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Enacting Legislation to Identify and Treat Children with Conduct Disorders

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The identification of conduct disordered children, that is, those children who are susceptible to becoming delinquent, is the first necessary step that must be undertaken if society's efforts to control a spiraling crime rate are to be successful. It is the authors' underlying premise that since the traditional approaches to rehabilitation have proven ineffective, it is incumbent upon the various state legislatures to become receptive to new methods and programs designed to prevent delinquency. The distinguishing feature of these alternatives would be early intervention and treatment. Admittedly, the authors note, many of these programs are experimental and based on the product of research, but many of the results appear encouraging. Particularly distinguished among the prospectively successful results are those aimed at minimizing the repercussions produced by academic failure. The authors examine the numerous sources of delinquency through a psychological perspective complemented by a legal analysis of the constitutional and statutory support for the amelioration of a conduct disordered child's "handicap."

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INTRODUCTION

No one can deny that crime in general, and juvenile delinquency in particular, are serious problems in the United States. The traditional approaches utilized to rehabilitate young offenders are quite ineffective, and may, in fact, exacerbate the problems which first bring delinquents to the attention of the police.¹ By the time society accurately identifies the older delinquent as a "career criminal" and incarcerates him for long periods of time, he may already have adopted crime as a way of life.² It would be far less costly and much more humane if society initially could prevent delinquency rather than unsuccessfully grappling with both juvenile and adult criminality.

It is the purpose of this article to advocate the identification of predelinquent (conduct-disordered) children, and to propose legislation for the provision of such appropriate education or other treatment that would help prevent later delinquency. Such early identification and treatment could substantially reduce the impact of crime in America, as well as preventing untold suffering on the part of potential offenders, their would-be victims, and society in general.

Identification of such children is on the horizon,³ although more research is necessary before scientific claims of accurate prediction can be substantiated. It can be demonstrated conclusively that treatment of early delinquency is not only possible, but relatively simple and inexpensive.⁴ Although there is disagreement over the etiology of delinquency,⁵ there is strong evidence to suggest that early learning difficulties leading to academic failure, in conjunction with other factors such as inadequate parenting, play

1. M. HASKELL & L. YABLONSKY, *CRIME AND DELINQUENCY* (2d ed. 1974).

2. P. GREENWOOD, J. CHAIKEN, J. PETERSILIA & M. PETERSON, *THE RAND HABITUAL OFFENDER PROJECT: A SUMMARY OF RESEARCH FINDINGS TO DATE* (1978) [hereinafter cited as *RAND REPORT*].

3. E. SURAN & J. RIZZO, *SPECIAL CHILDREN: AN INTEGRATIVE APPROACH* (1979); Powell, *Educational Intervention as a Preventive Measure*, 2 *CRIM. JUST. & BEHAVIOR* 397 (1975).

4. R. THARP & R. WETZEL, *BEHAVIOR MODIFICATION IN THE NATURAL ENVIRONMENT* (1969).

5. See, e.g., H. BECKER, *THE OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1963); E. SUTHERLAND & D. CRESSEY, *THE PRINCIPLES OF CRIMINOLOGY* (9th ed. 1974); M. WOLFGANG & F. FERRACUTI, *THE SUBCULTURE OF VIOLENCE* (1967); Hruska, *Obsolescence of Adolescence*, in *THEORETICAL PERSPECTIVES ON SCHOOL CRIME* (1978); Pink & White, *Delinquency Prevention: The State of the Art*, in *THE JUVENILE JUSTICE SYSTEM* 5 (1976); Lefcourt & Ladwig, *The American Negro: A Problem in Expectancies*, 1 *J. PERSONALITY & SOC. PSYCH.* 377 (1965); Reckless, Dinitz & Kay, *The Self Component in Potential Delinquency and Potential Non-Delinquency*, 22 *AM. SOC. REV.* 566 (1957); Rotter, *Generalized Expectancies for Internal Versus External Controls of Reinforcement*, 80 *PSYCH. MONOGRAPHS* 1 (1966); *The Youth Crime Plague*, *TIME*, July 11, 1977, at 18.

a major role in the formation of delinquent or predelinquent behaviors.⁶ The best approach for preventing delinquency would encompass several actions: (a) identification of children displaying predelinquent behavior (conduct disorders), (b) appropriate classroom education to remediate learning disabilities and behavioral problems, (c) assistance for parents of such children to increase parental effectiveness in controlling children's behavior, and (d) provision of surrogate parents as a source of guidance and support.

Section I of this article provides a brief definition of juvenile delinquency and what is described as "conduct-disordered" (*i.e.*, predelinquent) children. Section II covers the causes of delinquency from the perspective of research, with particular emphasis on the relationship between learning disorders and delinquency. The third section offers a brief survey of some successful programs for the treatment of delinquency and predelinquency. Section IV deals with the need for treatment and current legal support for treatment of delinquents. The final section proposes directions for legislative action.

I. IDENTIFICATION OF PREDELINQUENT CHILDREN

A. *Definition of Delinquency*

Delinquency can be defined as any behavior which deviates from cultural norms and/or restrictions.⁷ Children are delinquent if they are found guilty of breaking any of the federal, state, or local laws designed to control the behavior of adults.⁸

In many states, behavior such as smoking, swearing, running away from home, and sexual promiscuity have also been considered acts of delinquency.⁹ These behaviors are illegal only by virtue of the youth's age and would not be illegal were they committed by an adult. They are, therefore, designated as status offenses. The recent trend has been to ignore such offenses when institutionalization or lengthy detention of the youth is involved.¹⁰

6. G. SURAN & J. RIZZO, *supra* note 3.

7. *Id.*

8. M. HASKELL & L. YABLONSKY, *supra* note 1.

9. D. GLASER, ADULT CRIME AND SOC. POL'Y (1972); T. SELLIN & M. WOLFGANG, THE MEASUREMENT OF DELINQUENCY (1964).

10. Indeed, the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1109 (1974) (codified at 42 U.S.C. § 5601 et seq. (1976)), had as its goal the separation of juveniles from adults, and the detention of status offenders

Although most authorities agree that children guilty of status offenses should not be adjudicated delinquent,¹¹ it is also generally agreed that some children displaying these behaviors will ultimately become delinquent.

B. Theories of Delinquency

Legal definitions of delinquency are only remotely related to theories hypothesizing the causes of delinquency. This tenuous relationship is particularly evident when one becomes cognizant of the vast numbers of juveniles who have committed delinquent acts, but have not been apprehended.¹²

The specific causes of delinquency are far from clear. The four most common theories of delinquency causation are: (a) differential association (one is influenced by peers to become delinquent),¹³ (b) lower class criminality (the clash between lower class and middle class values leads members of the lower class into crime when they cannot achieve middle class rewards),¹⁴ (c) self-concept (youths with low self-esteem cannot insulate themselves from temptations),¹⁵ and (d) labeling theory (the person labeled as bad or delinquent lives up to the label).¹⁶ There are, of course, other theories, but these have less wide-spread acceptance¹⁷ and tend to be rather broad and unsupported by research data.

in noninstitutional settings. California, for example, enacted CAL. WELF. & INST. CODE § 207 (West Supp. 1978):

- (b) . . . [N]o minor shall be detained in any jail, lockup, juvenile hall, or other secure facility who is taken into custody solely upon the ground that he is a person described by Section 601 . . . or made a ward of the juvenile court solely upon that ground. If any such minor is detained, he shall be detained in a sheltered care facility or crisis resolution home . . . or in a non-secure facility.

In 1978, Assembly Bill 958 modified this provision by permitting brief detention of status offenders under certain circumstances. See 1978 Cal. Stats. ch. 1061, amending CAL. WELF. & INST. CODE § 207.

11. Marticorena, *Take My Child, Please—A Plea for Radical Nonintervention*, 6 PEPPERDINE L. REV. 639 (1978); Wilson, *The Long-Term Trend is Down*, IV CORRECTIONS MAGAZINE, September, 1978, at 3.

12. Williams & Gold, *From Delinquent Behavior to Official Delinquency*, 29 SOC. PROB. 209 (1972).

13. E. SUTHERLAND & D. CRESSEY, *supra* note 5.

14. M. WOLFGANG & F. FERRACUTI, *supra* note 5.

15. Reckless, Dinitz & Kay, *supra* note 5.

16. H. BECKER, *supra* note 5.

17. Delinquency serves economic functions in the society by providing work for such persons as psychologists, policemen, and prison administrators. Pink & White, *supra* note 5. Adolescence is obsolescent due to technological change. Hruska, *supra* note 5. Some juveniles feel powerless and believe their futures rest upon chance rather than upon personal actions and achievements. Lefcourt & Ladwig, *supra* note 5; Rotter, *supra* note 5. Society is too permissive. *The Youth Crime Plague*, TIME, July 11, 1977, at 18.

C. Correlational Studies

Determining the causes of delinquency presents many methodological problems.¹⁸ As a result of such problems, which inhere whenever conducting research which focuses on groups of persons displaying a group of varied traits, researchers have placed heavy emphasis on correlational data. It is impossible, however, to determine causality using only correlational data.¹⁹ Nonetheless, correlational data can be used to enhance identification, and to suggest "where to look" for causality.

Some variables which have been found to correlate with juvenile delinquency are: (a) sex, (b) race, (c) socioeconomic status, (d) genetic factors, (e) family disruption, (f) constitutional factors, (g) neurological impairment, and (h) academic failure. Statistics regarding these variables are illuminating. Eighty percent of arrested juveniles in 1977 were male, and males committed ninety percent of the violent crimes.²⁰ In a study by the California Youth Authority in 1977 (the CYA study), it was determined that sixty percent of the incarcerated juveniles were Black or His-

18. A difficulty encountered by academicians and researchers is the near impossibility of applying the customary experimental procedures to determine cause and effect relationships. As one moves away from the laboratory, it becomes increasingly difficult to control and manipulate the important independent variables. For example, one cannot take a large batch of newborns and randomly assign half of them to a father-absent home. Although serendipity occasionally provides an unusual opportunity for comparison of meaningful groups, for the most part social scientists must study handy samples as they occur in the natural environment. Furthermore, it is particularly difficult to isolate the effects of some single variables, such as race or socioeconomic status.

Program evaluation provides another problem. Very frequently, workers in the criminal justice system, such as probation workers, find it inhumane to withhold a possibly effective treatment from a control group just for the sake of evaluating the significance of some experimental variable. In addition, it is extremely difficult to conduct longitudinal studies because of frequent difficulties in obtaining retest measures over the years. Subjects may move, get ill, or simply refuse to be tested again. Even using posttests poses a methodological dilemma according to some statisticians.

19. The coefficient of correlation is a numerical index to indicate the degree of correspondence between two sets of paired measurements. To clarify the point, an example may prove useful. It is a fact that the variable of teachers' salaries increases proportionately with the variable of the amount of liquor sold in the United States. Despite the high coefficient of correlation between these two variables, one does not "cause" the other. It would be fallacious to assume that the teachers with their increased pay were the ones consuming the added amount of liquor. Rather, the changes in both variables may be "caused" by a third variable, such as economic prosperity.

20. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR 1977 (1978).

panic,²¹ a figure which represents an incidence approximately double their percentage within the total population.²² Nearly half of the incarcerated delinquents in the CYA study came from high poverty areas,²³ and seventy percent came from high crime areas.²⁴ Sixty-nine percent were unemployed.²⁵ A number of findings suggest that hereditary factors may also have an influence on the juvenile's inclination toward delinquency.²⁶ There is a rather high concordance rate for identical twins: 35.8 for males and 21.4 for females.²⁷ A genetic component, of course, merely indicates a predisposition which may be enhanced or reduced by environmental factors.

The CYA study also discovered that seventy percent of the institutionalized delinquents came from single parent homes.²⁸ In homes disrupted by divorce, it may not be the divorce *per se* which negatively influences the children, but rather the lack of adequate parental control. Family disruption may also lower the child's resistance to the pressures of frustration.²⁹

The last three variables—constitutional factors, neurological impairments, and academic failures—appear to be closely interre-

21. West, *The California Youth Authority: Planning for a Better Tomorrow*, 6 PEPPERDINE L. REV. 607 (1979).

22. H. COHEN, J. FILIPCZAK, J. BOREN, I. GODING, R. STORM, R. BISHOP & J. BREILING, ACADEMIC AND SOCIAL BEHAVIOR CHANGE IN A PUBLIC SCHOOL SETTING: PICA FINAL REPORT: PROJECT YEAR FOUR (1974) [hereinafter cited as COHEN].

23. West, *supra* note 21, at 625.

24. *Id.*

25. *Id.*

26. (1) Criminals have more abnormal EEG patterns than normals. (2) Many criminals have low IQs and it has been established that IQ has a hereditary component. (3) Criminals tend to be predominantly mesomorphic (average height and muscular) and thus may tend to be strong, tough, aggressive, and relatively fearless. (4) Many crimes are committed by individuals who are psychotic or near psychotic. Psychosis has a genetic factor. (5) It is possible, but not probable, that XYY (abnormal chromosome pattern) males may be aggressive and criminalistic. (6) Many crimes are committed under the influence of alcohol, and alcoholism seems to have a genetic component. (7) Some investigators think hyperactivity may lead to criminal behavior, and hyperactivity may have a genetic link. Christiansen, *Threshold of Tolerance in Various Population Groups Illustrated by Results from Danish Criminologic Twin Study*, in THE MENTALLY ABNORMAL OFFENDER 107 (1968); Rosenthal, *Heredity Criminality*, 2 CRIM. JUST. & BEHAVIOR 3 (1975).

27. The concordance rate is the percentage of persons who have the same characteristic under investigation. For example, if sixty-six pairs of identical twins out of a hundred were both schizophrenic, the concordance rate would be sixty-six percent.

28. West, *supra* note 21.

29. S. GLUECK & E. GLUECK, FAMILY ENVIRONMENT AND DELINQUENCY (1962); W. SANDERS, JUVENILE DELINQUENCY (1976); Anderson, *Where's Dad? Paternal Deprivation and Delinquency*, 18 ARCHIVES OF GENERAL PSYCH. 641 (1968); Grogan & Grogan, *The Criminogenic Family. Does Chronic Tension Trigger Delinquency?*, 14 CRIME & DELINQUENCY 220 (1968); Thomas, *The Changing American Family: Can the Courts Catch Up?*, 6 PEPPERDINE L. REV. 733 (1979).

lated. It is clear that large numbers of delinquents have failed in school, especially regarding their ability to read.³⁰ According to one study, seven percent of juvenile delinquents never completed the seventh grade, and fifty-two percent did not complete high school.³¹ The truancy rate of delinquents was thirty-four percent as compared with 6.8 percent for the general population of school children.³² According to the U.S. Bureau of Prisons, fifty percent of adults in federal and state facilities cannot read or write.³³ Other studies indicate that ninety percent of all inmates have not completed high school.³⁴ According to Chief Justice Burger: "The percentage of inmates in all institutions who cannot read or write is staggering. . . . The figures on literacy alone are enough to make one wish that every sentence imposed could include a provision that would grant release [only] when the prisoner had learned to read and write."³⁵

Constitutional factors and non-genetic damage suffered by a fetus in utero appear to be capable of contributing to academic failure, and hence to delinquency. The developing fetus is vulnerable to a host of conditions which may lead to birth defects. Some known conditions include maternal drug usage, maternal stress, maternal illness, maternal Rh negative blood type, and maternal nutrition.³⁶ Inadequate nutrition has been shown to decrease learning ability in experimental animals and in humans.³⁷ The number and size of neurones are diminished by poor nutrition, an effect which cannot be remedied by adequate nutrition after birth.

Neurological impairments, such as poor vision, poor speech, hyperkinesia, poor general health, and poor emotional control may

30. W. KVARACEUS, *JUVENILE DELINQUENCY AND THE SCHOOL* (1945).

31. W. SCHAFER & K. POLK, *DELINQUENCY AND THE SCHOOLS. TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME* (1967); Moore, *The Schools and the Problems of Juvenile Delinquency: Research Studies and Findings*, 7 *CRIME & DELINQUENCY* 201 (1961); Pollack, *The ABC's of Prison Education*, V *CORRECTIONS MAGAZINE*, September, 1979, at 60; Silberberg & Silberberg, *School Achievement and Delinquency*, 41 *REV. OF EDUC. RESEARCH* 1 (1971).

32. M. BARRON, *THE JUVENILE IN DELINQUENT SOCIETY* (1954).

33. Pollack, *supra* note 31; Silberberg & Silberberg, *supra* note 31.

34. *Id.*

35. See Pollack, *supra* note 31.

36. R. LIEBERT, R. POULOS & G. MARMOR, *DEVELOPMENTAL PSYCHOLOGY* (2d ed. 1977).

37. Kaplan, *Malnutrition and Mental Deficiency*, 78 *PSYCH. BULL.* 321 (1972); Knoblock & Pasamanick, *Seasonal Variation in the Births of the Mentally Deficient*, 48 *AM. J. PUB. HEALTH AND THE NATION'S HEALTH* 1201 (1958).

contribute to delinquency as well. Neurological problems, especially learning disorders,³⁸ certainly contribute to academic underachievement. The importance of such factors is asserted by a number of investigators who have suggested that delinquents may suffer from some physical, psychological, or mental impairment.³⁹ Additionally, there are behavioral similarities between children with presumed minimal brain damage and delinquent children. Some of the behavioral similarities include hyperactivity, short attention span, impulsivity, low frustration tolerance, inability to delay gratification, irritability, and aggressiveness. For example, one study determined that about one-fifth of juvenile offenders were brain-damaged.⁴⁰

This catalog of correlational data provides some descriptive characteristics of juvenile delinquents. A "typical" delinquent is a minority member male from the lower class, born into a large family with no father in the home. His home life is unstable, and he receives inadequate parental supervision. He probably has health problems which have not received medical attention. He is likely to have learning disabilities; in any event, he has difficulty reading. He has behavior problems in school; he is defiant, disobedient, disruptive, irresponsible, attention seeking, and boisterous. Truancy and interaction with the police are common.⁴¹

38. "Learning disabilities" is the term used to label a variety of dysfunctions which appear to prevent otherwise normal and intelligent children from learning at the expected rate. The afflicted children do not demonstrate lack of motivation, emotional disturbance or low intelligence level. In particular, the children suffer from dyslexia, asphasia, and hyperkinesis. Some of the symptoms of language handicaps are demonstrated in the child's inability to distinguish between such letters as "b" and "d" and between such words as "shops" and "hops." The child may have difficulty in telling left from right; he may not be able to skip or keep his balance on a balance board. He may be able to read in a quiet room, but not in a noisy one. There are various other symptoms too numerous to mention. The learning disabled child usually has several of the symptoms rather than just one. See C. MURRAY, *THE LINK BETWEEN LEARNING DISABILITIES AND JUVENILE DELINQUENCY* (1976); T. BRYAN & J. BRYAN, *UNDERSTANDING LEARNING DISABILITIES* 89 (1975).

39. Sawici & Schaeffer, *An Affirmative Approach to the LD/JD Link*, 30 JUV. & FAM. COURT J. 11 (1979); Berman, *Neurological Dysfunction in Juvenile Delinquents: Implications for Early Intervention*, 1 CHILD CARE Q. 264 (1972); Beshari, *Behavioral Correlates of the EEG in Delinquents*, 79 J. PSYCH. 141 (1971); Critchley, *Reading Retardation, Dyslexia, and Delinquency*, 115 BRIT. J. PSYCH. 1537 (1947); Ishihara & Yoshii, *Multivariate Analytic Study of EEG and Mental Activity in Juvenile Delinquents*, 33 ELECTROENCEPHALOGRAPHY & CLINICAL NEUROPHYSIOLOGY 71 (1972).

40. Keldgord, *Brain Damage and Delinquency: A Question and a Challenge*, 4 ACADEMIC THERAPY 93 (1968).

41. Quay, *Patterns of Aggression, Withdrawal, and Immaturity*, in PSYCHOPATHOLOGICAL DISORDERS OF CHILDHOOD 1 (1972).

D. Conduct Disorders

A similar description can be used to identify children who appear to be moving towards delinquency. Recently, such children have been designated as *conduct disordered*.⁴² These children engage in a variety of behaviors which may indicate that they are having problems in socialization.⁴³ According to Werry and Quay, conduct disorders include restlessness, destructiveness, lying, stealing, aggressiveness manifested in quarreling, fighting, swearing, disobedience and defiance, disinterest in school, truancy, sexual promiscuity, prostitution, substance abuse, and running away.⁴⁴ Table 1 presents a tabulation of indicators of conduct disorders.

Table 1⁴⁵

INDICATORS OF CONDUCT DISORDERS AND DELINQUENCY PRONENESS

1. Home supervision limited; lack of parental interest or involvement; only one parent in the home; home life characterized by disorganization; conflict between parents; emotional disturbance, criminal behavior, alcoholism, or drug abuse in one or both parents.

2. Socioeconomic deprivation; qualifies for subsidized school lunch or breakfast programs; family receiving public assistance.

3. Dislike of school; problems with school authorities; truancy; history of detentions, suspensions; unexcused absences, class cuts; defiance of teachers; refusal to complete assignments.

4. Difficulties in educational achievement; failure of one or more school subjects; reading below grade level; older than classmates because of grade retentions.

5. Patterns of association with delinquent peers; gang involvement; early use of drugs or alcohol; minor police involvement.

6. Early history of neurological dysfunction or learning disabilities; impulsive behavior patterns; below average to average intellectual ability.

7. Emotional instability; erratic behavior patterns; easily angered; unable to accept responsibility; rigidly independent or overly conforming.

No single characteristic by itself is indicative of a conduct disorder or proneness to delinquent behavior; the more factors present, the greater the probability of chronic behavior disturbance.

