CRIMINAL JUSTICE AND INTELLECTUAL DISABILITIES: A JOURNALIST'S NOTEBOOK

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By Robert Perske

> **I suppose I am a pretty good representative of the judiciary because the truth is that judges, by and large, don't know much about mental retardation. I think that's also true of lawyers. Even criminal defense lawyers don't know a great deal about mental retardation. This is what I see as the great need, so far as the courts are concerned — a need to know. (Chief Justice James G. Exum, North Carolina Supreme Court, cited in Conley, Luckasson, & Bouthilet, 1992, p. 1)**

Judge Exum opened the Presidential Forum on Offenders with Mental Retardation with this bold admission. He could have said the same thing about police, correction, probation, and victim's rights officers. Also, veteran court observers can testify that many psychological and psychiatric evaluators who appear on the witness stand do not understand mental retardation either.

THE BLEAK PAST

Three "witches" with retardation are reprieved (1693).

In 1692 the Puritans of Salem Village, Massachusetts, suddenly believed that their town had become "the battleground between God and the Devil." During that stormy year, they sentenced 20 citizens as witches and executed them. The convictions were based on "spectral evidence" supplied by a small group of hysterical maidens. For example, a teenager claimed that she saw a neighbor flying through the air. That type of evidence was enough to include the "flyer" in the town's frenzied attempt to cleanse itself.

On January 3, 1693, however, Governor William Phips ordered the Superior Court of Massachusetts to eliminate spectral evidence as a basis of conviction. With that order, the cases against 49 other defendants melted like butter on a hot summer day. Even so, Chief Justice William Stoughton, not happy with the order, suddenly signed the death warrants for three "feebleminded" women-Elizabeth Johnson, Mary Post, and Elizabeth Wardwell. After all, they had not been convicted by spectral evidence. They, unlike the others, had been forced to confess to being witches.

As soon as Governor Phips learned of the warrants, he reprieved the three along with five others who had been convicted earlier. Chief Justice Stoughton then lamented that the battle with the Devil was lost. Records show that he became ill and took to his bed (Hill, 1995, pp. 201-203; Starkey, 1949, pp. 242-243).

Criminality is ascribed to persons with retardation (1912).

Vineland, New Jersey, researcher Henry H. Goddard (1912) published a study of the

long-reaching effects of one man's sexual intercourse with two different women. The man was Martin Kallikak, a Revolutionary soldier of "good English blood" who in "an unguarded moment" impregnated a feebleminded woman. From that sex act, Goddard found a six-generation lineage of 480 derelict offspring-prostitutes, epileptics, criminals, paupers, perverts, welfare clients, whorehouse madams, horse thieves, and one "of the Mongolian type." Then Goddard focused on Kallikak's later marriage to a "respectable girl of good family." He found 496 upper-crust offspring who possessed "nothing but good representative citizenship."

Thanks to psychologist-investigator]. David Smith (1985), Goddard's study was found to be a preposterous fraud. Goddard, nevertheless, instilled a phobia in society that lingers today. He even created the term moron. According to him, morons were "feebleminded persons" who could pass for normal-making them the most dangerous and despicable of all. The only way to find these people with "diseased germ plasm" was to identify them via intelligence tests and lock them away (Goddard, 1912).

State's attorney drops an "airtight case against a moron" (1924). '

Early in 1924 a well-loved priest, Reverend Hubert Dahme, was gunned down on the sidewalk in downtown Bridgeport, Connecticut. Within hours, every available police-man began searching for clues. Eight days later, Harold Israel, a man described as a "transient indigent" and a "person of low mentality of the moron type" was arrested for the murder. The arrest was based on a powerful lO-point report that included seven eyewitnesses, a pistol, and an empty shell. Most important, the police got Israel to confess to murdering the priest.

On May 28, 1924, Fairfield County State's Attorney Homer Cummings appeared in court and dropped the case. Speaking without notes for 1 1/2 hours, he described his personal investigation that discredited every piece of evidence against Israel. At the finish, the courtroom remained deadly silent for a time. Then the audience stood and applauded.

Not everyone, however, applauded Cummings's surprise move. For example, Police Superintendent Patrick Flanagan took the case to the newspapers, stating angrily that Israel was indeed the vicious killer of the priest. Also, Cummings, a national committee-man for the Democratic party, received a snub by not being invited to a dinner in honor of Assistant Secretary of the Navy Franklin D. Roosevelt later in 1924.

