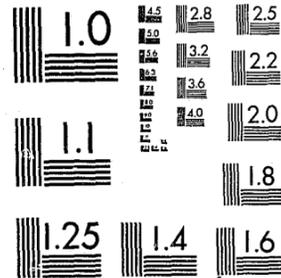


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# FBI LAW ENFORCEMENT BULLETIN

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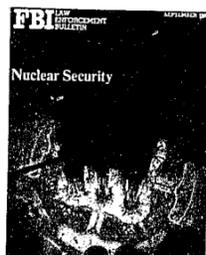
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William H. Webster, Director

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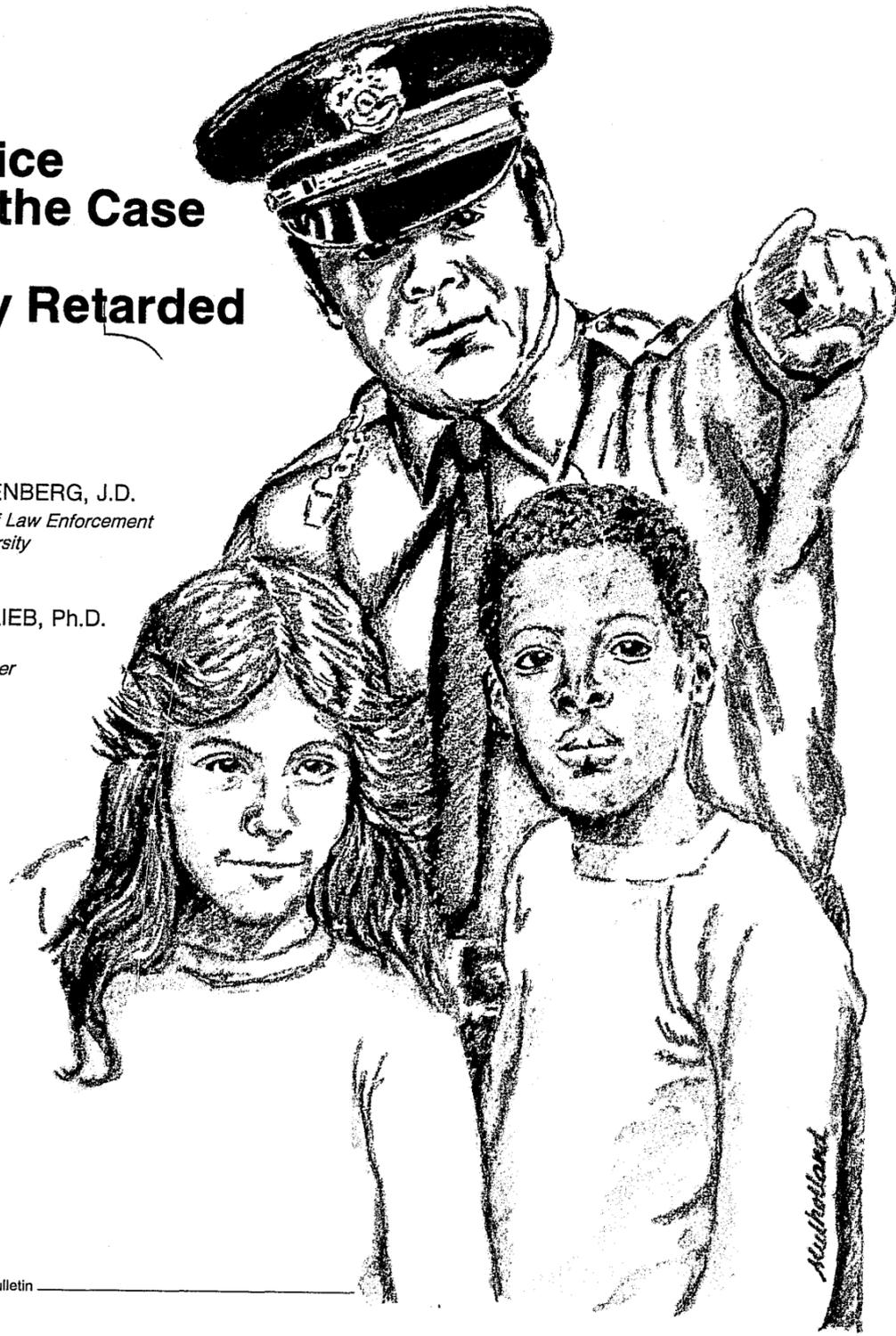
# The Police Role in the Case of the Mentally Retarded Child

