unlikely to be successful in their intent if the only alternative for the 'acting out' mentally retarded person is being subjected to the more distressing experience of being arrested, charged and subjected to the usual legal process.

Issues of Fitness to Plead or Be Tried and the Insanity Defence

Although these are legally different issues, for practical purposes they result in a similar disposition in most jurisdictions, that is an indeterminate sentence of detention 'at

the Governor's Pleasure' or at 'Her Majesty's pleasure'. Criteria for fitness to plead or to be tried have been defined slightly differently in the various jurisdictions according to statutory and/or judicial determinations. The Victorian criteria set out in R v Presser are fairly typical and can be summarised by saying that the defendant needs to have a layman's understanding of what goes on in courts, what charges are being laid against him, and what instructions he will give to his legal advisors about these charges.

The problem is that if the mentally retarded offenders are found to be 'unfit' either before or during their trial the prospects of their becoming 'fit' at a later date are slim. There is 'no recovery' from mental retardation as there is from a mental illness. Hence, they could be detained (usually, in practice, in prison) for a very long time indeed.

While this affects a numerically very small segment of the offender population, there are significant individual examples of apparently quite gross denial of natural justice.

A patient in one of our series (Laster and Glaser, 1985) of prisoners transferred to Victorian Mental Hospitals was a forty two year old mildly mentally retarded man who had been convicted of quite serious charges involving arson and burglary. He had a long history of previous convictions and multiple admissions to both prison and mental hospitals and was generally regarded as a 'social nuisance' and not really psychiatrically ill. On the occasion of his current charges, the issue of fitness to plead was raised by the prosecution (as is its right) and he was found unfit, mainly on the grounds that he insisted on having a jury of blonde headed ladies who would sit only on Mondays, Wednesday and Fridays. He repeated this assertion on a number of other subsequent examinations as to his fitness.

He thus remained in prison, unfit to plead, for almost four years before finally developing a frank psychotic illness which resulted in his transfer to a security mental hospital. On discharge from hospital back to prison, he pleaded guilty and was sentenced so that his effective minimum term was equal to the time he had already spent in prison. It is somewhat ironic that this man had to develop a frank mental illness in addition to his pre-existing mental retardation before he could be found 'fit'.

Similar considerations apply to the insanity defence although in practice this defence would be very rarely used for an intellectually handicapped offender not showing any signs of psychiatric illness.

A number of suggestions have been made as an improvement to the law relating to fitness to plead of to stand trial (Hayes and Hayes, 1984, pp 42-65; Potas, 1982, pp69-70) and will not be

canvassed here. From the psychiatric point of view, one thing to note is that mental retardation is a 'permanent' condition and, if they are to be used, criteria of fitness to plead need to be adapted to take account of this fact.

Sentencing

This is a stage of the criminal justice process which has the most impact on the intellectually handicapped offender for practical purposes. Yet it is the one where the sentencing official has little guidance from the law (Fox, 1985). In the case of the intellectually handicapped offender, 'expert opinion' in the form of pre-sentence reports may also be of little help. Psychiatrists and other mental health professionals who are often called upon to provide such reports, often do not in fact possess expertise in the field of mental retardation (Hayes and Hayes, 1984, pp 89-92).

Some of the difficulties which beset a sentencing court are well illustrated in the case of R v Tutchell (see also Potas, 1982, pp 135-140):

Tutchell was a twenty-three year old man who appealed against a prison sentence following conviction for a number of bizarre sex offences. The facts of his life as set out by the appeal court can be summarised by saying that he came from a grossly deprived emotional and social background, had been in institutions between the ages of five and seventeen, and was regarded for many years as being more severely retarded than he really was.

As several of the grounds of his appeal included his contention that he needed 'treatment' for inter alia, his sexual problems, a conference of various 'experts' concerned with the pre-sentence assessment of Tutchell was held in order to report back on the likely dispositional alternatives available to the court. This conference concluded, rather reluctantly, that court-ordered hospitalisation was the only alternative to imprisonment and yet could not be seen as a practical option because the hospital would not be able to guarantee that Tutchell would not present a danger to either the community or his co-patients.

After serving six years imprisonment (most of it in a 'psychiatric' division), Tutchell was transferred to hospital as a 'voluntary' patient (i.e. not under the provision of the Mental Health Act). One suspects that this transfer was able to be arranged, not because of any real change in his 'treatability' but rather because of administrative changes that had taken place in the relevant health and correctional services following the sentence set by the appeal court.

This case is a good illustration of the essential dilemma outlined at the beginning of this paper. The law tends not to

recognise the differences between the mentally retarded and the mentally ill. However, psychiatric hospitals are seen by those in charge of them as inappropriate places for the mentally retarded (although exceptions can easily be made in the right sort of administrative climate). Thus imprisonment comes to be used, not with any specific sentencing aim in mind (such as retribution, deterrence, rehabilitation, etc.) but simply because there is no other option available.

Yet in prison, such offenders continue to be doubly stigmatised; they are usually unable to cope with 'normal' prison society and hence get labelled as 'psychiatric' with resultant restrictions on their ability to move to a low security prison environment to obtain parole. Thus it would not be too cynical to suggest that for the intellectually handicapped offender, sentencing is really just a question of tailor-making a court order to the appropriate facility. For example in the United Kingdom, because of a community belief in 'treatment with consent', the use of hospital orders has declined and there has been a corresponding increase in probation orders with conditions of hospitalisation (Craft, 1984). Yet for practical purposes there is really no difference between these two types of orders.

Finally it must be stressed that sentencing options for the intellectually handicapped must not merely mimic those for the mentally ill. 'Subnormal' offenders subject to a hospital order in the United Kingdom in general spend a longer time in hospital than their mentally ill counterparts and also seem to experience a greater recidivism rate (Gibbens and Robertson, 1983a, 1983b).

There is no doubt that the over-crowded and under-staffed 'special' security hospitals in Britain do not promote retraining or treatment and even the smaller regional security units attached to local psychiatric hospital ('Butler' units) are not appropriate. Success has been reported using purpose-built small residential units with appropriate security provisions (Denkowski et al, 1984). Gibbens and Robertson (1983a) have made the wise observation that 'the higher grade mentally handicapped feel the stigma of being institutionalised as subnormal more keenly than any stigma attached to being a criminal'.

Release

Release after an indeterminate (e.g. Governor's Pleasure) or indefinite (maximum-minimum) sentence depends very much on the determination by a parole board or a similar body of a prisoner's likelihood of re-offending, i.e. his dangerousness. Enough research has now been produced to show that the psychiatrist or any other mental health professional has only a very limited role in the prediction of future behaviour, even amongst the mentally ill. When it comes to assessing dangerousness in the handicapped, much of the expert opinion is based more on anecdote

and clinical 'hunches' (Shepherd, 1982). It is strongly argued that the assessment of fitness for release of an intellectually handicapped offender should, at the very least, be a multi-disciplinary exercise.

THE ROLE OF THE PSYCHIATRIST

It can be seen that the psychiatrist's original humanitarian zeal in attempting to protect the intellectually disabled offender from the cruel inflexibility of the criminal justice system has placed him into several roles for which he is totally unsuitable.

Inappropriate Roles

There is no doubt that the psychiatrist is performing a decision-making and screening function which should more properly be performed by the police, the courts, correctional agencies, etc. This is not to say that the psychiatrist should not be involved in giving advice at various stages of the criminal justice process such as the decision to proceed with charges, fitness to plead, suitability for various sentencing options and parole board decisions. Nevertheless, the various agencies and judicial authorities involved must be made aware of the limitations of psychiatric expertise as regards the intellectually disabled offender and, where appropriate, the assistance of other professionals must be sought.

This is particularly important in the area of community based corrections. While this is a laudable development in terms of the disposition of the intellectually disabled offender, it does mean that the correctional officers involved will encounter more and different forms of bizarre or unusual behaviour amongst their clients.

Unfortunately, it is a natural reaction to send such clients along to a community forensic mental health service rather than seeking advice from more appropriate sources. Thus, even in the community it may be difficult for the intellectually disabled offender to avoid the psychiatric label.

Appropriate Roles

The psychiatrist's expertise lies in diagnosing and treating mental illness. The available studies seem to suggest that although the intellectually disabled are not over-represented in the general offender population (Gostason, 1985) or in prisons (Craft, 1984), there is some indication that particular groups of offenders, for example prisoners, do seem to have a higher rate of mental illness (Glaser, 1985). Hence, in such populations, it would be reasonable to suppose that the psychiatrist as part of his more general involvement, would be expected to see a number of intellectually disabled offenders who are also mentally ill.

Psychiatrists, like other professionals, also have a useful role in advising their colleagues in mental handicap services about the establishment of forensic facilities for special groups of clients (e.g. the mentally ill, the intellectually handicapped, juvenile offenders, etc.). However, the point made earlier must be emphasised: special services for intellectually disabled offenders should not mimic those for the mentally ill.