Even so, in 1933 President-elect Roosevelt made Homer Cummings his Attorney General. Then in 1954 Bridgeport resident Ralph DeNigris broke a 30-year silence.

He admitted to witnessing the killing and being threatened with death by the murderer if he ever spoke out about it. That real murderer was not Harold Israel (Zeldes, 1994).

Supreme Court orders sterilization of "unfit" citizens (1927).

In 1924 Harry Laughlin, a leader at the Eugenic Records Office, guided the

development of a law for the State of Virginia that called for the sterilization of all "hereditary defectives." To him, they were the "tramps, beggars, alcoholics, criminals, the feeble-minded, the insane, epileptics, the physically deformed, the blind and the deaf" (Smith, 1985, p. 138). The law came to the state courts as Buck v. Bell and it focused on Carrie Buck, an inmate of the Virginia Colony for Epileptics and the Feeble-minded. In 1927 the U.S. Supreme Court heard the case, and Chief Justice Oliver Wendell Holmes amplified the fears of leaders like Goddard and Laughlin. Holmes wrote,

> **It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind .... Three generations of imbeciles are enough. (Buck v. Bell, 1927, p. 50)**

The "three generations" Justice Holmes alluded to were Carrie Buck; her mother, Emma; and Carrie's daughter, Doris. Again, J. David Smith (1985) performed a valuable service to the mental retardation field by showing that neither Emma nor Carrie nor Doris had any retardation or debilitating illnesses at all (1985, pp. 150-155). He also showed how Holmes's ruling led to 4,000 sterilizations in Virginia, 50,000 nationally, and 56,000 in Germany. In 1936, Harry Laughlin received a Hitler-inspired honorary doctor's degree from Heidelberg University for his services to the science of eugenics and his efforts to purify "the human seed stock" (p. 157).

Warden fights to keep from executing a man labeled an "imbecile" (1939).

To all appearances, five-foot-four, 130-pound Joe Arridy, the son of Syrian immigrants, was one of those persons with so-called diseased protoplasm that had been so much in the news. He was kicked out of a Pueblo, Colorado, elementary school at an early age. He was tested and labeled an "imbecile" and was placed in the Grand Junction State Home and Training School for Mental Defectives. Then he ran away and became a scroungy but avid railroad boxcar rider during the summer of 1936.

When 15-year-old Dorothy Drain was raped and axed to death in Pueblo, Frank Aguilar, the murderer, was identified along with the weapon-but he refused to confess. This may have set the stage for a famous sheriff to become more famous by pulling Arridy off a boxcar in Cheyenne and questioning him about the murder in Pueblo. After an always-changing series of guided admissions--most of them in two- and three-word sentences-Arridy said what Aguilar would not. Arridy was finally led into saying he committed the murder "with Frank." With the case completed, both went to death row at Canon City, Colorado. Many saw Arridy as merely an expendable tagalong.

On the other hand, Canon City Warden Roy Best did not. He befriended Arridy.

He supplied picture books and cut-out scissors and toys for him to play with in his cell. During the Christmas of 1938, Warden Best even gave Arridy a toy train set. After that, his shouts of "train wreck!" and his unabashed laughter could be heard throughout the cell block. When reporters asked Best about Joe, he usually began by saying, "Joe Arridy is the happiest man who ever lived on death row." Best openly joined in court appeal efforts that brought nine stays in a single year.

Then Governor Teller Ammons called the warden and flatly told him to execute his friend-and Best broke down and cried. On January 6,1939, Joe Arridy was racing his train over "it's tinny tracks" when the warden and other officials came for him, took him to a special chamber, and snuffed out his life (Perske, 1995).

THE WAVERING PRESENT

The foregoing cases show how a neighborhood-or even a nation-could become hysterical over a certain social situation and then try to cleanse themselves of it by finding and killing-or colonizing-scapegoats. At times like that, people with retardation often became

- **the easiest to bear false witness against**
- **the easiest from whom to coerce a confession**
- **the easiest to demonize in the press**
- **the easiest to ignore when it comes to fighting for their Constitutional rights Today we see through such primitive urges, but do we always?**

Remember the famous Boston Murder of Carol Stuart in 1989?