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Evidence for the existence of mental retardation has been dated as far back as prehistoric times. However, the recognition, understanding, and treatment of mentally retarded individuals has slowly evolved through millions of years.<sup>1</sup> History demonstrates that a better understanding of these individuals leads to more humane treatment.

Since World War II, there has been a progressive deemphasis in the need to institutionalize retarded children, thus increasing the number of families who rear these children in their homes. In conjunction with this trend, two recent statutes have mandated considerable procedural and substantive protections for children in need of special education programs and services. According to Section 504 of the Rehabilitation Act of 1973, physical access to public buildings and grounds must be made available by agencies receiving any type of Federal assistance; the Education of All Handicapped Children Act of 1975 requires that federally aided school systems provide every handicapped child with a free public education. These regulations provide more of an opportunity for retarded children to interact with the rest of the public sector than ever before. Consequently, police personnel have an increased likelihood of making contact with these children.

When a troublesome incident regarding the conduct of a mentally retarded child occurs, police officers can expect to be the first person called upon to help resolve the problem. While mentally retarded persons represent approximately 3 percent of the people in the United States, "such persons reportedly comprise about ten percent of the population which is confined in jails and prisons";<sup>2</sup> and "an overwhelming majority of adult retarded offenders experience their first difficulty with the law as juveniles."<sup>3</sup>

The police mission in juvenile work includes rendering service to the mentally retarded individual. The police officer's effectiveness is principally a function of two factors—the quality of police training and a sincere concern for retarded individuals and their families. An array of manpower is needed to prevent retardation and to cope with it when it does occur. Police can strategically aid in these endeavors through an understanding of the problems associated with mental retardation and a willingness to implement the laws that entitle all handicapped children to certain benefits and procedural due process protections.

Today's police officer is required to enforce the law in situations that are more and more complex. Such complications arise whenever a mentally retarded person violates the law. However, low intelligence alone does not play an important role in causing delinquency, unless this factor combines with other factors such as poor home environment, mental disease, alcoholism, parental or guardian discord, low socioeconomic status, or community rejection toward children.

## "History demonstrates that a better understanding of these individuals leads to more humane treatment."

In 1976, President Gerald Ford stated that "the treatment we have accorded mentally retarded and other handicapped members of our society tests our success and challenges our ideals. Only recently we have sought to assure the right of mentally retarded citizens to develop their full potential, to share in the bounty of our land and to receive equal justice under the law."<sup>4</sup>

In 1978, the Report of the Liaison Task Panel on Mental Retardation submitted to the President's Commission on Mental Health urged that all "helping persons who are in frequent contact with mentally retarded people . . . be offered training and supportive services in basic mental health skills to better help mentally retarded people cope with their problems of living."<sup>5</sup>

The importance of the police role cannot be overemphasized because their contacts are often the first steps in the community's treatment system for dealing with the retarded offender. Police come into contact with the retarded child for the same reasons they come into contact with the average child. The child might be lost, confused, or in need of special help. The child might be the victim or suspected offender of a crime. Mentally retarded offenders frequently repeat their crimes. They are often easily arrested because they make no attempt to run or disguise what they have done.

Moreover, they are often quickly sentenced and required to serve full terms. Law enforcement personnel can prevent mentally retarded children from becoming convicts by being familiar with the symptoms of mental retardation and helping these individuals get the resources they need.