Inappropriate But De Facto Functions

Although, in an ideal system, the psychiatrist's function would be circumscribed, in practice he will continue to play a large part in the management of the intellectually disabled offender. The mad and the simple continue to be equated. For example, a recent report in The Age about new initiatives for intellectually disabled offenders appeared under the heading 'No Justice for Mentally Ill in Jails'. In any case, facilities are such that the psychiatrist is usually on the scene well ahead of the professional more experienced in the care of the intellectually handicapped. In this sense then, the psychiatrist acts as an advocate for the intellectually disabled offender, much as he acts as an advocate for the alcoholic, the drug addicted, the socially inadequate, and other offenders who are not necessarily mentally ill but who are deemed to be different from the normal class of offender.

Whether this role is appropriate is probably not the question. What is more to the point is that the intellectually disabled need to have some constant figure to guide them through the organisational craziness which besets the criminal justice, health and welfare systems. The case of Daniel, a twenty year old man, illustrates how, without such a guide, it is very easy for an intellectually disabled offender to become hopelessly lost:

Daniel's family came from an impoverished Victorian country town. His mother, who was probably mildly mentally retarded herself, ran the family budget on money that she made collecting soft drink cans. His speech impediment was not discovered until he started attending school and because of this and a number of other problems, he was placed in 'special' schools for handicapped children.

At the age of thirteen, he was the subject of a care application to the Children's Court and was finally admitted to wardship because his parents were 'unfit to have custody' of him. He was admitted to a reception centre for boys much younger than him because he was felt to be at risk of inappropriate sexual advances by older boys. There was no regional case worker available and therefore the institution took over his case planning. He was referred to multiple hostels and agencies, none of which resulted in a placement. An assessment by a Government

Mental Retardation facility noted the 'inadequate history', regretted the 'absence of any files on him' and expressed disgust that there was only a student social worker to accompany him to the interview. Their assessment was that he was too young for a sheltered workshop, had too bad a speech defect for an employment oriented workshop and was too intelligent for a day training centre. Their recommendation for action was 'do not register'.

After eight months, Daniel was finally placed in a hostel where he lasted ten months due largely to the warmth and interest showed by the hostel supervisor. In the meantime he changed schools because of his shift in location and was rapidly ejected from his new school because of his behaviour. He was then re-referred to the Government Mental Retardation Agency who did not see him but offered advice over the telephone. A local medical practitioner referred him to a specialist clinic where he was investigated extensively for his short stature (for which no medical reason could be found).

Eventually, because of his disruptive behaviour, Daniel was returned to the reception centre and again could not be accommodated with boys of his own age because of his immaturity. A regional case plan was formulated but the regional worker then resigned and the institution again took responsibility for him. He spent another eight months in the institution undergoing more rejections by various hostels and agencies until the region suddenly announced that it was resuming his case plan. On the basis of one interview with him, the regional worker decided to place him in a hostel which predominantly catered for older boys who had been involved with criminal offences. The institutional workers who knew him well lodged a formal appeal about this decision but the plan went ahead anyway.

At age eighteen, Daniel was 'home released' but his father died shortly afterwards. As a result, his mother could not cope with him and he was sent to boarding house accommodation. He met an accomplished burglar and was involved with him in some thirty-five offences. He pleaded guilty to these and was sent for a pre-sentence report to a community forensic psychiatric clinic by the court. The psychiatrist at this clinic described him as a 'pleasant' young man who 'feels remorse' and recommended against custodial sentencing.

Despite this report he received a youth training sentence and for the first time, was incarcerated with youths of this own age. He became very easily disturbed and he screamed obscenities at the boys and staff, threw billiard balls at everybody and kicked and punched his fellow residents. The institutional psychiatrist who saw him noted that Daniel had been upset at being incarcerated for both Christmas and his birthday but could suggest nothing more than that he be removed to isolation and given tranquilising medication.

While in a 'casual discussion' with one of his favourite staff members, Daniel admitted to the possible murder of an old tramp. Hence at the age of twenty he was transferred to the remand section of a large prison, where, not surprisingly, he became quite disturbed. He was seen by the prison psychiatrist and was ordered tranquilising medication and isolation.

At the insistence of the prison authorities, he was eventually transferred to the prison psychiatric unit, where he was given 'treatment'. This involved giving him a pair of gumboots and responsibility for cleaning out the swimming pool in the unit. Although it was contrary to prison regulations, the officers let him wear his gumboots for most of the day as this seemed to result in a marked reduction in his disturbed behaviour.

The murder charges were dismissed at committal proceedings and two psychiatrists assessed him for release on parole for his original youth training centre sentence. One psychiatrist commented that he was a 'warm responsible lad who is one of our best workers'. The other noted that 'while he has been in prison, Daniel has shown further disorders of behaviour'.

Daniel's story is not meant to be an indictment of individual organisations or agencies. However, it does point up the confusion in the minds of professional workers when they have to confront intellectually disabled offenders and the tendency to resort inappropriately to psychiatric labelling when disturbed behaviour is encountered. It certainly seems a pity that Daniel had to wear such a label before 'gumboot therapy' could be offered to him.

If psychiatrists are to have a role in the management of the intellectually disabled offender, then they might do no better than to return to their original function as advocates for humanitarian reforms. Just as psychiatrists attempted to save the mad and simple from the horrors of prison life one hundred years ago, so should they continue to point out the basic needs of all disadvantaged clients of the criminal justice system, no matter what label they might bear.

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109717

A NORMALISED APPROACH TO SUPPORTING INTELLECTUALLY DISABLED OFFENDERS

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INTRODUCTION

The positive philosophy of normalisation, which is today the basis for supporting people who are intellectually disabled, suggests support in the least restrictive, but most appropriate, manner. In other words - allow people who are disabled the right to be treated as much as possible like any person who is not disabled; and only support them when it is necessary, and then only in such a manner that is the least restrictive on their ability to maintain normal modes of living.

The Intellectually Handicapped Citizens Act of Queensland, which began operation in January, 1986, is predicated on this principle of Normalisation. That is, the Act operates under an assumption of competence. It assumes that people who are intellectually disabled are functionally competent unless specific and clear evidence is available to the contrary.

The Act provides a brief which relates to all people who have any intellectual disability and have reached the age of eighteen. It establishes the Intellectually Handicapped Citizens Council which provides assistance in matters of consent for professional treatment and care, and in matters dealing with the management of money. The Council is also charged with:

(a) establishing and maintaining liaison with government departments and other organisations or bodies with regard to the well being of citizens with an intellectual disability;

(b) providing advice to the Minister (of Health) in respect of matters concerning citizens who have an intellectual disability, when requested to do so, or when the Council considers such advice should be provided;

(c) assisting and encouraging efforts to improve the quality of life of citizens who are intellectually disabled; and

(d) promoting public information and understanding of intellectual disability.

While the Act has a general brief to support people who are intellectually disabled, this paper will examine how the Act can provide direct support in situations where people who are intellectually disabled are facing the criminal justice system. There are limitations in the Act in giving such support and only modifications to the criminal justice system will overcome these limitations.

UNDERSTANDING THE CRIMINAL JUSTICE SYSTEM OR UNDERSTANDING THE PERSON WITH THE INTELLECTUAL DISABILITY?

To a large degree the criminal justice system demands implicit understanding of its operations by the people who pass through it. Yet the system seems to make little effort itself to understand the disadvantage this attitude places on people who are intellectually disabled.

FIGURE 1

LINEAR DESCRIPTION OF CRIMINAL JUSTICE SYSTEM

1. Pre-arrest
   (a) Questioning *
   (b) Decision to Arrest/Charge

2. Arrest
   (a) Bail
   (b) Legal Advice *
   (c) Court Appearance *
   (d) Jurisdiction

3. Court Hearing
   (a) Plea of Guilty *
   (b) Summary Trial *
   (c) Committal Hearing *
   (d) Jury Trial *

4. Sentencing options *
   discharge without conviction
   bond
   probation
   community service
   fine
   fine/option
   prison/probation
   prison

* Where persons with an intellectual disability are most seriously disadvantaged

By looking at a basic conceptualisation of the criminal justice system, shown in Figure 1, it can be seen that persons who are intellectually disabled are liable to be disadvantaged at each step of the process from pre-arrest through to sentencing. While explicit examples of this disadvantage have been described elsewhere, it is important to understand the general reasons why such disadvantage is liable to occur.

As a group, people who are intellectually disabled exhibit a large inter-individual variability in their language use and the extent to which they understand abstract concepts. In general, people with an intellectual disability are noticeable because of deficits in these skills. Indeed labelling a person as intellectually disabled to a large extent, depends on the degree to which he or she is good at written and oral language. This is because traditional tests of intelligence rely heavily on a subject's oral or written reactions to either written or oral questions.

However, while many people who are intellectually disabled perform poorly in terms of their language ability, they nevertheless are able to function competently in many concrete and practical situations where, if the situations were 'set up' verbally, they would fail to demonstrate competence. In addition, many people choose mistakenly, to believe that if a person with an intellectual disability is slow to respond, or slow to learn, then this somehow is a measure of their ability to understand.

It is because of the possibility of a discrepancy between functional performance and actual language use, and because many of us always attribute a lack of intellectual understanding to slow performers that many people who are intellectually disabled are disadvantaged by the criminal justice system. With respect to the first three steps in Figure 1 (i.e. pre-arrest, arrest and the court hearing), a generally poor ability to communicate (i.e. either, or both, a poor receptive and expressive language ability; either written and/or oral) will seriously disadvantage a person charged with a criminal offence.