Loving husband Charles Stuart, lost in the city, frantically called for help on a cellular phone in his car. He said that an African American had just killed his wife and shot him. Remember how he kept talking on the cellular phone until a police dispatcher pinpointed his location? Remember the national uproar?

The police and press quickly zeroed in on Willie Bennett, in Boston's Mission District, as the prime suspect. The Stuarts were described by the media as "the Camelot couple," and Bennett was labeled an "urban savage." Much was made of Willie's public school records that listed him as a "mental defective." Three testings resulted in reported IQs of 64, 65, and 62.

The whole country seemed to want Willie dead-until husband Charles, the real killer, suddenly committed suicide by jumping off the Tobin Bridge (Perske, 1991).

Remember the 1990 mutilation murders of five University of Florida at Gainesville students?

The police quickly focused on a freshman named Edward Humphrey because he was arrested for fighting with his grandmother, and records showed that at one time he had been labeled "manic-depressive." After long hours of intense interrogation, Edward confessed that his "alter ego John" was the killer. One cannot help wondering whether this "confession" might have led to a conviction if DNA testing had not cleared Edward, and connected the crimes to Danny Harold Rolling (Rohter, 1994).

Remember the 1996 Daytona Beach "Spring Break" murder?

On a Friday in March, Canadian student Mark Fyke was fatally shot in the back of

the head. On Saturday, the police picked up odd, loquacious, happy-go-lucky, beach-loving, 18-year-old Donnie Shoup. Police said that they received a full confession from Donnie at 3 a.m. on Sunday morning. On Sunday afternoon, the police gave Shoup's confession to the press. They also added that he had an IQ of 52 (Ditzler, 1996).

Three weeks later, the real shooter and two accomplices were charged. Even so, Shoup was not released until August (Holland, 1996).

Remember Barry Fairchild, who was executed in Arkansas in 1995?

Did you know that there were 13 affidavits signed by African Americans who swore that Sheriff Tommy Robinson and his men brutally beat them in an unsuccessful attempt to get a confession for the 1983 rape-murder of Air Force nurse Greta Mason? Barry Fairchild was the 14th to be beaten. Barry Fairchild had mental retardation. Barry Fairchild, with his head wrapped in bandages, finally "confessed" (ABC TV, 1991).

By 1995 judicial authorities claimed that all of Fairchild's Constitutional protections were exhausted. Consequently, on August 31, he was executed as an accomplice to the murder of Ms. Mason, even though the real shooter has never even been identified.

Remember how Johnny Lee Wilson was pardoned in Missouri in 1995?

Johnny, a 20-year-old recent graduate of special education classes in the Aurora public schools, was intensely interrogated for the 1986 murder of 79-year-old Pauline Martz. Police officers at headquarters, who talked freely in the hall about Johnny being a "f retard," questioned him repeatedly until he confessed.

Later, the trial judge warned Johnny that if he pled innocent and went through a trial, he could get death. Scared, Johnny quickly pled guilty and the judge quickly sentenced him to life without parole. Still later, the real killer, Chris Brownfield, from a prison cell in Kansas, confessed to the murder. Even so, Johnny continued to lose all of his appeals (Perske, 1991).

On September 29, 1995, Governor Carnahan, after studying the case for better than a year, found Johnny's confession to be totally false and coerced-and he pardoned him.

TURNING POINTS

As society becomes more complex, so does the criminal justice system. Today, it is a monstrous, many-departmented behemoth. It is so large that only the brightest thinkers can come close to defining it. Even so, more and more persons with a background in mental retardation are daring to move into the monster. They, in the midst of all this largeness, are finding small but powerful areas in which to work and do good. They are bringing about turning points that may seem minor now but that could prove to be monumental later.

Ellis and Luckasson monograph break new ground in two fields.

James Ellis, a law professor, and Ruth Luckasson, a lawyer and professor of special education, felt that a 1983 draft of the ABA Criminal Justice Mental Health Standards failed to deal adequately with defendants having mental retardation. They joined with others to change them for the better. Then, not content to leave them as mere standards, they produced "a preliminary overview" of the mental retardation issues found in the standards. That 78-page overview, "Mentally Retarded Criminal Defendants," printed in The George Washington Law Review (Ellis & Luckasson, 1985), has, without a doubt, become the most illuminating and the most widely read document by both lawyers and mental retardation professionals.