### Identification

There are many problems associated with identifying an individual with mental retardation. In fact, the precise definition of mental retardation differs among the various experts in the field. Whereas some experts emphasize causation, others emphasize performance level. In addition, the definition is colored by a given society's sociocultural standards.

The most widely used definition in the United States is that given by the American Association on Mental Deficiency:

"Mental retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior (i.e., ability to care for oneself and get along with others in a manner appropriate for one's age), and manifested during the development period (i.e., from 1-18 years old)."<sup>6</sup>

Given the problems associated with the definition of mental retardation, one, then, is confronted with the problem of identifying those individuals who are mentally retarded. There is a great deal of controversy concerning the diagnostic tests used to determine

intellectual functioning. The tests are considered to be biased in favor of the white middle class population. Consequently, the administration and interpretation of these tests by a person who is not sufficiently skilled can result in tragic misdiagnoses. If a child's intellectual functioning is found to be significantly below-average, he or she might be described as having mild, moderate, severe, or profound retardation based on the level of deficiency. The police officer is most likely to come into contact with mildly retarded individuals since they comprise the bulk of this special population.

Those children diagnosed as mentally retarded are supposed to be given services within the public school system. However, the harsh reality is that many of these children are not adequately served.<sup>7</sup> Implications surrounding the diagnosis of mental retardation in court cases becomes increasingly problematic. While the testimony of the police as well as various specialists, such as psychologists and educators, is considered, the disposition of a case is often governed by the available treatment facilities. Consequently, a mentally retarded individual might be placed in an institution for the mentally ill simply because a more appropriate facility has no available space.

### Characteristics

Before police officers can know how to handle cases involving mentally retarded children, they must be familiar with the characteristics of mental retardation. However, precise characteristics are difficult to present since the label covers a broad range of ability deficits from mild to profound retardation. In addition, the retarded child is like any other child with his or her individual traits. Whereas some retarded persons have physical abnormali-

ties, others have the physical appearance of the average person.

It is important to emphasize that mental retardation is not synonymous with mental illness. It is true that some retarded individuals might develop mental illness, but similarly, some people in the average population might develop this problem.

The following list of characteristics associated with mentally retarded children is necessarily broad in scope. However, it can provide the police officer with a general understanding of this special population.

- 1) Retarded children often have difficulty in expressing themselves verbally. They may also have difficulty in understanding what they are told, especially when the sentences are long and express complex ideas.
- 2) Retarded individuals may have difficulty in making judgments. They may not be able to foresee the consequences of their actions. Consequently, it may be very easy for them to fall victim to a criminal's schemes.
- 3) These children may not be able to concentrate on any one task for a long period of time. In addition, they may be distracted from a task very easily.
- 4) Retarded children may have difficulty in remembering what they have seen or events that have just occurred.
- 5) Physical abnormalities are common among moderately, severely, and profoundly retarded children. However, such abnormalities are uncommon among the mildly retarded—these children look "normal."

### Special Factors Affecting Personality Development

Up until this point, no question has been raised as to the need to identify and label individuals as mentally retarded. In fact, the present article is based on the premise that an accurate picture of an individual will aid the police officer in making appropriate discretionary decisions concerning that individual. Such an understanding cannot be reached without first labeling the person. Labeling also enables agencies to obtain funds and establish appropriate programs. However, these gains do not come without cost. The labeled children are viewed as different from the average population. In essence, they can be considered as members of a minority group. As with other minority groups, they may be subject to prejudice and are likely to be rejected. It is unlikely that they receive positive feedback on many occasions. The difficulties encountered as a result of their minority group status may contribute to feelings of insecurity and low self-worth. There is an additional danger that the label will lower teacher and parent expectations. While it is important to maintain realistic expectations so as not to overly frustrate the person, demands must be made on these children so that they can develop to their fullest potentials.