Ideally, conduct-disordered children should be identified at an early age for purposes of special treatment before they become

42. E. SURAN & J. RIZZO, *supra* note 3.

43. *Id.*

44. Werry & Quay, *The Prevalence of Behavior Symptoms in Younger Elementary School Children*, 41 AM. J. ORTHOPSYCHIATRY 136 (1971).

45. E. SURAN & J. RIZZO, *supra* note 3, at 353, based on Powell, *supra* note 3.

official delinquents.⁴⁶ A number of problem children could likely be identified by observant teachers who become aware of homes broken by separation or divorce, lack of adult supervision, truancy and academic underachievement. In particular, the teacher should be alert to the child's progress in reading, his dislike of school and defiance of school authorities. Such factors can be useful in predicting delinquency.⁴⁷

Further research on identification of such children is urgently needed, since some behaviors may be difficult to diagnose. For example, how does one decide if a child is disruptive or just energetic? When is the child being abnormally aggressive or appropriately assertive? Some early attempts to diagnose and predict conduct disorders have been disappointing.⁴⁸

Two cautions should be noted for such identification. First, some psychologists note the possibility that early, adverse labeling of a child may in and of itself have negative effects on the child.

Programs attempting to identify predelinquent children should be planned and carried out with great care, if indeed they are to be used at all. To date, there are no reliable methods by which children can be classified into this category, or any other category for that matter. Until such procedures are established, programs attempting to identify predelinquents and give them special treatment should be discouraged. Delinquency is often a transitory rather than a developmental process.⁴⁹ Situations are important in producing infractions. Programs aimed at identifying predelinquents risk locking youths into the delinquent role by the processes of labeling and self-fulfillment.⁵⁰

The second word of warning relates to the use of tests to assess academic success and intellectual functioning. To date, the most accurate predictor of academic and "life" success has been the intelligence quotient (IQ), as measured by tests such as the Stan-

46. Richmond & Walzer, *Biological and Social Factors in Early Development: Implications for Child Care Programs*, in IDENTIFICATION OF PREDELINQUENTS: VALIDATION STUDIES AND SOME SUGGESTED USES OF GLUECK TABLE 132 (1972); E. SURAN & J. RIZZO, *supra* note 3. Similarly, the National Work Alliance, an organization representing more than one thousand community-based youth services agencies, supports the funding of prevention programs aimed at young people who have not yet come into contact with the juvenile justice system. *Youth Workers also Propose Amendments*, 10 CRIM. JUST. NEWSLETTER, December 3, 1979, at 5.

47. E. SURAN & J. RIZZO, *supra* note 3.

48. Venizia, *Delinquency Prediction: A Critique and a Suggestion*, 8 J. RESEARCH CRIME & DELINQUENCY 108 (1971).

49. Pink & White, *supra* note 5.

50. *Id.*

ford-Binet or Wechsler Intelligence Scale for Children (WISC).⁵¹ These tests are quite accurate predictors of reading ability and other kinds of school achievement.⁵² For one thing, a large component of IQ tests rests upon verbal fluency and verbal comprehension. IQ tests at age six do a remarkable job of predicting IQ at age eighteen.⁵³ Terman, for example, demonstrated that superior intellectual functioning, as measured by such tests, is highly correlative to success in life, as measured by objective achievements such as being listed in "Who's Who" or being a published author.⁵⁴

Caution must be exercised in the use of competency and IQ tests, however. Such tests, in their present form, are currently under attack as being culturally biased.⁵⁵ In *Larry P. v. Riles*,⁵⁶ for example, the plaintiff, black children, argued that the stigmatizing "educable mentally retarded" label was applied to them on the basis of IQ tests which penalized unfamiliarity with a white middle class background. In granting permanent injunctive relief, the court stated that intelligence tests "are racially and culturally biased, have a discriminatory impact on black children and have not been validated for the purpose of [consigning] black children into educationally dead-end, isolated and stigmatizing classes. . . ."⁵⁷ The court held that the use of standard IQ tests to place black children in classes for the retarded violated not only the California constitution but also the U.S. Constitution, under the fourteenth amendment guarantee of equal protection.⁵⁸ Similarly, a New York court held that the use of these tests as a major factor in terminating a Spanish-speaking mother's parental rights constituted a denial of equal protection under the New York and

51. Sears & Barbee, *Career and Life Satisfaction Among Terman's Gifted Women*, in *THE GIFTED AND THE CREATIVE: FIFTY-YEAR PERSPECTIVE* (1977).

52. Q. McNEMAR, *THE REVISION OF THE STANFORD-BINET SCALE: AN ANALYSIS OF THE STANDARDIZATION DATA* (1942).

53. *ORIGINS OF INTELLIGENCE: INFANCY AND EARLY CHILDHOOD* (M. Lewis ed. 1976).

54. Sears & Barbee, *supra* note 51.

55. See generally McClung, *Competency Testing Programs: Legal and Educational Issues*, 47 *FORDHAM L. REV.* 651 (1979).

56. 343 F. Supp. 1306 (N.D. Cal. 1972) (order granting temporary injunction), *aff'd per curiam*, 502 F.2d 963 (9th Cir. 1974), 3 *EDUC. HANDICAPPED L. REP. (CRR)* at 551:395 (N.D. Cal. 1979) (order granting permanent injunction).

57. 3 *EDUC. HANDICAPPED L. REP. (CRR)* at 551:228 (N.D. Cal. 1979).

58. *Id.*

U.S. constitutions.⁵⁹

These cases suggest that an important priority in the establishment of an identification program is the development of tests which are free of cultural elements. Furthermore, it is suggested that the legality of a testing program depends to a great extent on the use of the test results, rather than simply upon the test itself.⁶⁰ Thus any IQ or competency test should constitute only one of many factors considered in identifying conduct disordered children.

II. THE FOCUS OF TREATMENT

In the previous section, factors correlated to delinquency were described.⁶¹ The eight factors were: sex, race, socioeconomic status, genetic inheritance, family disruption, constitutional and neurological impairment, and academic failure. Some of the factors, such as sex, race, or genetic inheritance, are essentially incapable of being altered. Socioeconomic status is a factor which is susceptible to improvement, but which might require governmental and societal changes (such as increased socialism) which are unlikely at this time.

On the other hand, a great deal can be done to decrease the negative effects of constitutional and neurological impairments. For example, it is feasible and desirable to provide adequate nutrition for all pregnant women. This step alone would reduce constitutional and neurological maladies. The effects of family disruption could also be minimized by such procedures as supplying parent surrogates or "big brothers" for needy children. The easiest point of intervention would be in the area of academic failure. School programs could be adapted to incorporate methods to improve academic success.

Many criminologists have placed heavy emphasis on the fact that delinquents frequently fail in school, especially in the area of reading.⁶² Despite massive amounts of evidence indicting school failure as a probable cause of delinquency, the hypothesis has not as yet been experimentally tested. In such a setting, it is difficult to use the experimental method in the determination of causal factors.⁶³ Fortunately, a research project was undertaken in 1976 to test the effects of academic remediation on delinquency. An in-

59. *In re Ana Maria R.*, 98 Misc. 2d 910, 917, 414 N.Y.S. 2d 982, 986-87 (1979).

60. McClung, *supra* note 55, at 657.

61. Section I(C) *supra*.

62. *E.g.*, Burns, *Delinquents Failed by the System*, 60 SPECIAL EDUC., March, 1971, at 13; Hogenson, *Reading Failure and Juvenile Delinquency*, 24 BULL. ORTON Soc'y 164 (1974).

63. See text accompanying note 18 *supra*.

terim report describes evidence that remediation is at least possible.⁶⁴

One study investigated the effects of academic remediation on the attitudes of delinquents.⁶⁵ Delinquents were divided into three groups matched according to age, IQ, ethnic background, and reading ability. One group was given reading instruction for seven months, while another group was given swimming instruction for the same length of time. The third group (control) was given no particular treatment. An eighteen-month follow-up of the boys indicated that those who had been given the reading instruction significantly improved their attitudes toward authority.⁶⁶ It seems most likely, therefore, that school failure along with other factors, such as home disruption and poverty, contributes heavily to delinquency. Two related factors to be discussed are intellectual functioning and learning disorders.

Presumably, the single most important variable contributing to academic success is intellectual functioning. Intelligence, of course, is developed from a host of genetic, constitutional, and environmental factors. Children whose intelligence is low or who suffer from learning disorders may have difficulty in mastering school work.

Evidence abounds on both sides of the question of whether IQ is mainly hereditary or mainly environmental. Some radical thinkers, such as Jensen,⁶⁷ have attempted to attribute an excessive amount of intelligence to genetics. Research buttressing this view is found in identical twin studies⁶⁸ and in studies of adopted children.⁶⁹ On the other hand, environmental stimulation studies have demonstrated the strong effects of environment on the development of IQ.⁷⁰ In view of the research findings of both ge-

64. I. KEILITZ, M. SAKS & P. BRODER, *THE EVALUATION OF LEARNING DISABILITIES/JUVENILE DELINQUENCY REMEDIATION PROGRAM* (1979). See notes 19-38 *supra*, and accompanying text.

65. Dorney, *The Effectiveness of Reading Instruction in the Modification of Attitudes of Adolescent Delinquent Boys*, 60 J. EDUC. RESEARCH 438 (1967).

66. *Id.*

67. A. JENSEN, *EDUCABILITY AND GROUP DIFFERENCES* (1973).

68. Erlenmeyer-Kimling & Jarvik, *Genetics and Intelligence: A Review*, 142 SCI. 1477 (1963).

69. Scarr & Weinberg, *I.Q. Test Performance of Black Children Adopted by White Families*, 31 AM. PSYCHOLOGIST 726 (1976).

70. R. HEBER, H. GARBER, S. HARRINGTON, C. HOFFMAN & C. FALENDER, *REHABILITATION OF FAMILIES AT RISK FOR MENTAL RETARDATION* (1972) [hereinafter cited as HEBER]; Skeels & Dye, *A Study of the Effects of Differential Stimulation on Mentally Retarded Children*, 44 AM. A. MENTAL DEFICIENCY 114 (1939).

netic and environmental factors as they influence intellectual development, it has been concluded by a preponderance of scholars that genetic inheritance sets a "range" for intellectual functioning, while environment is capable of shifting the individual's IQ upward or downward within the range.⁷¹

A number of researchers have found evidence that juvenile delinquents have learning disorders. These children seem to suffer from some interference in the process of receiving information, utilizing it in cognitive processes, or communicating the results of cognition.⁷² The prevalence of learning disabilities in delinquents has varied from study to study, but has ranged from twenty-six percent to seventy-six percent.⁷³

This strong link between neurological impairments in the form of learning disorders and delinquency has led to three different hypotheses dealing with the relationship:⁷⁴ (a) The "school failure" hypothesis contends that the learning disability causes the child to fail in school. His failure may eventuate in frustration and low self-esteem, finally to be followed by the emergence of delinquent acts. (b) The "susceptibility" hypothesis suggests that learning disabled children possess a variety of socially troublesome personality characteristics which make them more susceptible to commit delinquent acts. They also will be more susceptible to influence from delinquent peers. (c) The "differential treatment" hypothesis rests upon the assumption that children with learning disabilities are somehow selected from the mass of juveniles who commit delinquent acts and differentially processed through the criminal justice system.

