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Determination of Feeble-Mindedness

As Related to the
Courts

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DETERMINATION OF FEEBLE-MINDEDNESS, AS RELATED TO THE COURTS.

Under the Minnesota laws of 1917 relating to the feeble-minded all commitments are directly to the State Board of Control, and through it to the School for the Feeble-Minded or other custody. The commitment may be voluntary on the part of parents or other guardian, or compulsory through the courts. The discharge of a case from further custody of the Board may be on the initiative of the Board or by order of the court. The legal processes of determining the alleged feeble-mindedness of a case is the same for discharge as for commitment, and need not therefore be considered separately. In hearing for a commitment the law makes a distinction between cases of obvious feeble-mindedness and cases in which feeble-mindedness is not obvious. For the latter, the court is directed to appoint two physicians, who, with the probate judge, shall constitute a board to examine the case in question. The court shall also notify the Board of Control of the hearing to be given, who may then send one skilled in mental diagnosis to examine the case and advise the board of examiners. When, however, the case is obviously feeble-minded the judge may, with the consent of the county attorney, dispense with the examining board, and may himself decide the question as to the feeble-mindedness of the case. We have, therefore, to discuss the determination of feeble-mindedness as related to the courts in connection with these two classes of cases, the obviously feeble-minded and the not obviously feeble-minded. It is left to the judge to make this distinction, and the process to be followed in determining feeble-mindedness rests in the first place on the ability and skill of the judge in recognizing it.

Before taking up the discussion from the standpoint of these two classes, it will be necessary to consider feeble-mindedness as defined by the law of 1917. This definition reads as follows: "The term 'feeble-minded persons' in this act means any person, minor or adult, other than an insane person, who is so mentally defective as to be incapable of managing himself and his affairs, and to require supervision, control and care for his own or the public welfare." To distinguish between the feeble-minded and the insane it will be sufficient to add here that feeble-mindedness is an arrested rate of mental development. In its general features the mental development of a feeble-minded person has been the same as that

of a normal child, but at a much slower rate. Since the mental development of the feeble-minded stops at the same age, or earlier than it does with the normal person, the feeble-minded never attains the full development of the normal. Though physically mature, the feeble-minded remains mentally like a child. Insanity is not mental arrest. The mind reaches normal maturity, barring rare instances of insanity in older children, and then degenerates, the mental symptoms of this degeneration being usually emotional disturbances of some sort, illusions of the senses and delusions in thinking. The definition of feeble-mindedness just quoted from the law follows that suggested by the Royal College of Physicians of London, and incorporated, with some alteration, in the Law of England in the English Mental Deficiency Act of 1913. It is the most frequently quoted definition in the literature on feeble-mindedness since that date and has been followed in other instances in which the state laws have attempted to define feeble-mindedness. There are several things to be noted in regard to it. In the first place, it lays down two criteria. The first is mental defectiveness other than insanity. The second is such a degree of this mental defectiveness as to render the person incapable of managing himself, and so on. There are many recognizable degrees of mentality below that of the average normal before we reach the point where the individual becomes incapable of managing himself, and so on, in the sense here intended. This tells us where to draw the line that is to divide the feeble-minded from the not feeble-minded. It does not tell us how to draw the line, which usually is not the function of a definition. But the noteworthy fact is that those traits of feeble-mindedness which it is essential to recognize in a law are just the ones that make the definition peculiarly difficult to apply. In the first place, the definition refers to adults rather than to minors. It is granted that children, however intelligent, are unable to manage themselves and their affairs, and require supervision. To apply it to a child a prediction as well as a diagnosis is required. We must be able to say whether the child in question will come under the definition after he will have reached maturity, a very much more difficult task still. But ability in managing oneself and one's affairs is also a matter of degree, and success in it a matter of interpretation instead of measurable by any objective method. Besides, it is dependent on a great variety of variable circumstances other than degree of intelligence. What admittedly capable and successful man has not at times mismanaged to the detriment of his own or the public welfare? How many admittedly feeble-minded are there who have not at times managed themselves and their affairs creditably? I have said that this second phase of the definition tells us where to draw the line in degrees of mental deficiency between the feeble-minded and the not feeble-minded. But it

becomes equally necessary to draw the line in regard to the traits described by the second phase. What degree of mismanagement must there be in order to be so detrimental to his own or the public welfare as to require state supervision and control? When it is decided that the permissible limit of mismanagement has been exceeded we come back to the question as to whether this mismanagement is all due to mental deficiency or partly to other factors. It is well known that there are a great many other things that contribute to failure. Of these I shall speak later in another connection.

