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DISORGANIZED CRIME: LEARNING DISABILITY AND THE CRIMINAL JUSTICE SYSTEM

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OVERVIEW

Between three and six percent of school-aged children are diagnosed with Learning Disability (LD), a specific cognitive disorder which affects the learning of academic and social information despite otherwise normal intellect. Yet, it is widely estimated that 20 to 55% of criminal justice clients qualify as having specific to pervasive Learning Disabilities (Keilitz & Miller, 1980; Larson, 1988; Brier, 1989; Cowardin, 1998). This finding is of great significance to defense attorneys at the trial and sentencing phases of the criminal justice process. It also raises theoretical and practical questions which cannot be ignored by educators or the criminal justice system.

DEFINING LEARNING DISABILITY

Learning Disability affects cognitive systems related to perception, attention, language and the symbolization abilities required to learn to read and/or carry out mathematical calculations in an automatic manner. Importantly, LD is not simply another term for Mental Retardation or Attention Deficit Disorder, although all three are considered to be *learning handicaps*. Neither should LD be confused with emotional disturbance. Persons with LD may function in one or more areas at levels consistent with mental retardation, may have concurrent behavior, conduct or emotional problems, and/or may display hyperactivity or limited attention capabilities. Still, the disorder remains unique in specifying a significant IQ-Achievement discrepancy in academic learning. In other words, the individual with a specific Learning Disability must display intelligence within the "normal range", and certainly above the commonly accepted cutoff for classification as mentally retarded, and one or more academic lags which are "significantly" (at least 1 ½ standard deviations) below this measured ability level. Formal diagnosis should also delineate a possible basis for the condition, e.g., a specific perceptual deficit which interferes with the intake, organization, retrieval and/or expression of academic or social information.

Learning Disability has been considered a school-related problem in that it is first noticed when a child fails to learn academic material and requires school-based remediation to improve functioning. However, it is pertinent to this discussion to point out that LD also affects the learning of social information which is needed for decision-making in nonacademic situations. Thus, it is not surprising that Learning Disabled youth and adults in incarcerated populations represent 3 ½ to 10 times the percent found among school children.

CHARACTERISTICS OF THE LD OFFENDER

The Learning Disability literature posits three hypotheses for the disproportionate number of these clients who fall into the criminal justice system: the School Failure, Differential Treatment and Susceptibility Theories. This paper will focus on the latter, which outlines several interrelated cognitive, language, social and personal characteristics common to LD offenders. It is believed that these differences may be responsible for 1) poor decision-making skills and easy manipulation by peers which lead to involvement in criminal behavior; 2) weak or missing avoidance and detection strategies which result in easy apprehension by authorities; 3) behavior problems which lead to harsher treatment within the justice system; and 4) inability to learn experientially in order to prevent recidivism.

Cognitive and Developmental Lags. The first characteristic which has been linked to criminal involvement and increased recidivism in the LD population is *lower intelligence*. Here, offender populations average a 7 to 9 point IQ deficit despite controls for race, age, gender, and socioeconomic status. This IQ discrepancy mirrors that of the LD population, which, although technically normal, falls at the lower end of this test band. Repeat offenders average a lower IQ than nonrecidivists, which helps to explain the overrepresentation of LD among "third-strike" offenders.

Studies have shown that most Learning Disabled teenagers have not developed cognitively to the same levels as their nondisabled peers. This is most observable during *information processing* tasks requiring an organized sequence of cognitive action which includes intake, organization, retrieval and expression of specific information. Here, normal teens employ mature, language-based strategies on an automatic basis. LD teens tend to function at a two to four year deficit in this regard, displaying inconsistent strategy use if, indeed, they use them at all. This inconsistent pattern of mental organization and performance can persist into adult life for these clients, greatly jeopardizing the possibility that they can keep up with normal peers. Instead, they tend to become overwhelmed with task variables during complex activities. Here, we often see the LD client simply "shutting down" all processing, preferring instead to take direction from others.

Roy and two younger teens dabbled in satanic worship as a means of increasing the popularity of their rock band. Under the influence of drugs, Roy chanced upon these youngsters on the evening they planned their second attempt to murder a female classmate. Skeptical, he accompanied them to a remote area and stood "frozen" as the two implemented their plan. He could neither prevent nor assist with the crime due to stimulus overload. Eventually, on direct instruction from his friends, Roy provided half-hearted and minimal assistance. After several months of extended "processing time", Roy turned himself in to authorities.