Criminologists holding to one of these three views note the possibility of intervention at an early age. It may be true, however, that such intervention will not be accomplished without

71. McCall, *Intelligence Quotient Pattern Over Age: Comparisons Among Siblings and Parent-Child Pairs*, 170 SCI. 644 (1970).

72. I. KEILTZ, M. SAKS & P. BRODER, *THE EVALUATION OF LEARNING DISABILITIES/JUVENILE DELINQUENCY REMEDIATION PROGRAM* (1979).

73. Sawici & Schaeffer, *An Affirmative Approach to the LD/JD Link*, 30 JUV. & FAM. COURT J. 11 (1979). In the Sawici & Schaeffer study, a random sample of 125 delinquents were selected from the St. Louis County Juvenile Court. Of this group, seven percent were not learning disabled, sixteen percent were mentally retarded, seventy-seven percent were learning disabled (forty-six percent mildly and thirty-one percent severely learning disabled). A further classification was made by number of offenses and severity of offense history. The offense history revealed a relationship between degree of learning disability and number of offenses: the more severe the learning disability, the more the offenses. There also was a link between the severity of the disability and the severity of offenses: the mildly learning disabled youths showed a preponderance of referrals for the less serious crimes. See also 39, *supra*; Berman, *supra* note 39; Bashari, *supra* note 36; Critchley, *supra* note 36; Ishihar & Yoshia, *supra* note 36.

74. I. KEILTZ, M. SAKS & P. BRODER, *supra* note 64; C. MURRAY, *supra* note 35.

mandatory legislation.⁷⁵ It is important that the etiology of learning disorders should be given top priority in future research.

III. EDUCATIONAL PROGRAMS—HOW TO TREAT

A number of possible educational programs have been explored. Some programs dealing with early environmental stimulation have not been aimed specifically at a delinquent population, but are nonetheless of interest as they may apply to such a population. Other approaches have been used successfully with delinquents. Before examining these programs, it would be useful to discuss the current status of programs in the traditional training schools.

A. Academic Remediation for Incarcerated Delinquents

Training schools often attempt rehabilitation with programs that have included psychological counseling, recreational opportunities, vocational instruction, academic training, solitary confinement, and deprivation of privileges.⁷⁶ Until recently, academic programs have been hampered by the lack of suitable reading materials.⁷⁷ The schools were often the recipients of old, cast-off readers about "Dick and Jane." Some of the newer materials, however, include high-interest, "low-level" pamphlets on such topics as how to take a bus, how to fill out a job application, and how bats fly in the dark.⁷⁸

Unfortunately, few schools have teachers specially educated to teach delinquents.⁷⁹ In addition, the milieu of the school itself may be counter-productive in this regard. For example, the youth may have been shaken down by security the night before or have received bad news from home. Thus, the youth are often unable to concentrate on achieving literacy because of the daily turmoil within the school.

As noted,⁸⁰ juveniles entering detention centers often have high rates of academic failure. Thus, the education available there

75. Poremba, *Learning Disabilities, Youth and Delinquency: Programs for Intervention*, in 3 PROGRESS IN LEARNING DISABILITIES 123 (1975).

76. Pollack, *supra* note 31.

77. *Id.*

78. *Id.*

79. *Id.*

80. See text accompanying notes 30-35 *supra*.

may come too late in life to offset the boy's previous failures.⁸¹ It seems only logical that academic remediation should be initiated much earlier in a juvenile delinquent's "career," and incarceration avoided. Such remediation could come from early programs of environmental stimulation.

B. Environmental Stimulation

As discussed earlier,⁸² achieved intelligence is derived not only from genetic predisposition, but from environmental factors as well. A number of studies support the importance of early environmental stimulation. One such study was conducted with infants of a group of Black women in Harlem whose measured IQs did not exceed seventy-five.⁸³ The twenty infants in the experimental group were given massive amounts of early stimulation in the form of adult talking, holding, playing, and exposure to toys in a well-staffed nursery school. As the infants matured, the program included reading, mathematics, and problem solving. The children were treated until age five. At five-and-a-half years of age, the average IQ for this experimental group was 124, well above average. In contrast, the children in the control group who did not receive the special treatment had IQs averaging 94 at the same age.

Another interesting study focused on the effects of transferring orphaned infants to an institution for the mentally retarded where they were assigned to surrogate mothers who were themselves mentally retarded.⁸⁴ Toys were provided, and the "mothers" played with the children and showered them with attention and affection. Another group of orphans, which remained

81. See notes 107-108 *infra* and accompanying text. It is often difficult to separate the problems of juveniles and those of adult offenders, since so many juveniles recidivate into their adult years. Just as there are academic remediation programs for juveniles, there are also programs for adults.

Through the Adult Education Act of 1966, Pub. L. 89-750, Title III, 80 Stat. 1191, 1216, (codified as amended at 23 U.S.C. §§ 1201-1213 (1976)), some incarcerated adults are receiving academic remediation. The Act defined as its target "those adults who by virtue of their deficiencies in communication, computation or social relationship skills are substantially impaired in their capability of getting or retaining employment commensurate with their real ability." The skills required are those which enable one to understand newspapers, driver-instruction manuals, job instruction, job applications, checkbooks, and tax returns. The Bureau of Prisons issued a policy statement in 1972 that advocated as a goal that all inmates with the need should achieve a minimum of sixth-grade level prior to release. This goal, however, has not been achieved. On April 30, 1979, there were 20,983 inmates in federal prisons (not state prisons or jails). Of this number, 4,500 were functionally illiterate, but only 1,759 were enrolled in basic education programs. Pollack, *supra* note 28.

82. See text accompanying notes 67-71 *supra*.

83. HEBER, *supra* note 70.

84. Skeels & Dye, *supra* note 70.

at the orphanage, constituted a convenient control group. These infants were given the standard care provided by the orphanage. The two groups of children were studied through early adulthood. The children raised by the mentally retarded "mothers," in general, developed normal IQs, graduated from high school, married, held jobs, and raised normal children. In contrast, the "control" group, on the average, did not develop normal IQs, did not go beyond the third grade in school, did not marry, and were unable to support themselves through work.

On the basis of such research findings, Head Start programs were established in the 1960s,⁸⁵ with aspirations of enabling youngsters of low socioeconomic status to achieve in school. Legislators and program designers felt that academic failure and inadequate intellectual functioning were caused by environmental deficits.⁸⁶

Several different types of programs were developed to meet this challenge.⁸⁷ Some concentrated on building motivation and creativity. Many focused on verbal conceptualization and language skills. Some were structured, others permissive. Unfortunately, these efforts did not uniformly increase cognitive ability and school achievement. In addition, initial gains in IQ were often lost by the second grade. Some hope still remains, however, that the few programs which concentrate on teaching the mothers how to interact with and stimulate their children will continue to show promising results.⁸⁸

C. Remediation for Delinquent and Predelinquent Children

A number of programs have shown promise in ameliorating the educational problems of delinquent and conduct disordered children. Prime examples of these include the Independence High school program, behavior modification programs, and the use of paraprofessionals.

85. Economic Opportunity Act of 1964, Pub. L. 88-452, 78 Stat. 508, (codified as amended at 42 U.S.C. § 2701 (1976)).

86. H. BEE, *SOCIAL ISSUES IN DEVELOPMENTAL PSYCHOLOGY* (2d ed. 1978).

87. *Id.*

88. Levenstein, *Cognitive Growth in Preschoolers Through Verbal Interaction With Mothers*, 40 AM. J. ORTHOPSYCHIATRY 426 (1970); Levenstein & Sunley, *Stimulation of Verbal Interaction Between Disadvantaged Mothers and Children*, 38 AM. J. ORTHOPSYCHIATRY 116 (1968).

1. Independence High School Program⁸⁹

Independence High School is an exemplary "street school" in Newark, New Jersey. It was established for school dropouts and has had a substantial degree of success. Under this program, each student takes basic courses in math, English and social studies. There are electives in street law, job interviewing, music, and drama. The students meet once a week with one of the school's three social workers to discuss outside problems. Once a week there are field trips to museums, libraries, movies and other alternative schools. The teachers "really care" about the students and "treat them like human beings."

The school offers jobs to the teenagers as well as classes. The teenagers generally have approximately eighty-five job choices, ranging from hospital aides to repair work. The fact that the school contributes \$30 a week toward wages has made finding employers for student trainees much easier. Such work can prove to be an invaluable experience for the youngsters. Through this experience, they can learn to deal with people more effectively and can gain a feeling of usefulness. Moreover, they are given the opportunity to earn money.

By the end of 1977, the school had fifty-seven graduates of whom over half had entered college, with nearly all of those remaining going on to receive technical training. Only about fifteen percent of the graduates had been rearrested, a figure far below that of comparable groups of delinquents.⁹⁰ The cost per student of \$4,200 per year was far less expensive than any type of rehabilitation program for the incarcerated. Unfortunately, however, funding requirements forced the school to change its format by opening its doors to status offenders, a move which altered the voluntary nature of the program by requiring some individuals to participate. This change in nature significantly impaired the effectiveness of what had been a very humane and cost-effective alternative to incarceration.

2. Behavior Modification

Numerous experiments using behavior modification⁹¹ have

89. Krajick, *Independence High: A School for Delinquents*, III CORRECTIONS MAGAZINE, December, 1977, at 45.

90. *Id.*

91. Behavior modification techniques are based upon learning principles, more specifically operant conditioning, *i.e.*, the "rat in the Skinner Box." In essence, favorable behavior is rewarded, whereas unfavorable behavior results in withdrawal of privileges or withdrawal of attention. Scientific use of punishment such as "time out" (being sent to a place where no reinforcement is available) may also be used. Some key elements of behavior modification include: (a) Exact

demonstrated their efficacy in various settings with conduct disordered children.⁹² These behavioral programs can be presented in the form of contracts between the child and the teacher, the child and the parent(s), or between all three parties. The teacher can serve as a source of ideas on how the parents can manage their child's behavior.⁹³

Many studies have been conducted to improve reading skills. For example, one four-year program enabled learning disabled children with behavioral problems to perform above the national norm on the Scholastic Aptitude language exam and on the Gates-MacGinitie Vocabulary and Gates-MacGinitie Comprehension tests.⁹⁴ The children greatly improved in arithmetic skills as well. In another study,⁹⁵ behavior modification was used on two

specification of the undesirable behavior, such as the location and amount of some behavior such as fighting. Abstract concepts such as "poor attitude" are avoided in favor of clearly stated, objective terms. (b) Observance of the behavior before any treatment is given, during the treatment, and after the treatment. (c) Planned intervention including tangible rewards such as candy and less tangible rewards such as praise, which are made dependent upon the child's performance of the desired behavior. (e) Ignoring (extinction) of undesirable behavior or punishment in the form of withdrawn privileges or "time out." Contingency contracting is especially useful in that all the parties involved, such as the child, the parent(s), and the teacher, write up an agreement specifying what changes are to be made and what the pay-offs will be. See R. THARP & R. WETZEL, *BEHAVIOR MODIFICATION IN THE NATURAL ENVIRONMENT* (1969). See also Anderson & Whitman, *The Control of Behavior Through Law: Theory and Practice*, 47 NOTRE DAME LAW. 815, 817-24 (1972); Stuart & Lott, *Behavioral Contracting with Delinquents: A Cautionary Note*, 3 J. BEHAVIOR THERAPY & EXPERIMENTAL PSYCH. 161 (1972).