Drawing from case law and clinical practice, Ellis and Luckasson presented (a) a rich history of the treatment of persons with retardation in the criminal justice system, (b) vivid descriptions of characteristics of these persons and their consequences, (c) a discussion of the extent to which these persons should be exculpatory of criminal responsibility, and (d) the critical importance of competency issues. They concluded with thoughtful discussions on how persons in the field of retardation might aid the criminal justice system, and vice versa. This document still serves as the best introductory reader one can find on this subject. It remains one of the most quoted references in legal briefs filed on behalf of defendants with retardation.

Bowden, Smith, and The Arc of Georgia bring about the first modern death penalty law for persons with retardation.

On October 11, 1976, Kathryn Stryker was brutally beaten and stabbed to death in her Columbus, Georgia, home. The killer, without a reasonable doubt, was 16-year-old Jamie Graves. The motive, all of the evidence, and even the pawnbroker's records pointed to him. But Graves said 24-year-old Jerome Bowden was with him. Bowden was taken into intensive interrogation and he finally signed a confession. Graves was given a life sentence. Bowden was sentenced to death (Perske, 1991).

As Bowden's execution drew near, Patricia Smith, the president of The Arc of Georgia and a recent graduate of law school, got involved. After joining with others on an 11th-hour investigation, she wrote and filed a brief with the Board of Pardons and Appeals. The brief made three powerful points:

> **1. Jerome Bowden has mental retardation and is intellectually incapable of comprehending the meaning of death.**
>
> **2. The question of Jerome Bowden's competency was never tried.**
>
> **3. No evidence linked Jerome to the crime, and he could not have read or understood the confession drafted for him by the police. (p. 29)**

That brief stopped the board dead in its tracks, but only for a while. His death warrant would expire soon, on June 24, 1986. So the board quickly contracted with Dr. Irwin Knopf, chairman of Emory University's psychology department, to test Bowden, which he did on the morning of June 23. After 3 hours of tests, Knopf reported that Bowden had a verbal IQ of 71, a nonverbal IQ of 62, and a full scale IQ

of 65. Knopf added that Bowden would need an IQ of 45 or less in order to be spared electrocution and sent to an institution for persons with retardation.

The next day, June 24, Jerome Bowden was executed at 10:05 a.m. In his last call to his lawyers, he discussed the IQ test he had just taken. "I tried real hard," he said. "I did the best I could" (p. 33).

After that, citizens of Georgia, spearheaded by Arc members throughout the state, moved on the legislature. One year and 7 months after Jerome Bowden's execution, Governor Joe Frank Harris signed into law the first bill in the nation that banned the execution of persons with mental retardation (p. 37).

Norley agitates for police training.

Today, many volunteer and professional agencies are designing helps for police officers-brochures, wallet cards, and curricula for police academies. Whether they know it or not, they are operating in a furrow plowed long ago by the mother of a son with retardation-who also served as a professor of communications, a police trainer, and a practicing lawyer.

During the 1960s Dolores Norley taught at police academies; logged hours in patrol cars; voluntarily visited in the cells of prisoners with retardation; wrote training manuals for officers, attorneys, and judges; and helped to develop some of the first laws designed to protect persons with disabilities. Those who knew her then can still describe the pressures she put on others to join her. When most were repelled by such pursuits, she went it alone.

In the late 1960s, under the aegis of the national Arc and the President's Committee on Mental Retardation, Norley developed a special "training key" for the International Association of Police Chiefs (IAPC): Contacts with Individuals Who Are Mentally Retarded (IAPC, 1980). It includes a remarkable street test that officers can use with a suspect or person in need. It contains 23 simple questions related to physical appearance (e.g., "Can the individual easily button his or her coat?"); speech and language (e.g., "Can the person give coherent directions from one place to another?"); educational level (e.g., "Can the person recognize coins and make change?"); and social maturity (e.g., "Does the person answer yes or no questions affirmatively, even if the yes answer seems inappropriate?"). "Keep in mind," she writes, "the purpose of street testing is not to affix a prejudicial label to the individual ... it permits the officer to recognize appropriate helping responses." This key was the springboard for many similar efforts that now take place across the nation (Perske, 1991, pp. 24-27).

Wood and White uphold the "right" to be arrested.