Language Immaturity. Much has been written about *language processing* differences in LD clients. Here, they have been characterized as deficient in the use of internal language, the "private speech" needed to mediate one's own actions. This deficiency can affect social awareness, personal organization and self control, all linked to delinquent behavior and criminal apprehension. We have found it typical for our LD clients to employ ineffective nonverbal imagery to make choices and

adaptive decisions once an action is underway. Processing information in this less mature, random manner greatly increases the likelihood of errors of *omission*, where not all information is received, and *commission*, where inaccurate information can result in behavioral confusion.

Language immaturity also affects ability to organize and monitor input on a continuing basis. Thus, LD clients often appear disorganized, relying instead on impulse, guesswork and luck. They often enter a crime situation with a "half-plan", that is, a poorly thought out image of a desired outcome, but have not conceptualized the small steps for actually reaching this goal. Then, when the situation escalates, the individual does not have sufficient internal language to correct his original plan through self-coaching.

John is a severely Learning Disabled man who faced the death penalty in a Special Circumstance murder case. Using keys taken from his brother's repair truck, he rode his bicycle to a private home during the work day with the intention of burglary. He soon became lost in placing odd objects, many of which were not the least valuable, in plastic bags which he piled by the kitchen door. This activity took several hours, during which he misplaced his pager somewhere in the house. While he frantically looked for it, the female tenant arrived home from work and found her home in disarray. Her murder apparently took place when John could not exit her home without a physical confrontation. Several personal items, including the victim's watch and harmonica, were found in John's backpack when he was apprehended a few days later.

Finally, *internal language* is a necessary ingredient for inducing and maintaining self-control in escalating social situations. Here, LD clients need to be taught to employ self-talk to curb aggressive impulses and effect more positive outcomes. People who do not routinely think through possible consequences of actions using private speech are more likely to act first, then encounter and deal with the fallout later. One lecturer (featured in PBS Video, 1989) has described this typical LD behavior as "**Ready...Fire...Aim!**" Thus, decision-making and self-monitoring do not appear to be language-based functions in LD offenders. Instead, they seem to make decisions and adaptations in a random manner, and are typically quite surprised when things go wrong.

Distorted Social Perception. Social perception is greatly influenced by the information processing abilities discussed above. Here, we have seen LD individuals who miscue from people and the environment due to impaired role-taking ability, poor conversation and interrogation skills, and misinterpreting social expressions and gestures. Deficits in *social awareness* can result in reduced ability to grasp the precariousness of one's actions or the magnitude of the predicament once apprehended. These individuals may also be less able to avoid apprehension because social "tip-off" cues are not being received. They are often left literally "holding the bag" by peers who, sensing danger, have fled the scene.

Gilbert was invited by his nondisabled friends to "cruise" the Coast Highway on a Friday night. The boys were dismayed to find metered parking along the highway,

and this launched a lively discussion about just how much money is collected in the average parking meter. Gilbert actively assisted in a group effort to remove the meter from the pole, oblivious to passersby who were witnessing and discussing the boys' mischievous behavior. He was the only youth remaining at the scene, parking meter in hand, when the police car pulled up.

Impaired social perception and problem-solving also affects the *personal organization* of LD individuals, and helps account for the high degree of what we have termed, "disorganized crime" in this population. This sort of mental disorganization is magnified greatly once action is underway and the LD individual cannot generate adaptive solutions to encountered problems. This type of client is often seen forging blindly ahead with the original plan (or half-plan) despite growing evidence which would lead a normal person to abort the endeavor completely. Social misperception in our client group has led to almost comical blunders in the Entry, Escalation and Exit phases of criminal activity. Here, as examples, one of our clients donned a ski mask after interacting with his victims for over ten minutes undisguised; another allowed a youthful McDonald's clerk to call his manager at home to get permission to hand over the money in the cash register; and several of our clients have left personal items such as wallets, notebooks and pagers at crime scenes. Thus, we see social perception as a key variable which, along with impaired internal language, almost dooms LD would-be criminals to failure without external direction.

Attention Disorders. The Learning Disability literature (Krupski, 1981) points to attention difficulties which increase significantly when LD children are presented with cognitive (nonautomatic) tasks. Here, we see children who cannot select the proper cue from a stimulus laden background and/or come to attention upon demand. We also find those who are highly distractible and/or cannot sustain attention over the long term at school, though well able to attend to video games for hours at a time at home. Thus, issues of *inattention and distractibility* are related to volition, or choice, as well as to the precise type of task being required. Accordingly, the federal definition of Attention Deficit Disorder which specifies chronic "limited alertness" may not be entirely descriptive of the issue in LD populations. On the contrary, we often notice that attention is not lacking, but aimed equally at all stimuli in the environment, interfering with task "vigilance". This client does not display an attention deficit, but a condition of cognitive overload which greatly interferes with attention in academic and social settings.