92. J. STRATTON & H. TERRY, *PREVENTION OF DELINQUENCY PROBLEMS AND PROGRAMS* (1968); *BEHAVIOR THERAPY WITH DELINQUENTS* (1973); Alexander & Parsons, *Short-Term Behavioral Intervention with Delinquent Families: Impact on Family Process and Recidivism*, 81 J. ABNORMAL PSYCH. 219 (1973); Bailey, Wolf & Phillips, *Home-Based Reinforcement and the Modification of Pre-delinquents' Classroom Behavior*, 3 J. APPLIED BEHAVIOR ANALYSIS 223 (1970); Cohen, *Programming Alternatives to Punishment: The Design of Competence Through Consequences*, in SYMPOSIUM ON BEHAVIOR MODIFICATION, UNIVERSITY OF VERACRUZ, 1971, *BEHAVIOR MODIFICATION: ISSUES AND EXTENSIONS* 63 (1972); Reid & Hendricks, *Preliminary Analysis of the Effectiveness of Direct Home Intervention for the Treatment of Predelinquent Boys Who Steal*, BANFF INT'L. CONF. ON BEHAV. MOD. 1972, in *BEHAVIOR CHANGE: METHODOLOGY, CONCEPTS AND PRACTICE* (1973); Schwitzgebel & Kolb, *Inducing Behavior Change in Adolescent Delinquents*, 1 BEHAVIOR RESEARCH & THERAPY 297 (1964); Stephens, *Using Reinforcement and Social Modeling with Delinquent Youth*, 43 REV. EDUC. RESEARCH 323 (1973); STUART, *Behavioral Contracting Within the Families of Delinquents*, 2 J. BEHAVIOR THERAPY & EXPERIMENTAL PSYCH. 1 (1971).

93. W. GARDNER, *CHILDREN WITH LEARNING AND BEHAVIOR PROBLEMS: A BEHAVIOR MANAGEMENT APPROACH* (2d ed. 1978).

94. COHEN, *supra* note 22.

95. Bednar, Zelhart, Greathouse & Weinberg, *Operant Conditioning Principles*

groups of delinquents, one of which received monetary tokens while the other did not. Although both groups improved significantly in their reading skills, the reinforced group was superior. The delinquents' behavior improved as well. In a particularly dramatic illustration, a problem child, who in eight years of elementary education had failed to attain a reading level above the second grade, was taught to read well enough to pass his classes in just forty hours at a cost of \$20.31.⁹⁶ Another study revealed rapid improvement, equal to one year of reading progress, after only twenty-four fifty-minute sessions.⁹⁷

In addition to improved academic achievement, behavior modification programs have shown conclusively that problem behavior and problem attitudes can be modified as well. One group of disruptive nine- and ten-year-olds were trained to correctly evaluate and control their behavior.⁹⁸ This turnabout was managed by a combination of token rewards and teacher praise in an after-school program. Eventually, only praise was needed to maintain behavioral control. In another study,⁹⁹ teachers were asked to select students exhibiting severe behavioral problems. Before the experiment, the selected students were disruptive seventy-two percent of the time. After the behavioral intervention, the students were disruptive only 19.5 percent of the time. Other programs provide supportive evidence for the effectiveness of these behavioral procedures.¹⁰⁰ Programs using behavior modification to reduce school dropout rates have also been most effective.¹⁰¹

3. The Use of Paraprofessionals

The use of paraprofessional volunteers has proven to be of

in the Treatment of Learning and Behavior Problems with Delinquent Boys, 17 J. COUNSELING PSYCH. 492 (1970).

96. Staats & Butterfield, *Treatment of Nonreading in a Culturally Deprived Delinquent: An Application of Reinforcement Principles*, 36 CHILD DEVELOPMENT 925 (1965).

97. Gormly & Nittoli, *Rapid Improvement of Reading Skills in Juvenile Delinquents*, 40 J. EXPERIMENTAL EDUC. 45 (Winter 1971).

98. Drabman, Spitalnik & O'Leary, *Teaching Self-Control to Disruptive Children*, 82 J. ABNORMAL PSYCH. 10 (1973).

99. Becker, *Some Effects of Direct Instruction Methods in Teaching Disadvantaged Children in Project Follow Through*, in INTERNATIONAL SYMPOSIUM ON BEHAVIOR MODIFICATION, 1ST, MINNEAPOLIS, 1972, APPLICATIONS OF BEHAVIOR MODIFICATION 139 (1975).

100. E.g., Eitzen, *The Effects of Behavior Modification on Attitudes of Delinquents*, 13 BEHAVIOR RESEARCH & THERAPY 295 (1975); Kifer, Lewis, Green & Phillips, *Training Predelinquent Youths and Their Parents to Negotiate Conflict Situations*, 7 J. APPLIED BEHAVIOR ANALYSIS 357 (1974).

101. C. MATTHEWS & J. ROAN, A CURRICULUM DEMONSTRATION PROGRAM FOR DROPOUT-PRONE STUDENTS: DELINQUENCY STUDY AND YOUTH DEVELOPMENT PROJECT (1966).

value, both on its own merits and as an adjunct to other programs. Logic dictates that if conduct-disordered children suffer from family disruption and inadequate parental supervision, providing surrogate parents should help alleviate these problems.

The California Youth Authority, for example, employed the Foster Grandparent Service to assist its wards both in and out of institutions.¹⁰² In another interesting experiment, college students served as surrogate parents or "big brothers" for juveniles who were contemplating dropping out of school.¹⁰³ The college students spent six to eight hours a week with the juveniles and used either the behavior contracting or child advocacy methods in an effort to keep the students in school. The program was quite effective.

An evaluation has been made of over 250 reports and monographs focused on programs for the utilization of volunteers.¹⁰⁴ Overall, the volunteers were found to be at least as effective in accomplishing their objectives (e.g., reducing recidivism, improving self-concept) as formal methods of rehabilitating offenders.

IV. THE NEED FOR TREATMENT—JUSTIFICATION FOR INTERVENTION

In earlier sections of this article, the difficulties of identifying predelinquent children have been raised.¹⁰⁵ A number of possible governmental programs have been discussed,¹⁰⁶ but the present inclination of the populace favors limiting government spending. Despite these potential difficulties, strong arguments support early identification and education for conduct disordered children. First, delinquency is widespread and is a substantial component of all crime in this country. Social and humanitarian reasons, as well as cost-benefit analyses, indicate the importance of treating predelinquent children, and thereby reducing the incidence of both juvenile and adult crime. Finally, there is legal support, both constitutional and statutory, for the right of predelinquent chil-

102. West, *supra* note 21.

103. U.S. NATIONAL INSTITUTE OF LAW ENFORCEMENT & CRIMINAL JUSTICE, AN EXEMPLARY PROJECT: OUT OF THE IVORY TOWER: A UNIVERSITY'S APPROACH TO DELINQUENCY BY ILLINOIS UNIVERSITY (1976).

104. Scioli & Cook, *How Effective Are Volunteers? Public Participation in the Criminal Justice System*, 22 CRIME & DELINQUENCY 192 (1976).

105. See text accompanying notes 42-60 *supra*.

106. See text accompanying notes 82-104 *supra*.

dren to receive many of the educational opportunities proposed within this article.

A. *The Prevalence of Delinquency*

It is difficult to discuss the prevalence of delinquency without noting the prevalence of adult crime, since the youthful offender is likely to recidivate as an adult. Recidivism rates for juveniles are substantial.¹⁰⁷ Furthermore, it has been found that the age of first conviction is a strong predictor of adult recidivism.¹⁰⁸ It is clear, therefore, that considerable numbers of juvenile offenders become adult offenders, and that any impact on juvenile delinquency will ultimately also impact on adult crime.

Although available data cannot be taken as precise,¹⁰⁹ it is clear that crime in the United States is a problem of great magnitude. In 1975, according to the FBI, there were 11,256,566 crimes committed and 9,273,600 arrests.¹¹⁰ These figures do not include unreported crimes.¹¹¹

Although authorities do not fully agree on the prevalence and extent of juvenile crime, it is clearly substantial.¹¹² In Chicago, one-third of all murders in 1976 were attributed to persons under 20.¹¹³ FBI Uniform Crime Reports show that the peak age for

107. West, *supra* note 21.

108. Carney, *Predicting Recidivism in a Medium Security Correctional Institution*, 58 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 338 (1967). See generally Canzer & Sarason, *Variables Associated with Recidivism Among Juvenile Delinquents*, 40 J. CONSULTING & CLINICAL PSYCH. 1 (1973); Sakata & Litwack, *Recidivism Among Juvenile Parolees*, 29 PSYCH. REP. 351 (1971).

109. A number of problems are encountered when an attempt is made to obtain accurate statistics about such matters as number of crimes committed, number of arrests, and number of recidivists. As with other data, reporting of delinquent acts is inexact. For example, not all crime is reported to the police; and the police are discretionary in their arrests. After arrest, plea-bargaining further alters accounting procedures by reducing or changing the classification of the arrest. In fact, the district attorney may decide not to prosecute at all.

Another problem that surrounds the classification of criminal behaviors among the various jurisdictions is the fact that crimes are not uniformly categorized throughout the United States. Another phenomenon which alters the accuracy of data collection is the artificial raising or lowering of statistics in response to societal pressures upon the police, or by manipulation of the public by the mass media. When crime becomes a political issue, the criminal justice system responds in such a way as to minimize criticism. Finally, the best statistics available are based upon data voluntarily submitted to the FBI. See FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS. For a more careful summary of these problems, see J. SHELLEY, *UNDERSTANDING CRIME* (1979).

110. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR 1975 (1976).

111. H. BARLOW, *INTRODUCTION TO CRIMINOLOGY* (1978).

112. FEDERAL BUREAU OF INVESTIGATION, *supra* note 20.

113. TIME, July 11, 1977, at 18.

property offenses is thirteen to fourteen,¹¹⁴ and the peak age for violent crimes is eighteen.¹¹⁵ Both the Senate Subcommittee to Investigate Juvenile Delinquency¹¹⁶ and the FBI Uniform Crime Reports¹¹⁷ found that persons between the ages of ten and seventeen are responsible for forty to fifty percent of crimes reported, although this age group comprises only one-tenth of the population.