It is seen from these few suggestions that the determination of feeble-mindedness as defined by the law may become an exceedingly complicated process, taking us far afield in many different directions, where our ground is always uncertain, and our conclusions are likely to be a matter of individual judgment and interpretation that lack the objectivity and trustworthiness of a scientifically established fact. These difficulties that the second phase of the definition, the so-called "social criterion of feeble-mindedness," gives rise to should serve as a warning not to stress it too much, and to give more weight to the degree of mental deficiency, which can be more accurately established, in deciding whether or not a given case is feeble-minded. Could we be permitted to define feeble-mindedness in terms of degree of mental deficiency alone, or, to substitute another expression, grade of intelligence, its determination would, with our modern methods, become a relatively very simple matter. But such a definition would be impracticable for other reasons. If the line between the feeble-minded and not feeble-minded were drawn on this basis alone, high enough to include all cases who failed chiefly because of mental deficiency to manage themselves so as to require supervision, it would include a good many, who in spite of some mental deficiency, would be entirely successful. If, on the other hand, the line were drawn lower it would exclude a good many who would fail.

Let me turn now to the consideration of the questions that concern us still more immediately. And first, when is a person obviously feeble-minded? The law permits the court to make any preliminary inquiry it may wish to conduct before deciding whether a case is obviously feeble-minded or not. I will mention the four common sources of evidence that are always available, and attempt in a word to give their relative importance. But first of all, it must be noted that feeble-mindedness is much more easily detected in older children and adults than in young children. If we are dealing with children at all and not adults, the question reduces itself to that of grade of intelligence, the social criterion in the second phase of the definition not being directly applicable. If the grade of intelligence of a child is such that we must consider whether he might be

able to pass the social test after he had reached maturity, we cannot in the first place consider him as obviously feeble-minded as a child. Lack of intelligence in children is recognized most readily in their inability to do the ordinary things of everyday life that normal children of the same age have learned to do several years earlier. In estimating the intelligence of a child, therefore, one of the best methods is to compare the things he can do with what the average normal child of the same age can do. But the younger the child the less known things there will be on the basis of which this comparison can be made. Feeble-mindedness of a given grade is, therefore, the less obvious to the ordinary observer, the younger the child.

The common sources of evidence of obvious feeble-mindedness, about in the order of their importance, are (1) physical appearance; (2) opinions of relatives; (3) opinion in community; and (4) observations on the acquisitions and ability to do the ordinary things of everyday life, which may in part be tested directly on the child. With observers of extended experience, physical appearance has some value, especially when facial expression and movements in general are included in the term. Experience in the selection of immigrants for special mental examination at Ellis Island has shown that a certain very small percentage of mental defectives can be recognized in this way. But the reliability of such a determination at its best is very small, even with the best observers. The chief source of error is of course in failing to recognize those that are feeble-minded, although the mistaking of normals for feeble-minded from their physical appearance alone also occurs too frequently to place any great reliance on this method. For the average observer without extended experience with the feeble-minded this method is practically without value. Feeble-mindedness does not express itself obviously in physical appearance.