All of these children will develop their own means of coping with the frustrations encountered due to their slowness. Some children may become timid and shy, while others may become very hostile and aggressive. The means with which the parents of these children cope also varies. Unfortunately, some of these parents may resort to punishing themselves or victimizing their children. In fact, statistics indicate that the child who is handicapped is more likely to be abused than the child who is not handicapped.<sup>8</sup>

### Causes

Mental retardation can be caused by genetic and/or environmental factors. Those cases which are genetically caused are often associated with a specific syndrome (i.e., group of characteristics). Fortunately, our advanced medical technology has made it possible to oftentimes determine a couple's risk of producing a child with such a syndrome.

The most common genetic cause of moderate to severe mental retardation is Down's syndrome. This abnormality was formerly called "Mongolism" because of the characteristic slanting eyes of the affected individuals. However, the resemblance to the Mongoloid people is slight; therefore, this latter term was dropped because of the negative connotation it brought to the Mongoloid race.<sup>9</sup> Another disorder frequently heard about is Phenylketonuria (PKU). It is a disorder in metabolism that can lead to mental retardation if not detected and treated through a special diet begun shortly after birth.<sup>10</sup>

There are a variety of other abnormalities linked to the sex of the individual. For example, Turner's syndrome can only be found among females. It is

**"The importance of the police role cannot be overemphasized because their contacts are often the first steps in the community's treatment system for dealing with the retarded offender."**

only sometimes associated with mental retardation. Individuals afflicted with this abnormality have difficulties in space/form perception—a problem which becomes quite apparent when faced with the task of reading a map.<sup>11</sup> In contrast to Turner's syndrome, Klinefelter's syndrome can only be found among males. It, also, is not always associated with mental retardation. Although this syndrome has sometimes been associated with criminal records involving sexual offenses and arson, such behavior is likely to be caused by the individual's immaturity rather than any "criminal personality."<sup>12</sup> The group of genetically abnormal males labeled as XYY males do not display any distinct group of characteristics. They may or may not be mentally retarded. There has been much controversy concerning the criminal tendencies of these individuals. Research has indicated that XYY male prisoners have family histories similar to the typical prisoner.<sup>13</sup> However, a French study conducted with non-criminals indicated that XYY males could be more easily provoked to display aggression in frustrating situations as compared to those males without such a genetic abnormality.<sup>14</sup>

Unlike genetic conditions, environmental factors associated with mental retardation are more controllable. These factors are potentially hazardous to the fetus in utero as well as to the developing child. The unborn child is especially at risk of being retarded if a pregnant woman is undernourished, exposed to radiation, or ingests specific drugs. Infections such as rubella, chicken pox, and syphilis in the expectant woman will also raise the risk of retardation. In addition, noninfectious conditions, such as diabetes, will place the unborn infant at risk.

Some hazards to the developing child include severe head injury, poisoning, and lack of oxygen from delayed resuscitation. In addition, specific infections, such as meningitis, can be the precipitant of mental retardation. Factors associated with psychosocial disadvantage also place the developing child in danger. These could include inadequate nutrition, low achievement motivation, overcrowded home, inappropriate school instruction, instability of the parents, poor medical care, and poor childrearing practices.

**The Retarded Child and the Juvenile Justice System**

Recognizing the immaturity of young people, the policy of family courts has been to consider the antisocial acts of average children as behavior problems rather than as criminal behavior. Mentally retarded children should certainly be subject to the same treatment philosophy. Police are encouraged to use discretion in referring cases to family court based on the principle that the home is usually the best place to rear a child. However, when it seems clear that the parents are unable to cope with a child's problem, referral can be made to local youth-oriented social agencies. Mentally retarded children are especially deserving of this diversion opportunity prior to court referral.