The total number of arrests of juveniles under eighteen years of age in 1977 was 3,466,159.¹¹⁸ The average number of juveniles incarcerated in public institutions on a single day is estimated to be over 45,900.¹¹⁹ Another 67,045 juveniles were incarcerated in private institutions in 1977. These figures do not include the growing, but unknown number of juveniles imprisoned in adult facilities; the effects of processing older juveniles through the adult courts is not known at this time.¹²⁰

Despite these apparently large figures, unrecorded delinquency is extremely high. Over eighty-three percent of polled juveniles admit to having committed one or more delinquent acts.¹²¹ When acts of delinquency are compiled from anonymous questionnaires, children of all races and classes appear to have committed about the same amount of crime.¹²² In summary, then, it is apparent that juveniles are committing a disproportionate share of the crimes committed.

B. Social and Humanitarian Goals

The social and humanitarian considerations for intervening in the processes which bring about delinquency are countless. The social costs of crime are incalculable. No one can put a price tag

114. FEDERAL BUREAU OF INVESTIGATION, *supra* note 20.

115. *Id.*

116. *See* TIME, July 11, 1977, at 18.

117. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR 1977 (1978).

118. *Id.*

119. NATIONAL CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, U.S. DEPT. OF JUSTICE, PUB. NO. SD-JD-5B, CHILDREN IN CUSTODY: ADVANCE REPORT ON THE 1977 CENSUS OF PRIVATE JUVENILE FACILITIES (1979).

120. Wilson, *The Long-Term Trend is Down*, IV CORRECTIONS MAGAZINE, September, 1978, at 3; *Is New York's Tough Juvenile Law Working?*, 10 CRIM. JUST. NEWSLETTER, November, 1979, at 4.

121. Williams & Gold, *From Delinquent Behavior to Official Delinquency*, 20 SOC. PROB. 209 (1972); *see also* note 12 *supra*, at 213.

122. *Id.*

on the physical and mental anguish suffered by a victim of a violent crime. Furthermore, the victim rarely receives the psychological and financial restitution he may need. Governmental victim assistance programs are few in number, and for the most part, are in highly experimental stages.¹²³

The offender, too, pays a heavy price in human suffering. For example, the training school to which he is sent for correction is likely to have only a negative impact upon him.¹²⁴ Ordinarily, while incarcerated, the delinquent will acquire a variety of new criminal skills. Unfortunately, it is a truism that training schools too often are actually "schools of crime." Although training schools usually offer some rehabilitative programs, they seem unable to offset the juvenile's life experiences. It is inevitable that a delinquent subculture will emerge in the training school to challenge the authorities. Furthermore, there is likely to be continual strife between custody personnel and treatment personnel.¹²⁵ Some adjectives one reads in describing such detention facilities are: "disaster area, paralysis, depressing, slovenly, apathetic, and demoralizing."¹²⁶ One researcher surveying the Warwick School for Boys in New York, concluded that the best that could be said about the institution was that a few boys escaped contamination.¹²⁷

Training schools which were able to selectively choose their inmates did not uniformly have damaging affects on juveniles. Even in the best schools, however, the recidivism rate is about thirty percent.¹²⁸ Recidivism rates in the progressive California Youth Authority were fifty percent in 1977.¹²⁹ Efforts made to reform incarcerated juveniles probably come too late in life to effect change. It is most likely that early childhood intervention is required to modify behavior.

A number of criminologists have suggested that juveniles could be treated less expensively, more humanely, and more effectively in community-based programs.¹³⁰ One such project which was designated as an "exemplary project" by the National Institute of

123. Blackmore, *Paying the Price of Crime: To What Extent Should the State Be Obligated to Compensate Victims of Violence*, V CORRECTIONS MAGAZINE, June, 1979, at 36; Newton, *Aid to the Victim, Part I: Compensation & Restitution*, 8 CRIME & DELINQUENCY LIT. 368 (1976); Newton, *Aid to the Victim, Part 2: Victim Aid Programs*, 8 CRIME & DELINQUENCY LIT. 508 (1975).

124. M. HASKELL & L. YABLONSKY, *supra* note 1.

125. *Id.*

126. SUBCOMMITTEE ON YOUTH VIOLENCE, NEW YORK STATE SENATE SOCIAL SERVICES COMMITTEE, NO PLACE TO KEEP A KID (1978).

127. M. HASKELL & L. YABLONSKY, *supra* note 1.

128. *Id.*

129. *Id.*

130. West, *supra* note 21.

Law Enforcement and Criminal Justice was New Pride in Denver, Colorado.¹³¹ This project singled out juvenile probationers with a record of several offenses and social adjustment problems for a year of intensive, individualized treatment. It provided an array of services including alternative schooling, correction of learning disabilities, vocational training, job placement, counseling, recreation and cultural activities. Recidivism data of this project when compared to expected rates showed a significant reduction.

For the most part, however, diversion programs have not reduced recidivism,¹³² although some have been less costly than incarceration.¹³³ One possible negative aspect of such pretrial programs is that they may deprive the juvenile of due process.¹³⁴

Given the high recidivism of juvenile delinquents followed by the equally high recidivism of adults, the lack of successful rehabilitation is glaringly apparent. On January 1, 1979, there were 303,103 adult offenders in federal and state prisons (jails not included).¹³⁵ Although restoration of adult offenders in the form of psychological assistance and education is attempted, it may come too late in a man's lifetime to alter his set behavior patterns.

On the whole, furthermore, prisons, detention centers and jails in the United States present deplorable conditions. Criminals may be subjected to months of idleness, confined to an overcrowded cell which is housed in an archaic structure. Approximately twenty-one state prison systems and county jails are under court order to reform because the conditions within have been held to constitute "cruel and unusual punishment" under the eighth amendment.¹³⁶

Other ethical issues revolve around the treatment of juvenile offenders by the criminal justice system, and whether adjudicating youths as delinquent (and incarcerating them) is useful. A

131. Empey, *Juvenile Justice Reform: Diversion, Due Process, and Deinstitutionalization*, in PRISONERS IN AMERICA 13 (1973).

132. C. BLEY, D. MCGILLIS & C. BRYANT, AN EXEMPLARY PROJECT: PROJECT NEW PRIDE, DENVER, COLORADO (1977).

133. Gibbons & Blake, *Evaluating the Impact of Juvenile Diversion Programs*, 22 CRIME & DELINQUENCY 411 (1976).

134. Zaffran, *First Offenders: A Deferred Prosecution Program*, JUVENILE JUST., August, 1967, at 41.

135. Krajick, *U.S. Prison Population Now at 303,103*, V CORRECTIONS MAGAZINE, June, 1979, at 21.

136. Gettinger, *Cruel and Unusual Prisons*, III CORRECTIONS MAGAZINE, December, 1977, at 3. See, e.g., *Holt v. Sarver*, 300 F. Supp. 825 (E.D. Ark. 1969); *Gates v. Collier*, 349 F. Supp. 881 (N.D. Miss. 1972).

number of scholars have found fault with the whole concept of the juvenile court. The most common criticism is that the juvenile gets the "worst of two worlds."¹³⁷ His juvenile status makes him vulnerable to arrest for behaviors such as swearing or smoking, status offenses which do not pertain to adults. In addition, as the juvenile court evolved, it attempted to informally process juveniles in an effort to "do what was best for the youths." Unfortunately, this effort often resulted in the deprivation of the juveniles right to due process of law.¹³⁸

Antisocial behaviors of juveniles are not even considered "criminal" in some countries. Denmark's citizens, for example, consider juvenile delinquency a *social* problem rather than a *legal* problem.¹³⁹ There are no juvenile courts in Denmark. No child under fifteen can be institutionalized. Instead, juveniles who violate the law are referred to social agencies which usually are staffed by paraprofessional adult citizens who attempt to aid the juvenile with his problems. Even when a juvenile between the ages of fifteen and eighteen is convicted of a crime, he is rarely incarcerated. If he is, the sentence is often six months or less.

Not only do victims and offenders suffer, but also society as a whole. Many people are afraid to leave their homes at night. Some elderly people in ghetto neighborhoods are afraid to venture outside even during the day. Crime is rated as one of this country's most serious problems, and it often becomes a political issue when the citizenry call for "law and order." Unfortunately, society as a whole has little accurate information on criminology and penology, and as a result experiences a great deal of frustration and anger. In addition, the mass media tend to sensationalize certain types of crimes in such a way that most people receive a very distorted picture of crime and criminals.

C. Cost: The Bottom Line

For those who are concerned about "mollycoddling" criminals and the expense of additional social programs, the most telling argument may be cost. It is impossible to assess the monetary cost of crime. The costs of property crimes such as shoplifting, robbery, embezzlement and fraud are paid by all through higher costs of goods and services or in higher insurance premiums. Similarly, the costs of violent crimes are paid by society in gen-

137. Kosimar, *Putting Johnny in Jail*, JURIS DOCTOR, June/July 1978, at 16; Langley, *The Juvenile Court: The Making of a Delinquent*, 7 L. & SOC'Y REV. 273 (1972); Rubin, *Retaining the Juvenile Court*, 25 CRIME & DELINQUENCY 281 (1979).

138. *In re Gault*, 387 U.S. 1 (1967). See also *In re Winship*, 397 U.S. 358, 366-68 (1970).

139. Serrill, *Profile/Denmark*, III CORRECTIONS MAGAZINE, March, 1977, at 23.

eral through higher insurance rates or welfare payments for some victims.

In regard to the criminal justice system, even a nominal arrest, such as one for drunkenness, costs around \$100.¹⁴⁰ Added to the cost of arrest is processing through the courts and the extremely high costs of incarceration. Other costs are incurred by such governmental agencies as probation and parole services. Even a case ending in execution, without probation or parole services or long-term incarceration, may cost several hundred thousand dollars, as the case is appealed to higher courts.¹⁴¹

Furthermore, current practices in dealing with delinquency are not cost-effective. Not only are training schools often unsuccessful in rehabilitating youth, they frequently exacerbate behavioral problems.¹⁴² Many, if not most, delinquents mature into habitual career criminals, and there are no known methods of rehabilitating them. In addition, treatment is expensive. The average cost of incarcerating a juvenile offender in the United States is over \$10,000 per year.¹⁴³ In California, it cost \$20,000 annually for the California Youth Authority to treat a delinquent in 1977.¹⁴⁴ In the same year New York was spending \$15,000 a year on every child in an open institution, and for a small group of delinquents sent to experimental psychiatric programs, the cost was \$50,000 a year.¹⁴⁵ Even probation is costly, averaging about \$5,000 per year.¹⁴⁶ One cannot help but wonder whether a smaller amount of money spent on the youth at an earlier age might prevent the necessity of these large expenditures.

The high cost of incarceration might be acceptable to some were it effective in keeping dangerous persons out of the community and thereby reducing the crime rate. Unfortunately, the level of imprisonment necessary to reduce the crime rate is staggering. The Rand Report disclosed that it would be necessary to give every felon a sentence of at least one year, and to increase the

140. AUDITOR-CONTROLLER LOS ANGELES COUNTY, FISCAL YEAR 1978-79. Though the costs of an arrest *per se* are difficult to compute, booking costs are about \$55, and maintenance is over \$20 per day.