With respect to the fourth step, sentencing, the range of sentence options are intended to deter people from further offences by applying them in a hierarchical sense. Again people with an intellectual disability may be disadvantaged if the nature of these sentencing options is not effectively communicated to them.

At present the criminal justice system provides little effective assistance to persons who are intellectually disabled, to compensate for their communication and/or conceptual deficits. Because there is liable to be a great degree of inter and intra-individual variability in these skills within the group of persons who are intellectually disabled, any assistance to make up for this neglect must be provided on an individual basis.

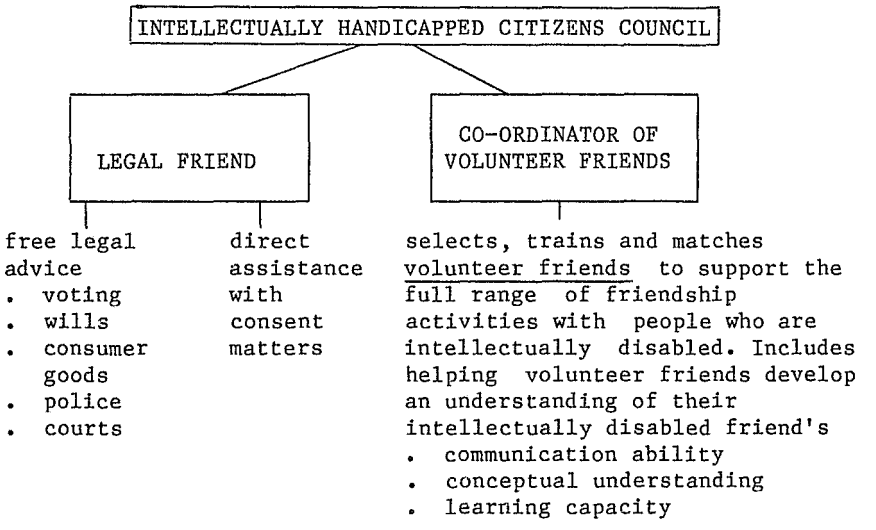
To be optimal, any assistance should be provided by a person or persons who understand the criminal justice system and have a long term and intimate knowledge of the disabled offender's capabilities and limitations. A legal friend and volunteer friend, available through the newly operational Intellectually Handicapped Citizens Act, together can provide this optimal type of assistance.

A LEGAL FRIEND AND A VOLUNTEER FRIEND

Figure 2 lists the functions of both the Legal Friend and the Co-ordinator of Volunteer Friends provided by the Act. Both officers are public servants under the direct control of the Intellectually Handicapped Citizens Council. The Council consists of five members of the community appointed by the Governor in Council for a three year term, because of their personal or professional knowledge and experience of persons who are intellectually disabled.

FIGURE 2

THE LEGAL FRIEND AND A VOLUNTEER FRIEND



It can be seen from Figure 2 that the Legal Friend makes available to people with an intellectual disability, free legal advice or direct assistance with consent matters. The Co-ordinator of Volunteer Friends aims to establish individual friendships for people with an intellectual disability who lack the personal support usually provided by family and friends.

The services of both the Legal Friend and the Co-ordinator of Volunteer Friends is provided to persons with an intellectual disability after successful application to the Intellectually Handicapped Citizens Council.

Requests for support can come from the disabled person themselves, from a relative, a member of the police force, an officer of the Council or any other person the Council sees has a proper interest in the welfare of the person with the disability.

Each of the above systems of support is potentially available for all adult persons with an intellectual disability in the State of Queensland.

The Legal Friend

The Legal Friend of the Intellectually Handicapped Citizens Council can be a Solicitor or a Barrister. He or she has the power to delegate some or all of the powers under the Act to other lawyers throughout the State. By this means the legal advice, available to persons with an intellectual disability, can be made more personable and relevant. As this process increases the number of lawyers working directly on behalf of intellectually disabled clients, an ever increasing number of lawyers will begin to appreciate the special situation posed by intellectually disabled clients. Perhaps with such a large number of lawyers beginning to appreciate the intra and inter individual capabilities of clients with an intellectual disability, the criminal justice system will itself be able to change its inappropriate perception of intellectually disabled offenders as being either 'mad or bad'!

It is now possible in Queensland for all people with an intellectual disability to establish, over time, a working relationship with an individual lawyer. For an intellectually disabled offender, being defended by someone who knows their special capabilities and limitations, and as well is qualified in the workings of the criminal justice system, can only be an advantage. While the interactive time normally available between lawyers and their clients may not always be sufficient for a lawyer to develop an adequate appreciation of a person's intellectual abilities, certainly the possibilities afforded by the Legal Friend must be an advantage over the system which presently operates. When seen in conjunction with a volunteer friend's support, the Legal Friend may well be the appropriate normalised solution for supporting intellectually disabled offenders. This of course depends on the kinds of support offered by a volunteer friend.

A Volunteer Friend

> A volunteer friend according to The Act, should endeavour to carry out the wishes of the person who is disabled, or if that person is unable to express his/her wishes the volunteer friend shall act with regard to the social and personal interests of the disabled citizen in such a manner as he considers he would wish to act if he were able to express his wishes. Of course to so act implies that the volunteer friend has such intimate knowledge of his/her friend that he can perceive, as much as anyone could, that person's wants and needs.

The volunteer friend program, which is at present being developed, aims to recruit, train and appropriately match volunteer friends with persons who are intellectually disabled and are in need of a friendly relationship. The type, and depths of the relationship that does develop will depend upon the chemistry between the two personalities involved, as does any normal friendship. However, initial and then continuous support as needed, will be available to the volunteer friend to help develop the skills and attitudes and to encourage the range of interactions possible in any normal friendship.

An important aspect of the volunteer friend program will be to ensure that all volunteer friends understand and act in terms of the normalisation principle. More importantly volunteer friends will need to learn not to view their friend, who is intellectually disabled with all the pre-conceived notions that are conjured up by the labels of 'intellectual disability', 'intellectual handicap', 'mental retardation' and so on. They must learn to discard professionally used concepts such as 'intelligence quotient' and 'mental age'. They will need to understand for themselves all the sins committed by the use of such labels which have excused so many people in the past from truly fathoming out the depth and breadth of a persons' abilities which lie behind descriptors such as IQ and 'mental age'.

Normally when a friendship has developed we usually are able to appreciate a person well beyond the public descriptors such as lawyer, doctor, husband, wife, father, mother. Similarly if a volunteer friend is going to develop a 'normal' friendship relationship the descriptors we currently use to label people with an intellectual disability need to be discarded and replaced by the full range of descriptors that truly do justice to the person behind the disability.

Where such a 'normal' friendship has developed, and a person who is intellectually disabled is subsequently confronted by the criminal justice system, the volunteer friend can offer the support and advice to his or her friend, that any person

would normally wish for in similar circumstances. Not only can a volunteer friend help his friend to understand the criminal justice system he or she can also provide the sort of advice to the legal system that may be required regarding the ability of his friend to understand the charges and the process he or she is facing. A volunteer friend who has developed a relationship over time, and in a wide range of circumstances, is liable to make a more valid and reliable judgment of such competence than a judgment made by a range of professionals usually relied upon by the courts, e.g. psychologists, psychiatrists, and medical practitioners who can't even pretend to really know the disabled offender.

At present, the above support available from both the Legal Friend and a volunteer friend is to a large extent hypothetical. Both the Legal Friend and the Co-ordinator of Volunteer Friends have only recently been employed, and have not yet been able to implement their programs to the extent just suggested. However, the Council is aware of the potential of such an approach to provide the least restrictive, yet most appropriate, type of support to people who are intellectually disabled, and the Council is keen to make such a system operational.

In summary then, the procedures described rely on modes of support for intellectually disabled offenders which are normal, i.e. support from a lawyer and/or friends. Obviously the extent to which this support is appropriate depends on the degree to which both the lawyer and friend understand the capabilities and limitations of the person who has an intellectual disability and is facing the criminal justice system.

It must be noted that a Legal Friend is available to both the person who is intellectually disabled and his family in relation to matters concerning the person with the disability. A volunteer friend is meant to support a person only when that support is not available from the family of the person with a disability.

CONCLUSION

The described system of normalised support at present being developed in Queensland, cannot hope to be appropriate for offenders who, given the best assessment and support, are still judged to be unable to either understand that they have committed a crime, or to understand the judicial system they are facing. In those cases we need to change the legal system from the one which is able to imprison an offender without a trial.

While such changes may be appropriate with regard to determining the true circumstances of a case, the available sentencing options should remain the same. However, where educational

options are called for, with regard to sentencing, they should be decided on in terms of need, not in terms of the availability of such a service. If an intellectually disabled offender requires social skills training as a sentencing option, the service should be made available. Avoiding such a sentence because personnel and facilities are not available should not preclude such a sentence. In the USA under P.L. 94-142 (The Education of All Children Act, 1975) if educational programs are prescribed for a student with disabilities, by a program committee, school districts are obliged to provide them. This occurs even to the extent of paying another district or state for the service.