Hubert Wood and David White readily admit that "some individuals, because of their incompetence, are unable to be prosecuted," but they bounce back quickly to say that most persons with retardation should have the "right" to be arrested. According to them, when some persons are brought into the police station for less than heinous crimes and are recognized as retarded, all they get is a Pepsi, a kind lecture, a pat on the head, and a ride home in a patrol car. "If not arrested, citizens with mental

retardation may feel they are above the law because of their disability. What needs to be taught is that citizens with retardation, like others, are accountable and responsible for their actions" (Wood & White, 1992, p. 154).

Consequently, in 1980, the twosome brought together two probation officers from the criminal justice system and two case managers from the mental health and mental retardation system. They developed The Lancaster, Pennsylvania, Office of Special Offenders Services. The goal of this joint system is "to enable offenders with mental retardation to successfully complete probation and parole." So they set up special programs for an annual average of 50 adults and 35 juveniles with retardation-each designed to help a person pay a debt to the court and society for a crime they committed. Their recidivism rate is only 5%. Retardation organizations, which talk increasingly about developing alternative sentencing programs, may want to begin by considering the work of Wood and White (1992, pp. 153-165).

Supreme Court ruling in Penry case serves as a wake-up call.

It began in Livingston, Texas, on the morning of October 29,1979. Johnny Paul Penry rode his bicycle to the home of Pamela Mosely Carpenter. He knocked. They talked. He said he liked her. He forced his way into the house. There was a fight. Carpenter stabbed Penry in the back with scissors. Then she was brutally beaten and stabbed to death with the same scissors. Penry then rode home on his bicycle.

Penry was mentally retarded, with an early history of vicious torture as a child and a later and longer history in Texas institutions. It also did not help Penry that Carpenter was the sister of Mark Mosely, the star kicker for the Washington Redskins and the National Football League's most valuable player. People in Livingston were so aroused by the crime that the trial was held in Groveton, 40 miles to the northwest. But to East Texans, that distance equated to a city dweller's 10-block walk, and the courtroom was filled for every hearing.

On April 1, 1980, the judge ruled that the jury needed to answer three questions: (1) Did Penry deliberately commit the crime? (2) Was the crime committed without provocation? (3) Will Penry be dangerous in the future? It took 46 minutes for the jury to come up with three yes answers.

As Penry's execution drew near, the U.S. Supreme Court agreed to hear the case since retardation had not figured in the verdict. In Penry v. Lynaugh (1989), the court chose to rule on two questions: (1) Should juries consider mental retardation as a mitigating factor in death penalty cases? (2) Is it cruel and unusual punishment to execute persons with mental retardation?

The case was heightened to national awareness by a remarkable brief of amicus curiae written by attorneys James Ellis and Ruth Luckasson. Amazingly, the American Association on Mental Retardation, The Arc of the United States, and nine other national organizations signed the brief (Conley et al., 1992, pp. 257-276).

Even so, the court's ruling was a sharply divided shocker. It voted 5 to 4 that retardation as a mitigating factor must be considered in the lower court. Then, with Justice Sandra Day O'Connor moving to the other side, the court voted 5 to 4 that it

was not cruel or unusual punishment to execute persons with mental retardation. O'Connor claimed that, until a consensus of states banned such an execution, she would not either (Perske, 1991, pp. 63-81).

That ruling moved many in the field to get to work. For example, at the time of the decision, only three states were against such executions. Now, the federal government and 12 of the 38 death penalty states have such laws. They are Alaska, Colorado, Georgia, Indiana, Kansas, Kentucky, Maryland, Nebraska, New Mexico, New York, Tennessee, and Washington. More are expected to adopt such legislation soon.

Glen Ridge, New Jersey, case raises awareness of victims.

On March 1, 1989, a 17 -year old girl with retardation was coerced into the basement of a Glen Ridge, New Jersey, home by 13 high school males. They promised her a date with a high school athlete. There a broomstick, a miniature baseball bat, and a stick were inserted in her vagina. The girl, wanting so much to be liked by the guys, seemed to have gone along with what they were telling her to do.

Three days later, the girl approached her high school swimming coach, told her what had happened, and asked for advice on how to say no if she is approached again. The coach told the principal, who after a delay, called the police. Five students were charged.

During the 4 years that followed, the whole nation seemed to rise up and argue over whether or not a rape took place in that basement. Then, on April 23, 1993, three of the defendants were sentenced to indeterminate terms of up to 15 years in a state facility for youthful offenders. That victimization, constantly aided by the media, was raised to a higher awareness in almost everyone's mind. A victimization in North Dakota, however, may have provided a more coherent, turning-point model.