141. S. REID, CRIME AND CRIMINOLOGY 566 (2d ed. 1979).

142. M. HASKELL & L. YABLONSKY, *supra* note 1.

143. U.S. NATIONAL CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE (1977).

144. West, *supra* note 21.

145. *The Youth Crime Plague*, TIME, July 11, 1977, at 18.

146. Blackmore, *supra* note 123.

number of persons incarcerated by fifty percent, in order to reduce the crime rate by only fifteen percent.¹⁴⁷ To reduce the crime rate by thirty-five percent would require that persons convicted of felonies receive a three-year sentence, and that the incarceration rate be increased by a staggering 225%.¹⁴⁸ It is unclear whether the citizenry would be willing to accept the massive financial burden that such measures would entail. Once again it appears likely that prevention of delinquency would be the most cost-effective route that could be taken in trying to curb criminalistic behavior. Surely a new approach is an urgent necessity.

D. Constitutional and Statutory Support

An appropriate education for handicapped children, including those designated as learning disabled, is required by federal statute¹⁴⁹ and by the Constitution,¹⁵⁰ if a state offers a free public education to its non-handicapped children.¹⁵¹ A similar Constitutional reading should also apply to conduct disordered children. Statutory authority should be expanded to include such children.

Education is regarded as extremely important in this country and throughout the world. In *Brown v. Board of Education*,¹⁵² Chief Justice Warren said:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.¹⁵³

147. RAND REPORT, *supra* note 2. See also Clarke, *Getting 'em Out of Circulation: Does Incarceration of Juvenile Offenders Reduce Crime?*, 65 CRIM. L. & CRIMINOLOGY 528 (1974).

148. RAND REPORT, *supra* note 2.

149. See text accompanying notes 182-99 *infra*.

150. See text accompanying notes 153-77 *infra*.

151. Levinson, *The Right to a Minimally Adequate Education for Learning Disabled Children*, 12 VAL. U. L. REV. 253 (1978).

152. 347 U.S. 483 (1954).

153. *Id.* at 493. In a similar vein, the United Nations Declaration of the Child states:

Principle 5. The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 7. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him, on a

Despite the undeniable importance of education, the Supreme Court held in *San Antonio Independent School Dist. v. Rodriguez*¹⁵⁴ that there is no constitutional right to a particular level of education. The plaintiffs in *Rodriguez* attacked the constitutionality of Texas' school financing scheme, alleging that it discriminated against students from poorer school districts. The problem of whether there is a right to the equal opportunity to obtain an adequate education was not at issue in *Rodriguez*, since the parties agreed that all children in Texas were already receiving an adequate education pursuant to Texas' Minimum Foundation Program of Education.¹⁵⁵ Rather, the question presented was whether the state had the duty to provide the equal opportunity to obtain some level of education over and above an adequate education.

The Supreme Court in the *Brown* decision stated that "an opportunity [for an education], where the state has undertaken to provide it, is a right which must be made available to all on equal terms."¹⁵⁶ The decision had been treated as having established the right to equal educational opportunity not only for blacks but for all disadvantaged children.¹⁵⁷ *Rodriguez* does not wholly retract *Brown's* promise of equal educational opportunity. The Court held that there is no fundamental right to equal per pupil expenditures, but it did not decide the question of whether the opportunity to acquire a minimally adequate education is so fundamental as to warrant imposition of the strict scrutiny standard.¹⁵⁸

Although *Rodriguez* rejects education as a "fundamental interest," its definition of the "traditional indicia of suspectness" seems tailor-made to qualify the handicapped as a suspect class. Thus, the North Dakota Supreme Court, in granting relief to a handicapped child, noted that deprivation of a meaningful education "would be just the sort of denial of equal protection which

basis of equal opportunity, to develop his abilities, his individual judgment and his sense of moral and social responsibility, and to become a useful member of society.

G.A. Res. 1386 (XIV), 14 U.N. GAOR. Supp. (No. 16) 19-20, U.N. Doc. A/4354 (1959).

154. 411 U.S. 1 (1973).

155. *Id.* at 24, 37.

156. 347 U.S. at 493 (1954).

157. Weintraub & Abeson, *Appropriate Education for All Handicapped Children: A Growing Issue*, 23 SYRACUSE U.L. REV. 1037 (1972).

158. 411 U.S. at 37.

has been held unconstitutional in cases involving discrimination based on race and illegitimacy."¹⁵⁹

Despite the Supreme Court's refusal to specify education as a fundamental right, subsequent cases have been successful in distinguishing the decision and denying its application to handicapped children asserting lack of opportunity to acquire a *minimally adequate* education.

In *Lau v. Nichols*,¹⁶⁰ a post-*Rodriguez* decision, the Supreme Court suggests that the question of whether a state is providing a minimally adequate educational opportunity must be measured from the viewpoint of the recipient. In that case, non-English speaking Chinese students, who were being taught solely in English, claimed they were being denied a meaningful opportunity to acquire an education, in violation of the Constitution and of section 601 of the Civil Rights Act of 1964.¹⁶¹ Although it did not reach the constitutional issue, the Court recognized that "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."¹⁶² Thus, a child may be *constructively excluded* from an education, and if a child with special needs is admitted into the public school system, he must be given the special help he needs to make the educational experience meaningful.

Some courts have used this concept of constructive exclusion from a minimally adequate education to distinguish *Rodriguez*. In *Frederick L. v. Thomas*,¹⁶³ children with specific learning disabilities claimed the right to a minimally adequate educational opportunity and the equal right to an educational program suited to their needs, since normal and mentally retarded children were being provided with such programs. In denying defendants' motion to dismiss for failure to state a claim, the court noted that *Rodriguez* "left open the possibility that the denial of a *minimally adequate educational* opportunity may entrench upon a fundamental interest if the state has undertaken to provide a free public education,"¹⁶⁴ and that defendants' policies may have to be subjected to strict scrutiny. In a subsequent proceeding, the court reached the merits of the case and held that the district had

159. *In re G.H.*, 218 N.W.2d 441, 447 (N.D. 1974).

160. 414 U.S. 563 (1974).

161. 42 U.S.C. § 2000(d) (1976).

162. 414 U.S. at 566.

163. 408 F. Supp. 832 (E.D. Pa. 1976).

164. *Id.* at 835 (emphasis added).

failed to meet its obligation under state law.¹⁶⁵ The Third Circuit affirmed this landmark decision for learning disabled children, rejecting defendants' argument that the screening relief was too broad.¹⁶⁶

In *Fialkowski v. Shapp*,¹⁶⁷ the court distinguished *Rodriguez* on three grounds: (1) it was "not inconsistent with *Rodriguez* to hold that there exists a constitutional right to a certain minimum level of education as opposed to a constitutional right to a particular level of education;"¹⁶⁸ (2) retarded children may be a suspect class and "depriving retarded children of all educational benefits would appear to warrant greater judicial scrutiny than that applied in *Rodriguez*;"¹⁶⁹ and (3) *Rodriguez* dealt only with equal educational opportunity measured in terms of equal financial expenditures, which was not the situation in the case before the court.¹⁷⁰

The application of these principles is well illustrated by three leading right-to-education cases. *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* [hereinafter cited as *PARC*],¹⁷¹ and *LeBanks v. Spears*¹⁷² were brought on behalf of all retarded children; *Mills v. Board of Education of the District of Columbia*¹⁷³ was brought on behalf of all children excluded by the public schools for a handicap of any kind including behavioral problems. Although these cases pre-dated the *Rodriguez* decision, the distinctions drawn in such cases as *Fialkowski* and *Frederick L.* indicate their continuing validity.

In each of the three cases the principle was accepted by the court that every child, no matter how severe his retardation or handicap, is "educable" and must be provided for "suitably" by the public school system. *PARC* and *Mills* both found that total

165. *Frederick L. v. Thomas*, 419 F. Supp. 960 (E.D. Pa. 1976).

166. *Frederick L. v. Thomas*, 557 F.2d 373 (3d Cir. 1977).

167. 405 F. Supp. 946 (E.D. Pa. 1976).

168. *Id.* at 958.

169. *Id.* at 958-59.

170. *Id.* at 958.

171. 334 F. Supp. 1257 (E.D. Pa. 1971) (court's interim order approving the original consent agreement of October 7, 1971), and 343 F. Supp. 279 (E.D. Pa. 1972) (final consent agreement and stipulation). For a full discussion of the *PARC* decision, see Comment, *The Handicapped Child Has a Right to an Appropriate Education*, 55 NEB. L. REV. 637, 646-50 (1976), and Kuriloff, True, Kirp & Buss, *Legal Reform and Educational Change: The Pennsylvania Case*, 41 EXCEPTIONAL CHILDREN 35 (1974).

172. 60 F.R.D. 135 (E.D. La. 1973).

173. 348 F. Supp. 866 (D.D.C. 1972).

exclusion of a handicapped child violated the equal protection clauses of the fourteenth and fifth amendments.¹⁷⁴ The three cases thus establish a "zero-reject" position, a policy that handicapped children of any kind, whether physically handicapped, mentally retarded, emotionally disturbed, or minimally brain damaged, should not be excluded from an education, and that all handicapped persons can learn, develop, and benefit from appropriate educational programs.¹⁷⁵

Such an education, furthermore, must be suited to their needs. The *PARC* decree mandated that every mentally retarded child must be placed in a free public program of education "appropriate to his learning capacities."¹⁷⁶ *Mills* required a "publicly supported education" for every child, regardless of the nature or severity of his handicap, which was "consistent with his needs and ability to benefit therefrom."¹⁷⁷ These holdings are strengthened by the *Lau* decision, which held that whether or not a state was providing a minimum adequate education would be measured from the recipient's viewpoint.

Thus, if a state offers a free public education to its normal children, it is constitutionally required to offer a free, appropriate education to all children, suited to their special needs so as to make the education meaningful. Such a result may also be guaranteed by state constitutions.¹⁷⁸ Thus, conduct disordered children have a constitutional right to an adequate education which would be appropriate to their unique needs.

Statutory and case law relating to handicapped children, both at the state and federal levels, may also be helpful for conduct disordered children, though definitions may have to be expanded. In 1971, 899 bills promoting the education of the handicapped were introduced in state legislatures; 237 of these were enacted into law.¹⁷⁹ By 1972, seventy percent of the states had enacted laws requiring educational programs for the handicapped;¹⁸⁰ by 1974, thirty-six right-to-education lawsuits had been filed and

174. *Id.* at 875.

175. See also Burgdorf & Burgdorf, *A History of Unequal Treatment: The Qualifications of Handicapped Persons as a 'Suspect Class' Under the Usual Protection Clause*, 15 SANTA CLARA LAW. 855, 876 (1974-75).

176. 334 F. Supp. at 1266; 343 F. Supp. at 313.

177. See note 173 *supra*, at 878. See also *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973).

178. Several state constitutions contain "free education for all" provisions. *E.g.*, Ind. Const. art. 8, § 1, provides that a public education system must be equally open to all students.