Such a special provision might not be considered normal, however it is certainly appropriate when a person may have acted in a sexual, non assertive or even an aggressive manner because of their lack of ability or lack of understanding of the accepted social context in which to act. In such cases an intent to act inappropriately did not exist, the act occurred because of a lack of skill that most probably can be remedied by social skills training. To sentence a person in the above situation without the training option is in itself criminal.

While the described Queensland system of support has a high potential to be the least restrictive and yet most appropriate for most cases of criminal offence by a person who is intellectually disabled, it will not always be so. In those fewer cases, the onus is on the criminal justice system to change, and ensure that all citizens receive equal hearing and sentencing options under the law.

Although the normalisation principle argues for the least restrictive option to maintain personal worth and dignity, it also implies a necessity to decide in each individual case what support is appropriate. A constant examination of these two conflicting options needs to occur for each person who is intellectually disabled to achieve the balance that is required over time and with each new situation as it arises. The Queensland system has the potential to achieve this balance because it provides support on an individual basis and it is flexible!!

ADVOCACY

The concept of a 'volunteer friend' provided by the Queensland legislation is paralleled by Citizen Advocacy groups about which Ms Heather Hindle, the Co-ordinator of the Citizen Advocacy Resource Unit in Victoria, addressed the seminar.

Citizen Advocacy is a community based program which builds one-to-one personal relationships between an adult who has an intellectual disability (referred to as a 'protege' or 'friend'), and a volunteer (citizen advocate) from the community. The advocate is a person who chooses to share some of his or her time with the person who has the disability.

Often people with an intellectual disability have been denied the opportunity to meet people who provide support, encouragement and companionship which most of us take for granted, so Citizen Advocacy provides an opportunity to help ensure that people's rights are not denied. The relationship provides people who have intellectual disabilities with a greater range of experiences and choices which will enable them to participate more fully in the community.

Ms Hindle explained that the role of the Citizen Advocacy Co-ordinator is to recruit, talk with, and then introduce two people who, hopefully, will come to have their own personal relationship. The Co-ordinator also helps to support that relationship by giving information, listening, thinking and helping to devise ways to approach problems.

Considerable time is spent in assessing the needs of the people for whom an advocate is sought, on assessing and screening prospective advocates, on orientation of advocates about the roles of a citizen advocate, and in making suitable 'matches'.

Citizen advocates take roles which vary according to their interest and the needs of their 'friend'. These roles may be formal or informal, short or long-term. They include spending time regularly with their 'friend' ... having fun and going places, or helping to solve an immediate problem, a personal crisis, speaking out on their 'friend's' behalf, or assisting their 'friend' in becoming more independent.

It may not always be possible for an advocate to 'solve' problems, but it is 'being there' that can provide the much needed support in their 'friend's' life.

Each advocacy relationship is unique and makes its own decisions. Activities, times and dates, and actions are decided by 'friends' and advocates together.

Advocates are free to call the Co-ordinator at any time they need help, to find information, to understand a particular agency policy, or just to talk. There are regular advocate gatherings, sometimes with films or guest speakers. Advocates can also be good resources for each other, especially since the kinds of situations advocates encounter may not be unique to one 'friend' alone.

Occasional social gatherings of advocates and 'friends' and other interested community people are held. Continuing training, both on an individual and group basis, is also offered.

Citizen Advocacy is the experience of one person valuing and respecting another person's worth. This value and respect often leads to positive changes in the lives of people with an intellectual disability, and in the advocate's life.

Also, involvement in the program provides the personal pleasure of being involved with a new community movement which supports people who have been disadvantaged by our social system.

However, the existence of a citizen advocacy program does not deny intellectually disabled people the chance to achieve things for themselves. Self-Advocacy NSW is a Department of Community Services' Demonstration Project which aims to train people with intellectual disabilities to speak out. It was represented at the seminar by Mr David Gant who addressed the participants as follows:

> At varying periods in my life, most recently working in the Self Advocacy Office, it has come home to me on a number of occasions that I (and others whom I know) learn best by example. Theory is all very well, but in situations such as mine and those of friends, it could just as easily be left out because I have difficulty understanding it. Nothing beats practical demonstration and experience.
>
> You might be wondering what on earth this has to do with the prison system. If we look into it a bit further and come to recognise that people with intellectual disability learn best in this way, it is not too far a jump to also realise that what we learn by example hinges very much on the environment we find ourselves in.
>
> In a supportive, social environment, it is possible to learn good things. However, when people with an intellectual disability are imprisoned for something they are said to have done, the prison system, as I understand it, has a torrid time trying to cope.

This is because, in my view, what the system was originally designed to do was to punish people who had done wrong. But how can it punish someone who is said not to have known that they have done wrong?

The reason why I see the need for change is that people who learn by example and who are also in a prison, are most likely to be subject to bad lessons. Consequently, people such as this who leave the prison system are more likely to return - and why? Because they will have been practising their new skills taught from within the prison.

The question that I see then is 'how to give retribution for wrongdoing' in such a way as to avoid putting people into a negative environment so that the chance of learning bad habits is minimised.

The New South Wales The Missing Services report gives a number of strategies: two refer to surveys to be conducted of people with intellectual disability in prisons and in the parole systems. Another two refer to Action and Research programs for the development of more effective prison and community services for people with intellectual disability.

The report proposes the establishment of a specific facility for offenders with intellectual disability. My personal view is that with a special facility for people with intellectual disability we are creating the potential for another institution, albeit under another name, but perhaps with little difference. This would be a retrograde step, I feel.

If such a facility was established, I feel that it should provide a positive environment in which to unlearn 'bad' habits and reinforce 'good' ones. In order to make sure that punishment is not ineffectual, it might also need to be a place without too many home comforts like television.

109718

SPORT AND RECREATION: HELP FOR INTELLECTUALLY DISABLED OFFENDERS

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INTRODUCTION

Recreation refers to those activities which are freely entered into by an individual during free or leisure time and which bring satisfactory and enjoyable experiences. Leisure is the discretionary time available to the individual after the completion of obligatory activities which can be used as he or she chooses, freedom of choice being the essence of recreation. Recreation choices range from active and competitive sport to pursuits such as weight watchers or bird watching. Sport is viewed for the purpose of this paper as a component of recreation.

Technological and attitudinal changes both at home and in the workplace over the years have given people more time to spend on recreation. Consequently, leisure time and recreation are gaining an increasing importance in our society to the point where today some social scientists predict that in the near future, recreation and not paid employment will be the major vehicle for achievement of feelings of personal worth and satisfaction.

Prior to World War II, recreation options for intellectually disabled individuals were virtually non-existent. To a great extent, this situation was a consequence of the eugenics movement and the seclusion of vast numbers of intellectually disabled individuals in large residential institutions that were concerned solely with custodial care. When provided, recreation programs consisted merely of activities that were developed to consume time, prevent boredom, provide relief for custodial staff, and prevent the occurrence of behavioural problems. Today, the importance of play and recreation in the development of socialisation of all people is recognised.

THE INTELLECTUALLY DISABLED

Each particular situation is different from the next but wherever intellectually disabled persons reside - however disparate their location and their level of ability - there are some common characteristics of those persons:

- Learning difficulties and generally poor literacy/ numeracy skills - this is decreasing with greater emphasis on acquisition of academic skills in educational facilities - from primary to further education;

- Lack of decision making ability - 'I can't make up my mind - I can't think what to say';

- Poor short term memory - can remember what happened ten years ago in meticulous detail, but can't remember what was eaten for breakfast;

- Inability to think in abstract terms - it is very difficult for them to foresee consequences or to imagine the results of their own actions;

- Lack of opportunity to be aware of oneself - as a physical entity often resulting in poor co-ordination and mobility skills;

- Concentration not consistent - have difficulty in sticking to a task for any length of time;

- Lack of self-esteem - and generally poor attitudes to their own sexuality and social competence. (Little, 1984, 5)

Intellectually disabled persons also have common needs:

- the need to be accepted
- the need to be understood
- the need to be recognised as people first - a person who also has a disability
- the need to have access to community services
- the need to belong.

The need to belong is the greatest precipitator to criminal activity amongst intellectually disabled offenders - illiteracy is the second.

> Frequently individuals who face a debilitating condition or problem become alienated or isolated in this society which emphasises achievement and perfection in a competitive milieu (Rhodes et al. 1986, 5).

RECREATION FOR THE INTELLECTUALLY DISABLED

In Australia during the eighties, significant changes have occurred in the recognition of the total needs of people with an intellectual disability. There has been a gradual awareness by Government instrumentalities, parents, caregivers, community

organisations, and society in general that 'no longer was the emphasis to be placed on huge impersonal institutions for the mentally handicapped' - but rather that the specific requirements of each person should be recognised and responded to with sensitivity and tolerance.

This fundamental shift in attitude and awareness is becoming more apparent as the old 'myths' and stereotyped 'treatment' processes disappear and the individual is accepted as a person who happens to have a disability, who from birth will be accorded every opportunity to gain a quality of life in 'the least restrictive alternative possible'. That is, normalisation (Nirge, 1971).

Indeed this positive and holistic approach is becoming more evident in all areas of service provision, including employment, vocational training, accommodation, education, welfare and community services, recreation, leisure and legal services.

Through the efforts of perceptive (and often persistent) lobby groups and the recognition by Government and other funding bodies sources of the importance of recreation and sport for people with intellectual disabilities, several initiatives have influenced the establishment of various programs throughout Australia.