Attention lapses have been identified as one reason why our client group is so amenable to outside influence and manipulation by peers. Here, we tend to see clients with poorly developed internal vigilance, who are more than eager to release control to others. It is not coincidence that many youth gangs admit one or more members who they perceive will follow all directions without question. These members, often tagged "Loco" or "Clown", are useful as "go-fors" during delinquent activity. They are also typically the ones used as scapegoats or characterized as "ring leaders" by other gang members during plea bargaining.

Finally, *response commissions* (failure to inhibit oneself consistently) during stimulus overload are at the heart of crimes of *impulsivity*. Here, we often see "trigger-happy" reactions which seem out of character to both the client's personality and the situation at hand. This was clearly

demonstrated by one of our clients who fired shots in the air as his would-be attackers were in the process of retreating. This action only served to reactivate a conflict which would have otherwise subsided without harm to either party. We shudder to think how many preventable crimes have occurred where handguns were paired with impulsivity.

Chris and a friend collaborated on an ATM robbery. Here, the friend offered to wait in and drive the get-away vehicle if Chris would carry out the actual robbery at gunpoint. When a patron approached the ATM machine, Chris stood nearby with a hidden gun, waiting for the right moment to demand money. But instead of a withdrawal, the man made a deposit, forcing Chris to come up with an adaptive solution. Although he had no cigarettes, Chris asked the man for a match and followed him to his car to locate one. At this point, Chris impulsively displayed the gun even though there was no cash available. The man lunged forward to grab it away and the gun fired, killing him. Chris's friend was now nowhere in sight, so he was forced to take the man's car in order to flee the scene.

Social and Emotional Deficits. Teachers of Learning Disabled children attest to the fact that emotions often run high in their classrooms. This characteristic volatility is further compounded by a degree of emotional lability, or mood swings in the disability group. Thus, we see inconsistent and dramatic emotional reactions which appear inappropriate to the situation at hand. Some of this behavioral display is merely compensatory in nature, that is, an attempt to mask social strategy failure. It is understandable that these students have developed a fair amount of frustration due to poor academic skills and social failure, thus become angered quickly. We are reminded of the LD youngster whose teacher announced a "pop" spelling quiz in ten minutes. His reaction was to kick a fellow student, thereby breaking a cardinal classroom rule. In this way, he manipulated a trip to the office in lieu of taking the quiz and risking social failure

While normal teens may be able to talk or charm their way out of a disciplinary situation, it is not uncommon to see the LD youth become sullen, defiant or belligerent when confronted by an authority figure. It is not unusual to find that the LD youngster is the only one of his peer group to be arrested for a minor offense. This may occur in part due to poor detection avoidance strategies (i.e., he's the only one caught), but is also the result of the *abrasive interpersonal skills* discussed above. It is not surprising that 31% of the Learning Disabled and 57% of the Emotionally Disturbed have experienced arrest by the time they are five years out of school. Similar inappropriate behavior and attitudes may also be displayed while in the courtroom or in meetings with the Probation Officer, further insuring that the LD youth will receive harsher treatment in the system.

Let's return to Gilbert left alone holding the parking meter as the police drove up. Instead of quickly concocting a believable story ("Gee, Officer, this came off the pole. Good thing you're here!"), the 17 year old became sullen and defiant. He refused to answer questions or offer any plausible excuse. He also refused to

incriminate his friends, thus was taken to the police station. Gilbert's parents were called to come and pick up their son. By this time, it was 2:00 in the morning.

DIFFERENTIAL TREATMENT

Disability advocates have documented numerous instances where Learning Disabled clients received more punitive treatment and/or extended periods of incarceration or probation. For example, Alberto, a client with pervasive disabilities, was told by the judge that he would not be released from probation until he obtained a high school diploma. Our assessment determined that this adult client functioned at first and second grade levels in spelling and reading, and demonstrated specific processing deficits which scored as low as the 5 year age level. Habitually trying to hide his severe disabilities, he had not sought previous academic remediation. Through our efforts, the Court received education regarding Alberto's disabilities. We also intervened with his adult school in order to best meet the client's unique educational needs.