179. Casey, *The Supreme Court and the Suspect Class*, 48 EXCEPTIONAL CHILDREN 119, 121 (1973).

180. Weintraub & Abeson, note 154 *supra*, at 1051.

were pending or concluded in twenty-five states.¹⁸¹ By 1975, approximately thirty-five states had concluded either judicially or statutorily that educational programs for the mentally handicapped are required by law.¹⁸²

Congress has also acted to assure an appropriate education for all handicapped children. Section 504 of the Rehabilitation Act of 1973¹⁸³ provides that otherwise qualified handicapped individuals cannot be discriminated against or be denied the benefits of any program receiving federal financial assistance of any kind on the basis of handicap alone. This section, in essence, keeps check on the states' compliance with federal mandates to provide basic employment and educational opportunities to all persons, regardless of handicap.

Regulations under Section 504 of the Rehabilitation Act¹⁸⁴ in regard to education were substantially based on the decisions in *PARC*, *Mills*, and *LeBanks*. They required that qualified handicapped children, regardless of the nature or severity of their handicap, be provided a free appropriate public education.¹⁸⁵

For Section 504, handicapped persons are defined as "any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."¹⁸⁶ Mental impairments are defined as "any mental or psychological disorder, such as mental illness, and specific learning disabilities."¹⁸⁷

Evaluation procedures must be improved to prevent misclassifications. These include tests and other evaluation materials validated for the specific purpose for which they are to be used.¹⁸⁸ Procedural safeguards must be established so that evaluation and classification decisions can be questioned by parents or guardians.¹⁸⁹

181. Abeson, *Movement and Momentum: Government and the Education of Handicapped Children-II*, 41 EXCEPTIONAL CHILDREN 109, 114 (1974).

182. A list of key cases appears in Comment, *The Handicapped Child Has a Right to an Appropriate Education*, 55 NEB. L. REV. 637, 639 n.5 (1976). A survey of applicable state statutes appears in [1975] U.S. CODE CONG. & AD. NEWS 1444-45.

183. Pub. L. 93-112, 87 Stat. 355 (1976) (codified as amended at 29 U.S.C. § 794).

184. 45 C.F.R. Part 84 (1979).

185. 45 C.F.R. § 84.33(a) (1979).

186. 45 C.F.R. § 84.3(j)(1) (1979).

187. 45 C.F.R. § 84.3(j)(2)(1)(B) (1979).

188. 45 C.F.R. § 84.35 (1979).

189. 45 C.F.R. § 84.36 (1979). See also 20 U.S.C. § 1415 (1978) (Education for All

Though Section 504 generally provides civil rights for handicapped persons, Congress has dealt more specifically with the educational rights of handicapped children. The Education of the Handicapped Act of 1974¹⁹⁰ and the Education for All Handicapped Children Act of 1975 [hereinafter E.A.H.C.A.]¹⁹¹ also relate their provisions to federal funding. The E.A.H.C.A. requires that a free appropriate public education must be available to all handicapped children, ages three to twenty-one, by September 1, 1980, with minor exceptions.¹⁹² The Act requires that special education should meet "the unique needs of a handicapped child"¹⁹³ and that "individualized education programs" should be developed and reviewed for each child.¹⁹⁴

The categories of handicapped persons are defined as "mentally retarded, hard of hearing or deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services."¹⁹⁵ The category of "seriously emotionally disturbed" specifically excludes "children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed."¹⁹⁶

Identification of handicapped children is of particular interest, since difficulties of identification have been discussed above with regard to conduct-disordered children. Section 612(5)(C) of the Act requires states to establish nondiscriminatory testing procedures for use in the evaluation and placement of handicapped children.¹⁹⁷ Like the regulations under Section 504 of the Rehabilitation Act, the E.A.H.C.A. requires that tests be validated for the specific purpose for which they are used, and that "no single procedure is used as the sole criterion for determining an appropri-

Handicapped Children Act); *Children Requiring Special Education: New Federal Requirements*, 11 CLEARINGHOUSE REV. 462 (1977). Although due process procedures have been an important issue in the fight for a minimally adequate education for the handicapped, a separate discussion of these procedures is beyond the intended scope of this article. For more on the case law of due process and the right to minimally adequate education, see Krass, *The Right to Public Education for Handicapped Children: A Primer for the New Advocate*, 1976 U. ILL. L.F. 1016, 1027-33 (1976); Abeson, *A Primer of Due Process: Education Decisions for Exceptional Children*, 42 EXCEPTIONAL CHILDREN 68 (1975); Dimond, *The Constitutional Right to Education: The Quiet Revolution*, 24 HASTINGS L.J. 1087 (1973).

190. Pub. L. 93-380, Title VI, 88 Stat. 576 (1976) (codified at 20 U.S.C. §§ 1401-61).

191. Pub. L. 94-142, 89 Stat. 773 (1976) (codified at 20 U.S.C. §§ 1401-1461).

192. 20 U.S.C. § 1412(2)(B) (1976).

193. 20 U.S.C. § 1401(16) (1976).

194. 20 U.S.C. §§ 1412(4), 1414(a)(5) (1976).

195. 20 U.S.C. § 1401 (1976); 45 C.F.R. § 121a.5(a) (1978).

196. 45 C.F.R. § 121a.5(b)(8)(ii) (1978).

197. See 45 C.F.R. §§ 121a.530-534 (1978).

ate educational program for a child."¹⁹⁸

In testing for the existence of a specific learning disability, an evaluation team must find a "severe discrepancy between achievement and intellectual ability" in at least one of seven areas relating to communication skills and mathematical abilities set forth in the regulation.¹⁹⁹ The team may not identify a child as having a specific learning disability if the severe academic discrepancy is primarily the result of a visual, hearing, or motor handicap, mental retardation, emotional disturbance, or environmental, cultural or economic disadvantage.²⁰⁰

V. SUGGESTIONS FOR FUTURE LEGISLATION

Current practices and priorities in preventing crime and in treating criminal offenders have met with little success. Focusing treatment on the adult offender cannot be justified on the basis of current knowledge, since recidivism rates conclusively demonstrate the failure of the criminal justice system either to prevent crime or to rehabilitate criminals. Future legislation should focus more on crime prevention by concentrating societal effort on conduct-disordered children.

Initially, governmental intervention should provide funding for further research to identify conduct-disordered children. For example, researchers could attempt to assign a predelinquency score to children in an untreated group and determine the accuracy of their predictions. In addition, ways to identify the conduct-disordered child without adversely labeling him could be examined. Furthermore, funding should be provided to train teachers to recognize such children and to make adequate referrals. It seems likely, however, that teachers are all too painfully aware of the child who cannot learn to read and who behaves in an unacceptable manner. On the other hand, teachers probably are not cognizant of the link between learning disabilities, academic failure and delinquency.

It also seems logical to call for laws which recognize conduct-disordered children as constituting a special group of children in much the same way as emotionally handicapped children are cat-

198. 45 C.F.R. § 121a.532(d) (1978).

199. 45 C.F.R. § 121a.541(a)(2) (1978).

200. 45 C.F.R. § 121a.541(b) (1978). *Accord* the regulations defining "specific learning disability," 45 C.F.R. 121a.5(b)(9) (1978).

egorized. If this were done, governmental funding and regulation could make possible a special, "appropriate" education for these children. Such laws would meet both humanitarian and pragmatic requirements.

Until now, the statutory definition of the handicapped child has been limited to easily discernable defects. The regulations under the E.A.H.C.A. described above would specifically exclude some criteria which would help identify conduct disordered children, criteria such as social maladjustment, environmental, cultural and economic disadvantage. By extending the definition of special classes of children entitled to special aids and educational programs, using a variety of factors including these criteria, predelinquent youth could be identified as a handicapped group requiring specialized aids in order to guarantee them access to an appropriate education.

Many conduct-disordered children may already be classified as learning disabled, and hence covered under the E.A.H.C.A. In these cases, the individualized education program should take into account factors other than the disability itself. That is, plans may differ for children with learning disorders only, and for children with learning disorders accompanied by family disruption, economic disadvantage, or other indicators of conduct disorder. Such special tailoring of programs for conduct disordered learning-disabled children should be provided even under the current law.

Educational programs aimed at conduct-disordered children must be developed. Fortunately, attempts to prevent delinquency through academic remediation are on the horizon. The Office of Juvenile Justice and Delinquency Prevention already has provided some guidelines for "alternative education" for delinquents.²⁰¹ Experimentation along these line has also begun, but has not as yet been evaluated.²⁰² These pilot programs, however, have not necessarily focused on behavior modification as a treatment of choice, nor has an effort been made to enlist the services of paraprofessionals. Since behavior modification techniques are demonstrably effective in assisting children to read and to control disruptive behavior, it is essential that this treatment be provided on a larger scale, to include the thousands of children who currently do not have access to such programs. Educational programs must also explore the role of paraprofessionals as surrogate parents.

201. 44 Fed. Reg. 59,297 (1973).

202. See note 64 *supra*, and accompanying text.

VI. CONCLUSION

It has been pointed out that adult crime and juvenile delinquency exact a high psychological and economic toll from offenders, victims, and society. The expense of crime is substantial, both in terms of the losses to the victim and in the costs of rehabilitating or even simply incarcerating offenders. The harmful effects of imprisonment are well-documented, and any type of confinement to an institution is costly. Early intervention programs for predelinquent children would be both cost-effective and humanitarian. On the whole, rationality requires a more creative approach to the problems of crime.

Currently, conduct-disordered children often do not receive the attention they need until their problems have erupted into clashes with law enforcement personnel. Once this has occurred, treatment during incarceration in a training school has little chance of success. It may come too late, be ill-conceived, be poorly implemented, or simply be doomed to failure against the background of incarceration. The only alternative programs currently available to help the child are for the most part experimentally based, such as Independence High School. The end result may be incarceration in an adult prison, where very little, if any, rehabilitation takes place.

Conduct-disordered children have remained untreated largely for lack of widespread recognition of this group as a target for intervention. It has been argued above that a program of identification should be initiated. Such a program should be based on a variety of factors including academic capability. Tests used in this regard should be nondiscriminatory, such as those called for by the E.A.H.C.A.

It has been further argued that conduct-disordered children are constitutionally entitled to an appropriate education suited to their needs. Legislation should be enacted setting up programs effectuating these rights, similar to those which exist for physically and mentally handicapped children.

A number of possible types of predelinquent intervention have been presented. Although infant intervention programs have demonstrated usefulness in developing cognitive abilities and life success, it was not the aim of these studies specifically to prevent delinquency. It could be argued, however, that infant intervention should be employed for a variety of purposes, including preven-

tion of conduct disorders and subsequent delinquency. By forestalling academic failure, it could also be argued that Head Start programs contribute to delinquency prevention.

Behavior modification is among the most promising of intervention techniques for conduct-disordered children. These techniques have been used successfully in a variety of settings, and their cost is minimal. These behavioral methods are based upon well-founded scientific principles which are relatively easy to implement. The possible utilization of paraprofessionals, such as those found in the Foster Grandparent program, has also been suggested.

Although new programs providing special appropriate education for conduct-disordered children may be very costly, the early treatment of such children would be far less expensive and more productive than attempts to curb criminality later in life, and may be the only effective method of reducing crime.