The Federal Government established the National Committee on Sport and Recreation for the Disabled (NCSRD) in 1981 and this body has enabled funding and resources to be allocated for the implementation of projects possibly leading to the eventual integration of intellectually disabled persons into community recreation opportunities.

The Australian Sport and Recreation Association for People with an Intellectual Disability (AUSRAPID) was formed in 1986 and has the responsibility of maintaining existing progress and encouraging the participation of all intellectually disabled persons into sport and recreation activities within all states.

The Australian Association for the Mentally Retarded (AAMR) 'Recreation Options Project', which was funded originally by NCSRD and then concluded with Department of Community Services Support, has acted as an excellent catalyst to encourage communities and service providers to not only promote the concept of integration but to actively combine with all generic organisations in the implementation of recreation opportunities.

Each State and Territory has its own culture and flavour - distance, culture, locale, climate, prevalence of disabled persons, service, provision, funding and resources, available recreation options for the general community. And within each state, city and regional rural areas have complexities peculiar to the above variants.

In South Australia over the past five years through the efforts of the Sport and Recreation Association of Intellectually Disabled of South Australia (SRAIDP) and utilising the concept of parallel programming - hundreds of intellectually disabled people (of all ages) have been included in the activities of sport and recreation organisations.

Activities include Netball, Basketball, Cricket, Tenpin Bowling, Indoor Soccer, Athletics, Performing Arts/Drama, Indoor Cricket, Keep-Fit, and Ice-Skating. The Parallel Programming concept enables a grade or division to be established in the regular fixtures of a major sport or recreation activity. Where possible the teams included in the parallel grades become part of the regular Club system and there is no such thing as the "special section". All participants compete at their own level of ability against peers of equal competence - the labelling and associated stigma are fast disappearing - competitors become acknowledged as athletes, netballers, basketballers, cricketers.

Persons with any level of disability are thus able to share in the same resources and opportunities as their able-bodied friends and relatives.

People with intellectual disability range in ability from severe/ profound and multiply disabled to borderline - the autistic, brain damaged, epileptic, sensory deprived or obese, vehicle accident victims, and those with cerebral palsy learning difficulties, rheumatoid arthritis, poor co-ordination, behaviour problems, as well as school refusers and offenders, are all included in the parallel programs.

Labels and diagnostic descriptions are not important but discipline, punctuality, playing the game and pulling ones weight are.

> To be disadvantaged or deprived and to be alone is a double hardship. To be disadvantaged or deprived but to be part of a group may supply a sense of connection, a source from which the vital element of identity and self respect can be drawn (Kartz, 1967, 10).

Through recreation and sport, offenders with an intellectual disability are being included in regular activities where their non-existent or poor self-esteem can be enhanced or nurtured in a non-threatening environment.

INTELLECTUALLY DISABLED OFFENDERS

The need to be part of society and accepted for one's self often leads to exploitation and risk taking to impress one's more competent peers with often no appreciation of the implication of their actions and the disastrous results which follow.

Loneliness and lack of appropriate social contact and the necessary opportunities to gain self-confidence and competence contribute to the high incidence of sexual offences committed by these offenders. In one study 'the percentage of subnormal offenders dealt with for sexual offences was six times as high as the percentage for all offenders' (Simon, 1980, 287).

Very few opportunities are provided for people with intellectual disabilities to learn the more sophisticated mores of our society and particularly in the area of sexuality they would have very little and sometimes no access to learning by experience or through formal education. The environment then becomes the most persuasive and effective factor influencing their knowledge of this integral facet of their existence. The media (especially TV) and their peers become the teachers.

Sport and recreation provide the most conducive ingredients for the acquisition of appropriate social skills, increased self-esteem, the establishment of realistic social networks and the opportunities to practise these previously neglected or non-existent talents.

AUSRAPID will encourage this inclusion of offenders with an intellectual disability into appropriate programs throughout Australia so that the prevalence and incidence of offences may be decreased.

It has not been possible to effectively research the population of intellectually disabled offenders but a sample indicator of the success of recreation and sport as a community option has been obtained from a Department for Community Welfare establishment in South Australia which accommodates intellectually disabled male adolescents with behavioural problems and includes offenders. Of the present population of fourteen boys, five can be classified as offenders. The five offenders are involved in many activities. They are extremely keen and participate willingly.

Case Studies

Case 1:

> T is a member of a family with several sibs, an aunt with intellectual disability, and a mother described as 'not very bright'. Moved from family home at age seven because of mother's inability to cope. Resided in a series of welfare institutions (large and small) - no family contact. Dependent on ever-changing staff for support.
>
> At age eighteen was wandering around beachfront and encouraged to join in the Bay Riots in Glenelg in 1983. He was easily led, 'sucked in', encouraged to throw

missiles at police, arrested and conveyed to 'watch house'. At court he was given a bond - on condition that he not visit the Bay area.

Because he needed to belong to a group to gain recognition (he was a keen football follower), T was encouraged to join the cheer squad of his football team. He has now spent seven seasons as a valued member of the squad - he helps prepare banners and is responsible for rolling up the ropes, etc. after the banner is erected on the oval.

He has so far appeared on TV as part of two grand final cheer squad supports. He has not reoffended and has gained immeasurable esteem and developed social networks which are supportive and consistent. He is a regular basketball player and this year became an athlete - in fact T is valued for his contribution in his workplace, his home, the community and his recreation and sporting environment.

He has learned responsibility, respect for himself and others, is aware of risks in society and the penalty for breaking the law.

Case 2:

At the early age of fifteen B was charged with murder. He had for years been left to his own devices - no friends, no activities - just wandering around the vicinity of his home. B is mildly intellectually disabled and had been continually teased and taunted by children because he looked and acted differently from them. After having had enough of this, and having suffocated one of his tormentors under a pile of rubbish on a nearby river bank, he was admitted to the security area of a psychiatric hospital and remained there for twelve years.

Prior to his release B had become involved in some recreational activities, basketball and tenpin bowling, and continued these interests on his discharge. Over six years he has not put a foot wrong as far as re-offending, except that he has problems with 'donkeys who run backwards' when he backs them. B always has a female companion and is accepted by a wide circle of friends as a pleasant and well adjusted man. He also has some teeth, which he didn't have at fifteen and his appearance has improved.

Case 3

L lived in a country town and at seventeen was 'feeling his oats'. After being rebuffed by ablebodied girls of his age he was invited to play 'mothers and fathers' with some precocious young ladies. Unfortunately he was caught by a

parent, reported, and consequently charged with sexual interference, indecent assault, etc., etc.

His parents were horrified as they had '... given him everything to make up for his lack of intelligence - he has stereo high-fi, his own room, goes everywhere with us ...': everything but acceptance by his peers, self esteem and acknowledgement of his adolescent status. After a great deal of heartbreak, court case, and related publicity, he was placed on a three year bond. The precocious young ladies are aware of this and wait for his bus, taunting him with their confidence and aware of his plight! His needs for friends and physical outlets for his libido needed meeting.

He was introduced to the game of lawn bowls in his home town and that provided a great physical outlet but he still required peer acceptance. His knowledge of music gained through his surfeit of 'stereo quadrophonic gear' during his 'aloneness period' provided that. L is now the competent, enthusiastic and reliable DJ for discos and hops in a nearby town which are attended by young people of his own ability. He is still on the bond, still watched like a hawk for any signs of deviance, but is functioning in a milieu which accepts him, applauds his skills and provides female companionship, with which he is able to cope in an appropriate way.

Case 4:

K is a lonely young man from a very deprived and disadvantaged family. With an intellectually disabled mother and brother, and a physically disabled grandmother, he resided in fourteen seedy boarding houses in five years. He lived by his wits, went from job to job, always at the bottom of the heap, always pretending he was more capable than he actually was and, because he didn't live in an institution, was 'one up' in the pecking order amongst other acquaintances with an intellectual disability. This is typical behaviour. Eventually he met and became engaged to a lass who had been protected and had no other male friends. K left to look after girlfriend and nephew - some 'games of a sexual nature played'. K was eventually charged with offences against both his fiance and the young lad and sentenced to prison.

On release he was on parole and encouraged to join some recreation programs, going to work in a sheltered workshop where he obtained consistent support and was just 'one of the mob', not hustling on the street and pretending to cope. K is now very happily married and involved in many activities which have all enhanced his self esteem and confidence.

SUMMARY

The common factors in the four cases cited are:

- loneliness
- poor literacy skills, (two illiterate) and no monetary skills
- poor self esteem
- ability to pretend to get by without much difficulty
- over inflated ideas of own competence
- easily led and vulnerable
- no social competence
- no evidence of appropriate relationships

In all cases, through involvement with sport and recreation they now belong to a team or group, identified as valued community organisations. They have gained literacy skills and monetary acumen. They are indeed very capable and pleasant people who continue to grow and develop in their new found areas of participation and indeed the 'world is their oyster' not 'their gaoler'. There is no reason why all offenders with intellectual disabilities cannot be similarly helped to avoid further contact with the criminal police system.

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PEOPLE WITH DISRUPTIVE BEHAVIOUR IN ALICE SPRINGS AND REMOTE COMMUNITIES

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It is highly unlikely that Central Australia is seen by other states in Australia as having problems of people with disruptive behaviour continually appearing before the magistrates courts.