The opinions of parents are somewhat more reliable, under certain circumstances. Before they receive consideration, however, the intelligence as well as the motives of the parents must be taken into account. In this connection it is well to remember that in the great majority of instances feeble-mindedness comes from feeble-mindedness, and that in more than half the cases one or the other of the parents is feeble-minded. But the failure or unwillingness of even the intelligent parent to recognize feeble-mindedness in his own children is a rule without a great many exceptions. Certain peculiarities, some backwardness, or differences from ordinary children may be admitted, but not feeble-mindedness. This is so common an observation that it needs no further discussion. The practical conclusion to be derived from this is that a denial of feeble-mindedness on the part of parents is to be set aside as of no value whatsoever. To infer from this, however, that an admission of feeble-mindedness in a

child on the part of its parents is always trustworthy would also be wrong. A number of abnormal traits are often mistaken by parents and others for feeble-mindedness, especially when failure in school or incorrigibility at home is associated with them, as it often is. In recent years with feeble-mindedness becoming increasingly a subject of public discussion its relation to and responsibility for various other faults of children and adults has sometimes been overemphasized, leading to the erroneous attributing of feeble-mindedness to cases, as the cause of the difficulties. It is the indirect testimony of parents that usually is of most value. They have been the closest observers of the child, and can give the most information concerning its history and development. They should be minutely questioned in regard to this. The lines along which this questioning should be conducted will be considered in a moment. The evidence thus obtainable very frequently reveals the child as very obviously feeble-minded when the direct testimony of the parents has been the opposite.

The opinion of the community is next in importance. In the larger towns, however, there is not likely to be a definite community opinion. The feeble-minded individual is here more likely to be lost sight of, unless the increased chances of delinquency have brought him into trouble. Perhaps we may say that when this opinion, whether from the rural, small urban, or larger city community, is more or less divided, we should in no case regard the person as obviously feeble-minded. Limiting ourselves to instances in which the neighbors are fairly well agreed, we may then point out certain marks of reliable and unreliable community opinion. We may say in a word that such opinion is relatively reliable when it affirms feeble-mindedness, when the opinion is of long standing, and when there are no complaints. It is relatively unreliable when its affirmation of feeble-mindedness is of recent origin, and when there are complaints against the case, or family. Common denial of feeble-mindedness is no proof of normality, but only good evidence that the case is not a very low grade of feeble-mindedness. Usually when the neighbors are agreed that the case is not very bright, that he is a little odd, peculiar, and so on, but not so bad as to be called feeble-minded, the case will be found, on special examination, to belong to the high grade imbecile, or low grade moron class. The reasons for these facts need no detailed discussion. They are the deductions from common observation that reveal their own explanations. Community opinion, however, is not a very practical source of evidence unless the judge through several years of previous observation has already become more or less familiar with it.

The most valuable source of evidence the court can gather in the preliminary inquiry to decide whether a case is obviously feeble-minded lies in the results of skilled questioning of parents and others closely as-

sociated with the case, and the responses from the case himself that may be elicited by a few set questions and tasks. The personal history of a case is always instructive, but it is often difficult to get reliable information on it. It is usually not worth while to attempt to discover causes with the idea of regarding them, if found, as evidence of the feeble-mindedness of the case in question. If the case is not obviously hereditary, it is not likely that the cause of the trouble will be established by any questioning of parents years after the causes were active. But since feeble-mindedness usually is hereditary it is important to inquire in regard to it. There is a biological law according to which no normal children will ever be born of parents that are both feeble-minded by heredity. When only one of the parents is feeble-minded the chances for the children are even. When both parents are normal but come from a stock that has feeble-mindedness in it, some of the children may still inherit feeble-mindedness. It is seen from this that definite information in regard to the heredity of a case may be valuable evidence. The inability to get such information, however, should not be regarded as significant. Parents and relatives are exceedingly reluctant to admit the presence of bad heredity, and often fail to realize the fact of its presence.