We have encountered judicial ignorance, especially critical in juvenile cases, concerning Learning Disability. Here, judges routinely take school reports of failing grades and/or behavior referrals at face value in making major decisions related to client disposition. Yet, they rarely require school officials to identify underlying causation for poor performance. Here, that one additional step could result in disability identification and eventual remediation for a Learning Disabled youngster. Thus, while the Differential Treatment Theory may not adequately explain why so many LD youth become offenders, it does help to explain their entrapment in a system which does not understand or respond to their unique learning needs.

INCARCERATION ISSUES

When a Learning Disabled defendant faces incarceration, the defense attorney is in an excellent position to assume an advocacy role in alerting prison officials of the client's condition. It is suggested that all diagnostic reports be forwarded to the Reception Center as a means of alerting staff to the presence of a disability. Making sure there is disability documentation in an inmate's file will eliminate the burden of his having to prove this status to receive fair accommodation as mandated by the Americans with Disabilities Act (ADA). ADA accommodation impacts a variety of prison programs and activities, including vocational training, hearings, and other aspects of daily prison life. Additionally, under the federal IDEA law (Individuals with Disabilities education Act, formerly PL 94-142), prisons have a legal obligation to provide continued special education services to inmates under 22 years of age who enter the system with active remedial education contracts (Individualized Educational Plans, or IEPs).

Failure to Provide Educational Accommodation

Prisons typically provide basic remedial education courses (ABE classes) for inmates who have not attained high school diplomas and test below the 7th grade level. In the California prison

system, ABE classes cannot be defined as special education in that 98% of them are not staffed by trained special educators, they do not conduct standardized individual pre/post assessments, they do not adhere to a formal team-generated Individualized Educational Plan and they do not provide the low pupil:teacher ratio needed to produce maximum academic gains in Learning Disabled students. Thus, at best, ABE offerings duplicate the same remediation efforts which were unsuccessful when the LD inmate was in school. Yet, other than these basic remedial offerings, there are *no* special education provisions in most prison programs.

Failure to Provide Vocational Accommodation

We found in the California prison system that only inmates who score above a sixth grade reading level are enrolled in vocational training programs. In this way, LD inmates, as well as others with low academic skills, are denied all but the most menial jobs, and are rarely able to obtain any sort of paid employment within the prison system. We have concluded that vocational offerings in most prisons exclude LD inmates based on entrance criteria (literacy attainment) which are beyond their capabilities. The problem is compounded by the fact that LD inmates cannot improve their academic skills without special education, and therefore remain unable to meet entrance requirements for the vocational training program. The outcome is that LD inmates who may be capable of doing the manual work for which a program trains and/or who have worked in such a field prior to incarceration are effectively barred from vocational participation.

Failure to Provide Accommodation in Daily Prison Life

Inmates with LD are often unable to fully participate in the daily activities which are part of prison life. For example, several LD inmates have complained that existing library materials are not appropriate for their low reading levels. Library personnel are neither consistently available nor trained to assist illiterate inmates in accessing essential library materials such as taped novels and self-instruction workbooks.

Inability to read posted notices has resulted in punitive and even life threatening circumstances for several LD inmates whom we encountered. Yet, the posting of important information in printed form remains the primary, and sometimes only method of communication between inmates and prison officials. Asking other inmates for help may be viewed as a sign of weakness, thereby making an individual more vulnerable to predators. Neither is asking prison officials for reading assistance a workable alternative. In this scenario, the LD inmate is rendered more dependent on staff than are his nondisabled peers. Such requests may be viewed as "pestering" a staff member, which can result in retaliation, ridicule or even disciplinary action.

Filling out prison forms is a process which also requires assistance for most LD inmates. Requests for certain supplies and medical appointments in the prison setting typically require the completion of a written form. Here, the LD inmate's only alternative, enlisting an inmate helper, can result in inaccurate or erroneous information.

Finally, reading personal and legal mail is yet another obstacle which faces LD inmates in daily prison life. This main form of communication with the free world, including legal counsel, is often denied to LD and other prisoners who are illiterate. These inmates have two options: 1) to ask for staff assistance in reading or responding to private or otherwise sensitive material, or 2) to procure help from peers who may have poor skills themselves or may take advantage of their dependence. Neither option is an appropriate accommodation under the Americans with Disabilities Act.