In conjunction with the trend to seek diversion opportunities, a Federal mandate has been passed to deinstitutionalize status offenders such as runaways or truants. The use of special group home facilities or short term foster homes may be appropriate alternatives in the case of mentally retarded children. Departmental rules governing the questioning, searching, and "arresting" of juveniles differ among the various jurisdictions. However, some specific generalizations can be drawn. The major premise held at every stage of police and court processing is that the particular action is "fundamentally fair," and consequently, withstands the constitutional test of affording the individual his rights. As with the average child, care must be exercised by the police and court attachés in ascertaining the voluntariness of admissions of involvement or plea statements, inasmuch as some mentally retarded children may be desirous of pleasing authority figures or may acquiesce to forms of coercion more readily than other persons. The same care must be exercised when receiving the juvenile's consent to search. The child may waive his rights without actually comprehending what has occurred. The presence of counsel or a parent may be very important in order to avoid such an incident.<sup>15</sup> Without this assistance, the police officer is faced with the very difficult task of judging the retarded child's level of comprehension.

Although the Supreme Court has not yet held that the retention of an advisory counsel for mentally retarded accused persons is required at every stage in police and court processing, it would appear to be appropriate. In addition, some retarded individuals might need interpreters or aides similar to those required by deaf persons or foreign language clients.

Without the appropriate accommodations, a retarded child is clearly handicapped if he becomes a case in the juvenile justice system. In fact, the 1976 National Task Force on Juvenile Justice and Delinquency Prevention recommended that after the filing of a delinquency petition, the family court should hold a hearing when there is evidence that the juvenile may be mentally retarded.<sup>16</sup> Civil commitment proceedings could then be initiated. This places the mentally retarded person in the tenuous position of possibly being indefinitely institutionalized if extreme caution is not taken—a possibility which exists simply because the person is mentally retarded. However, such an action would be in violation of the principle of the presumption of innocence and the right to trial. In this regard, the Supreme Court ruled in the case of *Jackson v. Indiana* that indefinite commitment to a mental institution could not follow automatically from a finding of unfitness to stand trial.<sup>17</sup>

**The Retarded Child and the Civil Law**

We have stated that the mentally retarded person may be unjustly committed to an institution if caution is not exercised. However, constitutional civil law has been interpreted in a manner so as to prevent such a travesty from occurring. The concepts of basic due process and equal protection are appli-

cable to cases involving civil commitment of a mentally retarded person. In addition to being entitled to a hearing, such an individual is entitled to counsel and adequate notice to prepare for the hearing. The person is also entitled to be present at the hearing and to put on a defense.<sup>18</sup>

Historically, the law has reflected the desire to protect the young from the possible results of their own immaturity. Consequently, there are many restrictions on the activities of all children under the age of 18. For example, all children are bound by the will of their parents concerning where and how to live. In addition, they are required to get their parents' consent before marrying or learning how to drive. Along with these restrictions, children are entitled to such rights as support and education.

While the average child looks forward to broader rights upon assuming the age of majority, the retarded child's future rights may be in doubt. For example, the areas of marrying, raising a family, entering into contracts, suing, holding office, voting, and holding a job are controversial with regard to the mentally retarded population. However, the law provides that such rights cannot be interfered with unless a test of "compelling justification" is satisfied.<sup>19</sup>

Public statements are often made to communicate a particular minority group's plight. In 1972, the United Nation's Declaration on the Rights of Mentally Retarded Persons was adopted to make the public aware of the rights of mentally retarded persons. Of special interest, it was declared that the mentally retarded person is entitled "... to the maximum degree of feasibility, the same rights as other human beings." The mentally retarded person is entitled "... to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential." The mentally retarded person is entitled "... to protection from exploitation, abuse and degrading treatment." And "... if care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life."