Men acquitted of gang rape, and a Grand Forks Arc rises up.

On September 16, 1990, in Grand Forks, North Dakota, a group of men began drinking in the afternoon. At 7:00 p.m. they met and talked to an attractive 18-year-old woman on the street. Fifteen minutes later, they drove the woman to an abandoned farmhouse. There, according to charges, four of them raped and sodomized her and then drove her back to town.

At the trial, expert witnesses described her as having an IQ of 65. They said she had been a virgin and she suffered tears in her rectum. They also said that she did not look retarded, but "as soon as people talked to her they would know."

Testifying on her own behalf for 1 1/2 hours, the woman knew where she worked, but could not say how long she worked there or how much she got paid an hour, and did not understand what the money was for. She could not tell what time it was on the prosecutor's watch. When the prosecutor asked her to talk about "the bad thing" that had happened to her, she began to cry. The men had asked her to go "cruising." She thought that meant going around the block. The sexual acts "hurt," she said, but they kept on. At one point, they put a blanket over her head, she said.

The defendants swore repeatedly they did not know she was retarded. They said she was more than willing. One even characterized her as being "horny." The defendants were charged under a statute stating that "a reasonable person would have known that the woman suffered from a mental disease or defect that made her incapable of understanding the nature of her conduct." The regular rape statute could not be applied, because the woman-like many persons with retardation-did not resist or fight back. The jury deliberated for 2 hours before giving a verdict of "not guilty."

A few days later, the Valley Chapter Arc called a press conference and voiced anger over the verdict. Arc President Nancy O'Connor claimed, "The real crime, apparently, was the woman did not look retarded." Prosecutor Rick Brown claimed there was "overwhelming evidence" that a reasonable person would know or at least suspect that the woman was mentally retarded. Executive Director Dianne Sheppard claimed that the statute favored the defendants and not the victim. She called for a language change in the statute (Sweney, 1991).

That press conference proved to be only the beginning. The Arc sponsored an all-day seminar on the case. They engaged attorneys to provide the legal help. They lobbied. They pushed a bill with better language, but the legislature refused to make the changes. Consequently, The Arc gathered around the victim and her family and brought a civil case against the four men-and they won.

OPPORTUNITIES AND ATTITUDES FOR THE 21ST CENTURY

Respect needs to be developed for criminal justice laws and lawmaking.

Know that an ever-changing criminal justice system is needed. When one walks into a police station, that person walks into a place that legal expert Yale Kamisar described as The Gatehouse of the criminal system (Kamisar, LaFave, & Israel, 1994). Mistakes may be made in this building that need correction. But one should also recognize and feel respect for those who work there and for the protection they give. When one sits in a courtroom, he or she is present in what Kamisar called The Mansion of criminal justice. Here errors are made that need to be appealed. But know also that the walls of this place echo powerful statements from the Magna Carta and the Constitution that are forever being reapplied in this ever-changing world. In Robert Bolt's 1990 play, A Man for All Seasons, an impatient young man rails against a law. He longs to cut down every law in England in his pursuit of the Devil, to which Thomas More replies, "And when the last law was down, and the Devil turned around on you-where would you hide?"

There is a place for citizens' groups, but there are limits to what they can do.

Without a citizens' group, Johnny Lee Wilson would have quietly disappeared in the penitentiary at Jefferson City, Missouri. A small handful of people kept hope alive for the young man who confessed falsely to the murder of Pauline Martz. Bumper stickers, fund-raisers, a large billboard, petitions, letters from self-advocates, and even a march on the state capitol kept the innocent young man's plight uppermost in people's minds. Even the national media amplified the situation. Nevertheless, when it actually comes down to trying to win in a court of law, only lawyers can talk to the

judge and only lawyers can put on the stand witnesses who can talk to the judge and jury. Also, only lawyers can write the brief that finally convinced a governor to grant a pardon like Mel Carnahan did.

Arcs can be natural home bases for citizens' groups, but it can be costly.

The board of directors of The Arc of Connecticut learned about a citizens' group fighting to free Richard Lapointe, a man with Dandy Walker syndrome who was in prison for a murder many believe he could not have committed. They discussed the case and voted to back this organization in any way they could (Perske, 1996). Later, one of the assistant state attorneys with a connection to the prosecution of Lapointe became the president of a local Arc. It was then communicated to the state executive director, Margaret Dignoti, that if the state board did not drop the Lapointe case, that local would pull out. Dignoti discussed the situation with the state board and they voted to keep backing Lapointe's citizens' group as one of their valued efforts. The local did indeed do what they promised. They withdrew.