Does the rest of Australia recognise that the Northern Territory may have specific problems because of its isolated geographic location?

In Central Australia, people with behaviour problems are causing disruption and strife within their family community. This behaviour brings them to the attention of the courts, police, health and welfare agencies.

No one existing medical, psychiatric, therapeutic, disabled, housing, legal or custodial service is readily available to meet the needs of these people. Innovative ways in which agencies can work together need to be developed to address the problem. It in turn is exacerbated by many factors, including:

- transcultural differences,
- culturally inappropriate services when matched to certain specific needs,
- lack of information on cultural perspectives.

DISRUPTIVE BEHAVIOUR

In early 1985 a Working Party for People with Disruptive Behaviour was formed with representatives from the Health Department, Central Australian Aboriginal Legal Aid Service, Department of Community Development, Correctional Services Department, Police, Disabled Persons' Bureau and the Central Australian Aboriginal Congress. It decided upon the following working definition:

> Disruptive Behaviour is behaviour considered within the person's own culture and community to be unlawful, obnoxious, or dangerous, and with which the community has no effective way of coping.

This definition remains outside a strictly medical domain and focusses on the problem, not the label. This avoids the problem

whereby existing services are able to avoid involvement in this area by labelling people with disruptive behaviour as being outside their area of concern.

A preliminary inter-departmental survey of the problems in Central Australia identified almost eighty aboriginal people who could potentially demonstrate some degree of 'behavioural disturbance'. Of these, approximately twelve presently demonstrate significant behaviour problems. Only a small proportion of these people had been before the courts.

It is thought that a large majority of the people could be managed in the community for extended periods if suitable support services were provided. A few perhaps would be able to be adequately managed in the community. The number of those who fit the category of 'disruptive behaviour' should not be thought of as a constant. It is possible and highly likely that over the next decade the numbers will considerably increase, due to the possible long term effects of petrol sniffing, alcohol and other substance abuse.

The commonness of petrol sniffing is evident from documented research. Some settlements have a ten year history of petrol sniffing. The personal effects of the practice can result in death, stunted growth, intellectual impairment, and alienation from the community. Doctors at some communities have seen severely affected persons whose intellectual capacities have diminished dramatically over a period of five years, to the extent that some people are totally unable to care for themselves.

The external results include vandalism and breaking and entering which are frequent occurrences encompassing a range of minor to major offences. This seems to point to a high probability of disruptive behaviour occurring with alarming frequency in the future.

A high incidence of alcohol abuse in remote communities, towns and fringe camps exists. It seriously affects social and community life and can lead to violent and disruptive behaviour which in turn can lead to an appearance before the court. Many communities however are taking responsibility for their problems and achieving some worthwhile results in meeting their communities' needs.

Cultural Complexities

The cultural complexities are enormous. How the problem itself affects the various communities or language groups varies, as no community is alike. Obviously, flexibility in response needs will be of prime importance if services are to have any meaning to the client group.

Coping mechanisms of traditional and urbanised aboriginal people differ and often combine mixtures of the two lifestyles (i.e. living as an urban aboriginal as opposed to traditional lifestyles). All communities bring their own perceptions, experience and uniqueness to proposed solutions to the problem, and in Aboriginal society, there is quite a range of perspectives and views just as there is in our own society.

Range of Behaviours

The range of disruptive behaviours vary from dangerous (i.e. that where human life is threatened) to persistent nuisance behaviour where a person exhibits attention seeking behaviour through petty break-ins, minor stealing offences, removing ones clothes, walking the streets at night in urban or fringe camp areas, and being a general nuisance.

Variations between these extremes are dependent upon the ingenuity of the person concerned. The extremes themselves illustrate the complexities of resolving the problem.

Differences in Communities

The differences in communities cannot be underestimated. Different types of communities have differing strengths and weaknesses. For example, a larger community may have better or easier access to health services or may have an Aboriginal health worker to call upon. However, these desirable attributes and population size may lead to added stresses for people with disruptive behaviours (e.g. kids who taunt and tease, or rejection by the family and community) and they may result in a tendency for a person to live on the periphery of social life.

Smaller communities, such as outstations, may not have easy access to services, but may be more tolerant, more together as family units and handle a situation with better understanding. This may indicate that better support systems are available at a personal level.

Geographic Spread

The geographic spread of Central Australia can only be classified as horrendous when viewed from the perspectives of providing appropriate services let alone identifying the dimensions of the problem. The Northern Territory Health and Community Service Network is addressing the issue with a network of community workers of various professional and cultural backgrounds but this initiative is still in its developmental stage.

The migratory nature of Aboriginal people also needs to be kept in mind. It is a recognised fact that trips away from home frequently occur for many reasons; men's business, ceremonies, visiting relatives, trips to town and so on.

How then can the needs of this client group be adequately and appropriately met?

SERVICES AVAILABLE IN ALICE SPRINGS

The Alice Springs Hospital Psychiatric Ward is for acute stage psychiatric admissions with outpatient follow-up. Such people who are not acutely 'psychiatrically ill', who may have brain damage, personality disorders, substance abuse effects, other intellectual or physical disabilities or social problems can be out on a limb with few options to other services. Those who have shown that they do not respond to standard psychiatric treatment have been most at risk of missing out.

Attached to the Alice Springs Hospital Unit is a Day Centre staffed by psychiatric staff who provide support for clients in the unit in the community. However, this predominantly caters for the white community. The unit would need special expertise to assist the traditional or transitional Aboriginal person. A community health team is being established to assist in the better assessment and community placement including support of Aboriginal people.

A part-time crisis line which is a telephone counselling service, is operating on a limited basis.

Other services, e.g. The Bindi Centre provide self-development and living skills programs, job training, etc. for trainees with intellectual disability of different degrees. It is not able to cater for people with acute disruptive behaviour.

As will be realised, services on the ground for this client group are extremely limited. However, there are allied health professionals who can be called upon for advice, e.g. psychologists, social workers, and so on from the community health centre. These people do not have any formal training in transcultural problems. However, acquired experience can be gained over a period of time.

ALICE SPRINGS GAOL

Gaol is often the only place available locally for offenders who have broken the law and have nowhere to go and no-one to care for them. No other option exists. This naturally is most unsatisfactory to all concerned and a continual source of frustration. This problem is now being addressed with the emphasis on crime anticipation, rather than crisis intervention.

POLICE

The police, by and large, are most co-operative when handling people with disruptive behaviour. They display tolerance and understanding when people are brought in after committing an offence. The police seem most concerned (as are the courts) that there are too few facilities or services provided for the special needs of these people.

COURTS

The magistrates in Alice Springs experience many dilemmas when people with disturbed behaviour continually appear before them. These people are not always responsible for their actions and are shuffled between the courtroom, the gaol and the street.

The courts have been apt to lodge criticisms against the health department and correctional services for the apparent lack of options available, especially when the person concerned does not come within the ambit of the Mental Health Act. The court clearly sees a large grey area in which none of these people appear to fit.

Recent headlines from the Centralian Advocate emphasise this point:

'Desperate cases still ignored, says lawyer'
'Magistrate call for humanity'
'Mental crisis a shame, says magistrate'
'No place by gaol'
'Facility needed for mentally ill'
'Disabled man placed on bond for eighteen months'
'Disabled care back in 1400s'

IMPLICATIONS FOR ACTION

The implications for action are many and varied. They obviously encompass a huge range of ideas both in the short and long term approach for implementation.

1. Do nothing at all - let the problem resolve itself, it might even go away.

2. Greater financial commitment from government and non-government bodies to introduce:

   - team assessment people, and
   - community based support services, live-in careers, part-time care, i.e. respite, this may well work on remote communities (who would bear the costs), short/long-term residential facilities, institutional care for dangerous persons.

The list goes on and on with the financial burden growing larger and larger. Is it any wonder that the magnitude of the problem is overwhelming to us all.

3. Changing attitudes of people, bureaucracies, government and service providers to increase understanding and sensitivity towards the intellectually disabled disruptive person.

4. Addressing cultural perceptions - there is virtually no information available about aboriginal perceptions of the problems that people with disturbed behaviour present. The lack of information is highly significant when discussed in terms of culturally appropriate services.

CENTRAL AUSTRALIAN ABORIGINAL CONGRESS RESEARCH PROJECT

A very exciting project is currently being undertaken by the Central Australian Aboriginal Congress, an Aboriginal community controlled organisation that does have a responsibility to ensure that services are culturally appropriate.

This project was initiated to supplement the developmental planning being done by the previously mentioned working party, who are contributing to the development of a complete service for all people with disturbed behaviour in Central Australia.

In response to the lack of knowledge on cultural perception, the Central Australian Aboriginal Congress has started a research project. It is a one year project, funded by the Research Development Grants Advisory Committee of the Commonwealth Department of Health. The goals of this research include exploring the way Aboriginal people perceive behaviourally disturbed members of their community, and examining the response to such people.

- who is considered a problem and why?
- are there traditional coping mechanisms still in practice?
- have communities developed new ways of looking after such people?

As part of the discussions, the researchers will ask communities about their ideas on the ways care and support could be provided for disturbed persons, their families and communities.