The mere statement of rights which are deserved is often not enough. Consequently, laws are often passed to prevent an infringement of these rights. Two laws which are aimed at safeguarding the rights of mentally retarded children are Public Law (P.L.) 94-142, the Education for All Handicapped Children Act and Section 504 of P.L. 93-112, the Vocational Rehabilitation Act Amendments of 1973. P.L. 94-142 assures the availability of a free, appropriate education for all handicapped children between the ages of 3 and 21 at no cost to parents or guardians. However, this mandate

**"Before police officers can know how to handle cases involving mentally retarded children, they must be familiar with the characteristics of mental retardation."**

does not apply to children within the age ranges of 3 to 5 and 18 to 21, if such requirement is inconsistent with State law. In order to ensure appropriate education, the law mandates non-discriminatory testing and evaluation, the maintenance of an individualized education program for all handicapped children, consultation with parent or guardian, and educational placement of the child in the "least restrictive" environment.<sup>20</sup> It is assured that each of these requirements are carried out with complete procedural safeguards.

Section 504 is much broader in scope. It is a basic civil rights statute which prohibits discrimination against the handicapped by educational or noneducational (e.g., employment, health care, social services) programs receiving any type of Federal assistance. Such issues as accessibility to buildings and grounds are covered under this statute.

These regulations are highlights of the various regulations that apply to the mentally retarded child on a national scope. The police officer should also be aware of the local statutes which are applicable only in his State.

**Techniques for Handling Mentally Retarded Children**

It is essential that police officers be equipped with the knowledge of local, and in some cases, national resources for the proper referral and disposition of cases regarding mentally retarded children. In addition, there are published materials that can give police officers further insight into mental retardation and consequently aid in their future interactions with this special population.

The following techniques are also helpful in this regard:

- 1) A positive and direct response to each subject will enhance the overall ability to cope successfully with the mentally retarded child. An officer can best prepare himself for undertaking such a response through an understanding and appreciation of the difficulties faced by the retarded child.
- 2) The police officer should be very clear and specific in any directions given. For example, if the child is told not to display certain behavior on a street corner, the retarded child might go to another street corner and display the same behavior if it is not clearly explained that the behavior is not appropriate at any public location.
- 3) Simple language should be used when talking to the retarded child. In addition, the child should be asked to explain what was just said. Although the child might respond in the affirmative when asked if everything was understood, this might not be the case—he might respond with the word "yes" to almost anything that is asked.
- 4) Since retarded children often have difficulty in expressing themselves verbally, insistence on such a response might be very frustrating and frightening. Consequently, the use of visual aids, such as pictures, might be very helpful in explaining things, as well as in obtaining responses.

- 5) Retarded children should be given the same respect as other children. They should not be treated with ridicule or pity. In addition, they should not be treated as if they were not present when a third party is being consulted.
- 6) Expect the mentally retarded individual to act in a manner which would be more appropriate to someone younger than his age, such as sudden temper tantrums, or the refusal to respond because of fear or shyness. The level of immaturity will depend upon the degree of retardation.
- 7) When a police officer must make contact with the child's parents or guardians, he should not hold any preconceived notions as to the type of care given the child. The parents should be approached in a positive and direct manner regarding the specific incident. When appropriate, the officer should provide the parents with the names of local agencies that provide supportive services to the retarded and their families.

**Conclusion**

Police officers are charged with the control of juvenile delinquency. At times, they will encounter youngsters with special conditions. If such an offender is to be helped and the ends of justice served, police officers must understand the nature of the problem. By knowing some of the characteristics and causes of mental retardation, as well as the laws involving the retarded individual's basic civil rights, future encounters will be made easier. It is important to stress that these individuals have the same needs as other individuals. They have pride and need to feel a sense of worth and human dignity. However, due to their limited ability to cope in some situations, retarded individuals are often among the citizens most in need of a police officer's services.