An increasing number of windows of service for caring professionals are opening.

Again, there is a price to be paid for such actions. For example, Johnny Lee Wilson's two pro-bono attorneys-while working on the pardon brief and its appendix for the governor-suddenly felt uneasy about an earlier psychiatric evaluation. On a Thursday evening, the evaluation was read word for word over the telephone to Professor Denis Keyes in Charleston, South Carolina. On Friday evening, Keyes flew to Jefferson City, Missouri. He spent Saturday and Sunday in the state penitentiary, testing Wilson. At home, Keyes gave 2 weeks worth of late-night hours producing his report.

Although many others were called in for other emergency pro-bono services as well, it was, in the legal team's opinion, Keyes's report that helped make a difference.

Arcs can show that people with retardation who are executed are not exactly the most culpable.

Although this was mentioned earlier, fresh ways of showing it will be needed in the new century. If there is a death penalty, it should be reserved for the most cunning, the most premeditating, the most vicious, the most aware of what they were doing, the most sure of the punishment if they were caught-the most culpable. Yet, of the 33 persons with retardation who were executed since 1976 (Keyes, Edwards, & Perske, 1997), they were easy to kill, but they certainly were not the most culpable.

When Morris Mason was taken away for execution, he told his fellow inmates he would be back for the basketball game in the recreation yard. Robert Wayne Sawyer told the board of pardons he was sorry for lying to them about being a river boat pilot and for making the prosecutor so angry. Barry Fairchild told a fellow inmate that he thought the reading of the Miranda warning was an "opening devotions" the police did before getting down to work. Jerome Bowden felt he had gotten into the fix he was in because he could not read and write. Walter Correll curled up in a corner and cried every time two appointed lawyers came to him and asked about the crime.

Ricky Ray Rector left the pie from his last meal on his window sill-to eat after he got back from where they were taking him. On and on it goes.

These, of course, are personal observations that colleagues are quick to share, but they would not mean much in a court of law. The powerful legal foundation of this point can be found in the Penry v. Lynaugh (1989) amicus brief. The following is a paraphrasing of the arguments in the brief:

> **I. Mental retardation is directly relevant to criminal responsibility and the choice of punishment. First, it impairs the capacity to understand and control actions. Second, it should have a bearing on the choice of punishment.**
>
> **II. The reduction of blameworthiness caused by retardation makes the death penalty unconstitutional. That is so because the death penalty is reserved for a few who should be selected according to their true blameworthiness and guilt. Also, persons with retardation simply do not have the degree of culpability needed for a death penalty.**
>
> **III. The execution of a person with retardation is cruel and unusual. The Eighth Amendment of the Constitution bars such an act.**
>
> **IV. Executing a person with retardation serves no penological purpose.**

The foregoing does not do justice to the detailed language of the actual brief. Therefore, know that nonlegals have a rich opportunity to read it in its entirety in Conley et al. (1992, pp. 246-278).

Miranda does not always protect persons with mental retardation.

In 1966 Miranda v. Arizona was instituted to put a stop to beating confessions out of suspects. The reading of the Miranda warning, however, has proved to be of great comfort to many seasoned criminals. After the warning has been read to that kind of suspect, he or she can respond, "Thanks for reading that to me, guys, but you know I'm not talking until my lawyer is sitting beside me." To which the police must reply, "Okay, Bucky. You can go. See you again sometime." The suspect walks out into freedom.

But when Miranda is read to people with retardation, different responses can be expected. Some possible examples.

- **On the right to remain silent: "That's okay. I'll talk. You guys are my friends."**
- **On the right to know that anything you say can be used against you in a court of law: "That's okay, too. I'm not afraid. I don't have anything to hide."**
- **On the right to have a lawyer present: "I haven't done anything wrong. So what do I need a lawyer for?"**

These answers are honest and trusting. People with retardation are that way because that is the way we have helped them to be. Then in the police station they are asked to sign a "waiver sheet" and to put their initials at the end of each "right," even if they cannot read. After they sign and initial that sheet, a psychological and physical trap door is slammed shut between them and freedom. For hours after that

they can be subject to the most vicious dehumanization and accusations and lies and threats and trickery they will ever experience in their lives. We see this happening on TV shows all the time, and we cheer on the interrogators. But when it happens to people we work with, it hurts!