Failure to Provide Accommodation at Hearings

Most procedures associated with hearings, including such tasks as filling out hearing requests, appeal forms, and reading/ responding to disciplinary reports, depend on an inmate's ability to read and write. All inmates must participate in a number of hearings during their incarceration. Classification hearings concern the inmate's housing and other programming within the institution. Disciplinary hearings adjudicate rules violations which can result in loss of privileges/credits or even placement in security. Finally, parole hearings determine whether an inmate has attained parole and/or provide recommendations to help him increase his chances of earning parole in the future. These hearings have important implications for prison life, thus it is imperative that all inmates, including the Learning Disabled, fully comprehend and participate in the proceedings. Apart from the problems LD prisoners may have with written text, those with language and processing disorders may require assistance in comprehending the verbal content of these hearings. Accommodations may also be needed in reading and translating written notice of charges against them, conducting investigation or file review in preparation for a hearing, rewording abstract language at hearings, formulating written responses to charges, and filing appeals.

Parole hearings often provide LD inmates with a final hurdle by requiring *educational improvement* as a condition for earning parole. For the LD inmate, it is unrealistic to require educational progress without offering special education as a means of obtaining this outcome. Far too often, parole commissioners neither understand LD nor have been provided any sort of training toward this end. As a result, they are not able to make realistic or appropriate recommendations for LD inmates.

CONCLUSION

This paper has attempted to define and explain the link between Learning Disability and involvement in the criminal justice system. An overwhelming number of these youth and adults are currently in custody where they receive little or no remediation or accommodation for their various

disabilities. With the exception of some juvenile clients with current disability status, it has been our finding that the justice system neither detects, understands, nor provides for cognitive differences at arrest, adjudication or disposition unless assisted or ordered to do so.

Finally, incarceration is likely to have a more devastating impact on criminal offenders with Learning Disability than on nondisabled inmates. This is so because accommodations needed by LD inmates for responding to the daily challenges of prison life have not been implemented by most correctional systems. Until necessary ADA accommodations are implemented for LD offenders, the justice system would do well to look for more appropriate sentencing alternatives whenever possible.

DETERMINING THE NEED FOR LD ASSESSMENT

Learning Disability assessment can yield information which is especially valuable to attorneys in the presentencing and sentencing stages of representation. Following is a symptom checklist which may be helpful in determining whether to refer a client for LD assessment. Attorneys are urged to select a qualified diagnostician to conduct a complete, multidimensional assessment and prepare a detailed report of findings. The report should describe the disorder in functional terms and yield cognitive levels in several developmental areas including intelligence, academic skills, information processing, language, and social development. An educational psychologist/diagnostician or special education learning specialist with doctoral training is recommended for this task.

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LEARNING DISABILITY SYMPTOM CHECKLIST

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ACADEMIC DEFICITS:

1. __ Poor grades despite adequate school attendance
2. __ Reads or writes at childish levels
3. __ History of special education class enrollment
4. __ Low yearly achievement test scores in school cum file
5. __ Spiky profile (both high and low skills)
6. __ Lacks general age-appropriate information

ATTENTION DEFICITS:

7. __ Exhibits physical "overflow" movements while working
(noise-making, rocking, tapping, etc.)
8. __ Recall shows "hit and miss" attending to content
9. __ Can be easily distracted from task
10. __ Needs redirection or prompting to complete tasks

SPEECH-LANGUAGE DEFICITS:

11. __ Needs restatement, simplification or repetition of questions and directions
12. __ Talks a lot but makes little sense
13. __ Missing or incorrect labels for nouns/verbs
14. __ Speech/articulation problems
15. __ Generally hard to communicate with

PHYSICAL DISABILITY CLUES:

16. __ History of maternal drugs, birth injury or head trauma
17. __ Family member has similar disabilities

ADAPTIVE SKILL DEFICITS:

18. __ Problems communicating information to others
19. __ Behaves immaturely and/or has younger friends
20. __ Acts randomly without considering possible consequences
21. __ Cannot apply academic skills to daily living

SOCIAL-BEHAVIORAL DEFICITS:

22. __ Impulsivity (makes fast, bad decisions)
23. __ No plan, half-plan, or abandons plan once action is underway
24. __ Emotional mood swings
25. __ Needs outside direction in a crisis
26. __ Odd, immature, disorganized or poorly accepted by others
27. __ Used by peers as scapegoat or "go-for"
28. __ Easily led, bribed or cajoled to self-incriminate
29. __ Lacks confidence in own decision-making
30. __ Misinterprets social gestures, facial expressions or environmental cues

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