- are there already existing ways of coping that could be encouraged or helped?

- could communities look after some of these persons if they were given additional support, i.e. mental health workers, a visiting team including expert carers, special training?

- would it be useful to have hostel type set-up in town for extreme cases, to give communities respite?

- what would be the most appropriate way to introduce support, so as to suit the particular cultural and social needs of the individual person and groups?

- are there other strategies not being considered?

- is there a range or combination of services required?

It is hoped that by involving the Aboriginal communities in defining and discussing responses to the problem, the plans emanating from the research will be suited to the real need of the communities. Indeed, it is necessary to ground the research of an examination of the Aboriginals' definition of the problem, in order that whatever services are suggested actually cater for people who are considered problematic in their home group. The issues defined in this way should neither exclude persons simply because the non-Aboriginal agencies are not aware of them, nor treat as problem persons those whom the Aboriginal communities feel they can cope with adequately.

Moreover, the research recognises the right of groups to have some say in determining policies which will involve and affect them. This means that communities are more likely to support and become involved in future strategies to cope with the people concerned. This support is crucial given the disruption these people can cause their community and the strain placed on family members. If community based care is to continue, or to be developed, it is important to know to what extent this is feasible and when alternative strategies will become necessary.

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DOING SOMETHING POSITIVE: DEVELOPMENTS IN WESTERN AUSTRALIA

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SERVICES IN WESTERN AUSTRALIA

The Authority for Intellectually Handicapped Persons, or Irrabeena, is the State service for people with an intellectual handicap in Western Australia. It seeks to provide community based services in co-operation with the voluntary sector to the 4500 people with an intellectual handicap in Western Australia. Irrabeena employs approximately 1600 people and has a budget of $50m per annum. Approximately $7m of this is used to support voluntary agencies.

The operation of Irrabeena is governed by the Authority for Intellectually Handicapped Persons Act 1985. This states that Irrabeena is established to develop and carry out policies for the provision of appropriate services for, and for the advancing the welfare of, intellectually handicapped persons.

The Act is framed around normalisation so that Irrabeena, in carrying out its functions, must ensure that:

- Intellectually handicapped people should be treated as members of the community;
- An intellectually handicapped person should, as far as is possible, participate in decisions concerning his or her welfare;
- Living conditions for the intellectually handicapped should be as close as possible to those considered normal for the mainstream of society;
- Care and protection of the intellectually disabled should be arranged with a minimum of restrictions on them.

I would like to acknowledge the work of Michael Tunney (Clinical Psychologist), Val Strain and the other Social Trainer staff at Belmont Flat; the unit which is described in this Paper.

As argued by McCord (1982), normalisation principles alter the traditional role of human service agencies as agencies of social control of deviant people. The principles of self-determination, and the least restrictive alternative, are principles antithetical to social control.

It is not surprising therefore that in the Western Australian Act there is no provision to deal with anyone involuntarily in any way; there are no powers of detention.

In other words, Irrabeena is not in the business of protecting the public from dangerous intellectually handicapped people. Not only that, but it is proposed to especially exclude people with an intellectual handicap, unless they are also suffering from a mental illness, from legislation governing psychiatric services. A new Mental Health Act to this effect was passed in 1985 but has not been proclaimed.

Thus, with the closing of Swanbourne Hospital some years ago - Swanbourne being the largest institution for intellectually handicapped people in Perth - there is no appropriate approved hospital to which intellectually handicapped people may be sent on an involuntary basis. The psychiatric hospitals, foreshadowing the proposed legislation, do not regard intellectual handicap as a reason for admission to them.

SERVICES FOR INTELLECTUALLY HANDICAPPED OFFENDERS

Irrabeena has recently entered into arrangements with Probation and Parole, had discussions with the Chief Stipendiary Magistrate, exchanged statistics with the Corrective Services Department and held a joint seminar with Psychiatric Services because of concern about the plight of intellectually handicapped offenders.

As in Queensland, there have been negotiations at a local, regional level with the police. While these are not formalised arrangements, the use of the police has, at times, been involved in a client's management plan. At the request of police, psychologists have prepared reports on 'fitness to plead'. These have been prepared for clients for whom it seemed police attention was likely. This procedure gives the police some reassurance that the magistrate will not dismiss their charges on the grounds, 'the defendant is not fit to plead'.

It is inappropriate to expect that contact with the police will act as an effective behaviour modification system. While this is an empirical question, there are reasons to believe that the court process will have little impact on the behaviour of many intellectually handicapped people.

It is unlikely that such delayed consequences as a court sentence will be effective in preventing further incidents. In practice, many clients seem to enjoy their contact with the police and solicitors.

There are a few firms of solicitors who, over the years, have built up substantial expertise in representing intellectually disabled people in the criminal courts. Such people now therefore have the opportunity to be represented by lawyers experienced with the issues involved.

In addition, there is the Interagency Legal Committee with contributors from Irrabeena and the SLCG (an association for developmental disability) which concerns itself with legal matters and the intellectually handicapped -not only criminal offenders but wills, compensation cases and other issues. This committee is in the process of producing information leaflets and has made submissions to a number of other bodies, including the Law Reform Commission of Western Australia. The most recent of these concerns the report produced by the Law Reform Commission on the criminal process and persons suffering from mental disorder.

In October 1986 Irrabeena started to collect statistics on intellectually handicapped persons who had been charged by police. The data are far from comprehensive but the best estimate is that there are 50-80 cases per year in Western Australia where charges are laid. As perhaps up to one third of these charges are later withdrawn, the number of court appearances per year is substantially less.

Most of the court appearances are in the Court of Petty Sessions for offences such as assault, sexual offences including indecent exposure, rape and unlawful carnal knowledge, and other offences such as breaking and entering, and stealing. Hayes and Hayes (1984) suggest sexual offences are of low frequency. The West Australian experience seems to differ from this although the above data are not comprehensive.

In November 1986 the Prisons Department (now the Corrective Services Department) prisoners' census was compared with the Irrabeena client register. In a total prison population of 1470, there were found to be 5 'active' clients, 12 'inactive' clients, and 3 in our 'not to be contacted' category. Of those 20, one was a female in the 'inactive' category.

The major reason for moving clients to the 'inactive' or 'not to be contacted' categories is that they are no longer considered intellectually handicapped. The estimate of 20 in 1470 or 1.3% is thus an upper limit.

Conversely, some of the 'inactive' and 'not to be contacted' cases are indeed intellectually handicapped and so the estimate of 5 in 1470 or 0.34% is a lower limit.

In any event the prevalence estimate of between 0.34% and 1.3% is not as high as the estimates of Hayes and Hayes (1984). Different criteria for intellectual handicap may account for this discrepancy. The Western Australian definition is close to the AAMD 1983 definition (Grossman, 1983).

SIMILARITIES BETWEEN WESTERN AUSTRALIA AND OTHER STATES

The situation in Western Australia is quite similar to that in other states. Like others, indeterminate sentences at the Governor's pleasure are used. This happened as recently as March 1987 for a young man found guily of charges of deprivation of liberty and aggravated sexual penetration.

Also, intellectually handicapped people are sent to psychiatric hospitals for court reports and those reports are being completed without any reference to Irrabeena. This happened as recently as two weeks ago with a young man remanded to the psychiatric hospital in Perth from a country Court of Petty Sessions. He remained there for six weeks before Psychiatric Services referred him as a new referral to Irrabeena. Court reports were completed without the benefit of Irrabeena history. He had no psychiatric illness.

However, more and more probation and parole officers and magistrates now know to contact Irrabeena when presented with someone they think may be intellectually handicapped. Necessary reports will then be provided by Irrabeena staff; by a clinical psychologist if 'fitness to plead' is at issue.

Like others, inappropriate arrests occur which could perhaps be avoided if police were suitable trained in communication skills. In 1985 a young man was charged with resisting arrest and assaulting a police officer. With the help of assessment information from a clinical psychologist the court found the man not guilty on the basis of moral incapacity, i.e. that he did not know what he was doing was wrong. He did not understand what the police were trying to do by arresting him.

More positively, some creative sentencing also occurs. In August 1986 a man who had a number of previous charges, including ten charges of breaking and entering and stealing, aggravated assault and unlawfully setting fire to an indigenous shrub, was committed to the care of his brother in Port Hedland, a town in the north of the state. He was transferred from Perth to Port Hedland via a number of country prisons. Finally his brother came and signed for him at the Port Hedland Prison. This arrangement appears to be working well.

In summary, it is important to distinguish in law, as in human services, between the intellectually handicapped and the mentally ill. This is appropriate for the following reasons:

- Intellectual handicap will be specifically excluded from mental health legislation in Western Australia and elsewhere, and therefore disposal options available to the courts for the mentally ill are not available for the intellectually handicapped.

- The level of functioning of an intellectually handicapped person is comparatively stable, although he or she may be expected to acquire new skills, given appropriate training. Having said that, one would not expect a large fluctuation in behaviour between the time when an individual is charged and a court appearance. This means that for the intellectually handicapped, the criteria by which to measure natural mental infirmity as it may have impacted on a particular act in question, or 'fitness to plead', can be comparatively precise and objective.

PREVENTION AND MANAGEMENT OF VIOLENT ACTS

I now want to discuss the prevention and management of violent acts from the perspective of a behavioural scientist in a service delivery agency.