Self-advocate groups have picked up on this danger. Many now role-play such situations. In one group, the goal is to get everyone to shout, "I want a lawyer," then to sit down and shut up. Somehow, that runs across the grain of what they have been taught, but they now may have to do it to protect themselves. In the new century, someone in the field may take a fresh look at Miranda and work for fairer alternatives.

Arcs need to understand what can happen in police interrogation rooms.

After signing the waiver sheet, a suspect is often taken to a room in the most out-of-the-way area of the station. The suspect's chair is far from the door and the farthest away from light switches, thermostats, and other control devices. Bathroom and eating privileges must be asked for. Here, the suspect becomes "a depersonalized 'subject' to be 'sized up' and subjected to 'interrogation tactics and techniques most appropriate for the occasion'; he is 'game' to be stalked and cornered" (Kamisar et al., 1994, p. 445). Forensic psychologist Saul Kassin (1997) sees three problems associated with the gathering of confession evidence today:

> **(a) The police routinely used deception, trickery, and psychologically coercive methods of interrogation; (b) these methods may, at times, cause innocent people to confess to crimes they did not commit; and (c) when coerced self-incriminating statements are presented in the courtroom, juries do not sufficiently discount the evidence in reaching a verdict. (p. 221)**

Most interrogators today have been well trained in any of a large number of 3- to 5-day, graduated skill-enhancement courses. For some, becoming a skilled interrogator is much like going for a black belt in Karate. If an interrogator is trained according to Inbau, Reid, and Buckley (1986), everything possible is done by the interrogator to promote feelings of social isolation, sensory deprivation, and a lack of control in the suspect. Then the interrogator becomes a confident behavior analyst and the sole stimulus in the room, delivering a wide range of statements and questions and receiving every verbal and nonverbal response the suspect gives. The interrogator follows nine well-planned steps, a technique that leads many to incriminate themselves. Some interrogators even claim success rates as high as 90%. Such techniques are great for catching tricky criminals, but if an interrogator does not understand-really understand- people with retardation, watch out!

Arcs need to lobby for the nonstop videotaping of interrogations.

In Judge Harold Rothwax's recent controversial book (1996), he calls for "sweeping changes" in the criminal justice system. In one of them, he claims that Miranda can be replaced by the recording of an arrest and interrogation through videotapes, tape recorders, and other technology. That is quite a jump, but why not? This is the electronic era, and a 1993 national survey estimated that one third of all large police and sheriff's departments now videotape at least some interrogations. The survey also showed that 97% of those departments found them helpful (Geller, 1993).

There is nothing more anguishing than sitting in a courtroom and observing the "swearing contest" that goes on between articulate detectives and an inarticulate person with a disability, when there is no record of what was actually said and done in the interrogation room. In every case like this, the defendant with retardation loses.

Someone needs to work at solving the IQ number shibboleth.

Some courts get carried away with IQ numbers. Arguments can take place over whether a defendant measures above or below, say, an IQ of 70. It is hard to believe that in some cases, a 69 IQ can mean life and a 71 IQ can mean death. Mental retardation is the only disability that is sometimes measured with a number. After the IQ number issue is settled, the forensic witness can sometimes talk at length about adaptive behaviors-while the judge, jury, and lawyers almost go to sleep. The IQ makes such a vivid impression, they lose interest in everything else that is said. This is the very thing Alfred Binet, the father of this numbering system, warned against (Gould, 1981, p. 155). Some in the field long to see this problem solved, once and for all. Others do not.

EPILOGUE

Not so very long ago, I left a courtroom trial in a far west state. I noticed that all the seats behind the defendant with retardation and his lawyer were vacant. The seats behind the prosecutor were packed. Having witnessed this phenomenon before, I visited the executive director of an agency who at one time served and supported the defendant. When the exec was told about that day in court, he suddenly responded like a cow watching a passing train. Then after a long silence, he said, "John isn't in our population anymore. He belongs to the police now."

That response is understandable. Most people in the field of mental retardation feel that way. I felt that way once-until a painful arrest and conviction of a person with a mental disability in my own neighborhood grabbed me and refused to let me go.

So it goes.

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