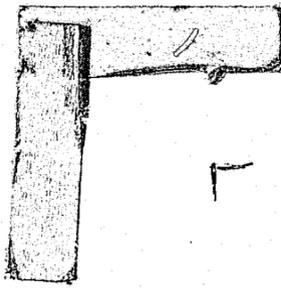
In the past, the mentally retarded person has not been "very well cared for by mental health programs, and even less so by the criminal justice system."<sup>21</sup> These individuals have often been shuttled back and forth between agencies sharing overlapping jurisdictions. However, the police can begin to break this cycle through insight and the use of the most effective response for a given situation. The result will be a savings of time for the police officer, fewer taxes for the community, and justice for the mentally retarded citizen.

Mentally retarded children do not have to become delinquents, nor can we explain delinquency as a manifestation of the retardation. It is not surprising that some of these children become delinquents; it is amazing that more do not. Society must recognize the need for psychiatric and social services, realistic education, and vocational counseling for all its citizens.

More importantly, we must cease looking with derision at those in a different cultural milieu.<sup>22</sup> **FBI**

**Footnotes**

- <sup>1</sup> See R.C. Scheerenberger, *A History of Mental Retardation* (Baltimore: Brookes Publishing Co., 1982).
- <sup>2</sup> A. Talent and R. Kelgord, "The Mentally Retarded Probationer," *Federal Probation*, vol. 39, No. 3, 1975, p. 39.
- <sup>3</sup> *Ibid.*, p. 41.
- <sup>4</sup> M. Kindred, J. Cohen, D. Penrod, and T. Shaffer, *The Mentally Retarded Citizen and the Law* (New York: The Free Press, 1976), p. iii.
- <sup>5</sup> President's Commission on Mental Health, *Report of the Liaison Task Panel on Mental Retardation: Volume IV* (Washington, D.C.: U.S. Government Printing Office, 1978), p. 2011.
- <sup>6</sup> E. Grossman, ed., *Manual on Terminology and Classification in Mental Retardation* (Washington, D.C.: American Association on Mental Deficiency, 1973), p. 11.
- <sup>7</sup> See Dona Kleiman, "Many Disabled Still Not Placed by City Schools," *New York Times*, August 31, 1981, pp. 1 and D10.
- <sup>8</sup> M. Soeffing, "Abused Children are Exceptional Children," *Exceptional Children*, 42, 1975, pp. 126-133.
- <sup>9</sup> N. Robinson and H. Robinson, *The Mentally Retarded Child* (New York: McGraw-Hill, 1976), pp. 77-88.
- <sup>10</sup> *Ibid.*, pp. 97-100.
- <sup>11</sup> *Ibid.*, pp. 90-92.
- <sup>12</sup> *Ibid.*, p. 92.
- <sup>13</sup> *Ibid.*, pp. 92-93.
- <sup>14</sup> B. Noel, J. Dupont, D. Revel, I. Dussuyer, and B. Quack, "The XYY Syndrome: Reality or Myth?" *Clinical Genetics*, 5, 1974, pp. 387-394.
- <sup>15</sup> See *In re Thompson*, 241 N.W. 2d 2 (1976).
- <sup>16</sup> See National Advisory Committee on Criminal Justice Standards and Goals, *Task Force Report on Juvenile Justice and Delinquency Prevention* (Washington, D.C.: U.S. Government Printing Office, 1976).
- <sup>17</sup> See *In re Gault*, 387 U.S. 1 (1967) for the rights of juveniles in delinquency proceedings.
- <sup>18</sup> See *Lessard v. Schmidt*, 349 F. Supp. 1078 (1972).
- <sup>19</sup> Kindred, et al., *supra* note 4.
- <sup>20</sup> See Section 612 (5) (B) of this Act.
- <sup>21</sup> L. Radelet, *The Police and the Community*, 3d ed. (Encino, Calif.: Glencoe, 1980), p. 388.
- <sup>22</sup> B. Blatt, "Some Persistently Recurring Assumptions Concerning Education of the Mentally Retarded," in *Mental Retardation: Readings and Resources*, ed. J. Rothstein, (New York: Holt, Rinehart and Winston, 1971), pp. 44-45.



**END**