From the behavioural science point of view, the issue of whether a person has offended or not is virtually irrelevant. The behaviour that leads to an offence is caused by the same host of internal and external factors that lead to a while range of other behaviours that do not result in offences being committed.

Internal factors are a characteristic of the individual concerned, and include learning history, neo-psychological state, and physical state. External factors are found in the environment and include lack of stimulation or boredom, provocation, overcrowding and lack of consistent staff or parent handling.

While behavioural scientists have an understanding of the role of internal and external factors in the causation of behaviour, the court is concerned to assign individual responsibility. The legal notions of intent and free will should be allowed to gain currency as valid psychological or behavioural explanations of the behaviour in question or to influence clinical management decisions.

From the service delivery perspective, there are numerous violent acts of clients towards their caretakers that do not lead to charges being laid. These can range from a non-compliant child hitting his or her mother, to an adult client attempting to stab a staff member with a knife. Thus a service delivery agency must have a policy on how to prevent and manage violent acts. Irrabeena has a comprehensive Policy for Prevention and Management of Seriously Disruptive Incidents.

Prevention is most important for a service delivery agency. It is where significant resources should be placed. While a first offence may be the first contact the criminal justice system has with a particular individual, it is likely that the incident that led to the charge will have been preceded by other similar, possibly equally, serious incidents. In this case an adequately functioning service delivery system will have already been alerted to the situation and should be acting to manage/prevent its recurrence.

In practice however, it is often the case that a service system will be distributing its resources thinly across a number of priority areas, including prevention.

If the courts order under-resourced service providing agencies to provide treatment or residential services for offenders, then the agency's thinly-spread resources may be diverted from prevention to dealing with clients with already established problems.

Pulling resources away from prevention would be counter productive in the long run, and simply allow the creation of more established problems in the future.

How far can an agency such as Irrabeena go in the management of people with a history of violent acts, consistent with a philosophy of integration and self-determination and without putting the public at large at undue risk? To answer this question it is useful to see violent or anti-social behaviour as an absence of pro-social behaviour.

Denkowski and Denkowski (1985) described a community based treatment program for mentally retarded adolescent offenders. The State of Texas had guaranteed mentally retarded adolescent offenders community-based treatment by virtue of least restrictive alternative principles. The program started with eight residents using a contingency management system - a token economy point system.

In the first three months there was a very high rate of running away - 30-45 incidents per month. Rewards such as alcohol and marijuana were available in the community that were not available in the program, so residents ran away to get them. This led to a high rate of police contact and complaints.

In response, the program was modified. Doors were locked and programmatic time-out was used as a backup punishment for the fines in the point system. The revised program was successful in reducing aggressive incidents and increasing socially appropriate behaviour.

The Denkowskis concluded that a successful community based program could be run as long as it was closed, had adequate

negative contingencies and, in addition, had hands-on monitoring of staff program implementation by a behaviour analyst.

The history of behavioural technology could be described as discovering less and less restrictive ways to achieve the same ends.

A SEGREGATED COMMUNITY BASED PROGRAM

An Irrabeena program has been developed in the context of the Seriously Disruptive Incidents policy mentioned above, and with three broad goals:

- To create a safe living environment for non-violent residents
- To create a safe working environment for staff
- To increase the pro-social behaviour of residents in the program.

Six clients, who were in environments that seemed to maintain their disruptive behaviour, were transferred to a group home in May 1986. These clients appear to be fairly minor offenders who, if unchecked, may have progressed to more serious offences. Nevertheless, what is minor in terms of offences, often hides a long history of violent or disruptive incidents - such is the case with these clients. Suffice to say they were the most disruptive clients in our residential services and therefore, by implication, the most disruptive in the State at the time the unit was created.

Last week another client joined the group. These seven males range in age from twenty-two to fifty - only the youngest and the oldest have not been charged by the police. The program was established drawing strongly on the work of Risley's Living Environments Group (Jones et al. 1986) and the work of Foxx (1985).

The purpose of the unit is to promote pro-social behaviour. All clients demonstrate social, assertive, co-operative behaviour under some conditions. The unit needs to find out what these conditions are, provide them, then strengthen the appropriate behaviour and generalise it to other situations.

To illustrate this, consider the difference in behaviour between people boarding an aeroplane and when they disembark. Boarding is orderly - disembarkation chaotic. If there is going to be a disruptive incident, it will be just after taxiing when everyone gets up to get their baggage from the overhead lockers.

Why does the same group of people act so differently?

On boarding, the environment supports orderly behaviour. When you leave the boarding lounge you are required to show your boarding card and enter a narrow tunnel. This breaks up groups and leads to a stream of people arriving a few paces behind one another at the door of the aircraft. There, the stewardess greets you. You again pause and are directed to your seat. Again the narrow door and direction creates an orderly flow of people to enter the cabin. There is time for each to stow baggage and sit down before the others arrive.

When you leave, there are no cues to support orderly behaviour. There is congestion, looks of agitation and anxiety and apologies as people get hit over the head with hand luggage.

In terms of leaving the airport of course there is no advantage in leaving the aeroplane before anyone else - when you are able to leave the airport will be determined by when your baggage comes through.

I have laboured this point to demonstrate what I mean by supporting pro-social behaviour. I am not talking about contingency management or the management of consequences, although this can be important as well. I am primarily talking about the physical environment, routines and cueing of pro-social behaviour by staff.

Promotion of pro-social behaviour also means:

- High rates of engagement in recreational activities that build self-esteem

- A regime or routine that is naturally rewarding.

Indeed clients must want to live in the unit. The main tool we have is that time in the program is far more rewarding than time out. This includes time spent in the community at large because this is an open unit.

To get a resident 'hooked', the program must provide a very high rate of non-contingent rewards as soon as they enter. The program cannot be seen as a punishment but must be viewed as an opportunity - the best place for the person to live.

Attention must also be paid to physical well being. Health and fitness are known to positively influence mood. The unit has a weekly health check. Undetected irritations can contribute to incidents.

The micro-skills of direct care staff are vitally important. They are making judgements throughout the day on when to redirect, when to ignore, when not to back down when a resident seeks to control their environment by aggression and, most

importantly of all, they must know how and when to reinforce warmly and genuinely. The micro-skills of staff are all important as residents are changing behaviour daily. Staff need to be creative as new situations arise and be able to sensitively 'read' the behaviour of clients.

A psychologist or supervisor, or both, must be regularly on the shop floor in daily interaction with clients to experiment with their styles of interaction, to shape good behaviour management skills in staff, and to make decisions on the structuring of the physical environment routines and management techniques.

It is intended that the group of residents in this intensively staffed group will remain together indefinitely. There are good reasons for this:

- Foxx (1985) cites one of the main reasons for the return of inappropriate behaviour as 'programmatic decay' - or put more simply, people stop implementing the program.

- To transfer clients to another unit - no matter how much attention is paid to handover and generalisation procedures, virtually builds in 'programmatic decay'. This is particularly true when it has been demonstrated that the previous environments have maintained violent behaviour. There is no reason to think violent behaviour would not be again maintained once restarted.

In contrast, staff will be withdrawn from the unit as they are no longer required.

The present resource allocation to this unit is ten social trainers plus a supervisor. This allows two staff on shift throughout. There is also a half time clinical psychologist and occasional consultations with medical officers, including a psychiatrist. The total annual staffing cost is of the order of $250,000 dollars.

In terms of results, figures on increase in pro-social behaviour have yet to be collated. However,

- There have been no further offences - perhaps not surprisingly as the rate of offending was in any case quite low.

- There have been two contacts only with the police. Both within two weeks of new residents arriving.

- There has been a marked reduction in psychotropic medication. Only anti-convulsants and anti-parkinsonian medication is now used.

- All clients have maintained regular attendance at an Irrabeena supported employment workshop, almost without incident.

- With the exception of one client for whom time-out has been used, no aversive techniques have been employed.

- Plans are well advanced to reduce the staff numbers from ten social trainers to eight.

It has been demonstrated with a small group of intellectually handicapped people that the application of behaviour analytic principles used with warmth and creativity rather than rigid technique can support pro-social behaviour in a community based setting. This has been achieved without compromising the rights of clients involved or the safety of the public at large.

The program has so far proved an effective, although not necessarily ideal solution. It has segregated the residents from the mainstream of residential, though not vocational and recreational services, and the unit is still at times an unsafe environment in which to live, as there is an unknown level of violence among clients.

With those reservations in mind, I have reported a strategy for managing and preventing violent behaviour in previously consistently disruptive clients that is acceptable to the clients themselves, staff, service delivery agency administration and the community alike.

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DISCUSSION

Discussion focussed on the program that Mr Jones described. He agreed that ethical standards for staff were needed along with close shopfloor supervision to avoid possible abuse of residents.

He also pointed out that the program did not detain people without their agreement so could not be used by the court as a remand facility. It could, however, be a post-conviction placement as long as the court realises that the offender will receive no different treatment from other residents.

Programs such as described had to have mechanisms for dealing with minor disturbances or offending by residents. Those persons who do not wish to be on the program would 'vote with their feet' according to Mr Jones who did however agree that the issue of consent could be problematic under some circumstances.

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