All normally developing children acquire certain abilities at more or less definite ages. It is in the belated appearances of these acquisitions or in their entire absence that we recognize feeble-mindedness. A few of them are always objects of such common observation that parents can give more or less trustworthy information about them. They should be asked the following: (1) At what age did the child begin to hold things in his hand for a minute or more at a time? (2) When did he begin to reach for objects and take hold of them? (3) When did he learn to stand up entirely unsupported, and walk a few steps? (4) When did he begin to imitate movements, such as shaking a rattle, or waving a "bye-bye". (5) When did he learn to feed himself with spoon or fork? (6) When did he begin distinctly to use words? (7) When short but complete sentences? (8) When did he learn to obey simple commands, such as "Give me the spoon," or "Bring me the ball," for example? (9) When did he acquire an interest in pictures so as to name several things in a picture when asked to do so? (10) When did he learn to name most of the common objects in the house, such as chair, table, spoon, knife, stove, and so on? If the child is much older than three years the parents are likely to have forgotten too much of the observations they may have made at the time so that they can no longer give adequate replies. It is seen, however, that most of the abilities involved can readily be tested out directly on the child to determine his present capacities in these matters. 1 and 2 involve normal capacities at the age of six months;

3 and 4 at the age of twelve months; 5 and 6 at eighteen months; 7 and 8 at two years; and 9 and 10 at three years. If it is found that a child from four to eight years or more falls short in most or all of these he may be regarded as obviously feeble-minded. For children eight to twelve years old, obvious feeble-mindedness can be readily determined by a relatively small number of questions and set tasks given the child as tests. Many of the tests regularly in use for determining grades of intelligence in children are so simple and easy to administer that anyone with ordinary caution and judgment can give them, with more than sufficient reliability to determine the presence or absence of obvious feeble-mindedness. The following are all standardized questions and tasks that may be used for this purpose, chosen from a much larger number that are usually given by mental examiners. Before giving them the child should first be put at ease and made to respond readily to any conversation. Parents or other acquaintances of the child should either be absent or rigidly instructed to remain absolutely silent and interfere in no other way with the child's responses. A private room should be used. If the child is properly controlled so as to respond naturally, the rest of the procedure will offer no difficulty.

(11) Say to the child: "You say these numbers after me. Say '4—8'." Then, "Now say:

- a. '2—6—4'
- b. '7—5—3'
- c. '8—1—9' "

Give these three trials, reading the numerals at the rate of about three per two seconds. Give each set once only. The child should repeat them correctly in at least one of the three trials with three numerals.

(12) Ask:

- a. "What must you do when you are sleepy?"
- b. "What must you do when you are cold?"
- c. "What must you do when you are hungry?"

If there is no response the child should be urged by repeating the question and in other ways. His responses should indicate that he comprehends the proper thing to do in at least two out of the three instances.

(13) Place four pennies in a row before the child, and say: "Count these, and tell me how many there are. Count them with your finger." Urge if necessary. After he has made the count ask: "How many are there?" He should count and answer correctly.

(14) Say: "You say now what I read to you, just the way I read it. Listen!"

- a. "His name is John. He is a very good boy."
- b. "We will have a great time at the big picnic."
- c. "When the train passes you will hear the whistle blow."

Repeat the first sentence once if there is no response, and ask at once, "Now what did I say?" Read the others once only. The child should get one of the three literally correct, after the first reading.

(15) Say:

- a. "Raise your right hand."
- b. "Show me your left ear."
- c. "Show me your right eye."

Speak slowly with accent on "right" and "left." If the child makes only one error, repeat all three, but reverse questions to "left hand", "right ear" and "left eye". The child should get all three correct the first time, or five out of the six correct in the two trials.

(16) Having things arranged beforehand, say: "You see that chair there. Go put it there (any other place to which you point). Then put this book (or other object) on the chair. Then close (or open) the door". Then repeat, "First put the chair over there. Then put the book on the chair. Then close the door. Go ahead". The child is likely to begin before you are through with all the instructions, in which case say: "Now wait, wait," and then repeat from the start. The child should do all three things, in any order, without help or further suggestion of any sort.

(17) Show the child the following coins in the order given, asking for each: "How much is this?" a. Nickel. b. Quarter. c. Dime. d. Penny. If there is only one error, repeat the series once. The child should name all correctly in the first or second trial.

(18) Ask the following:

- a. "How many fingers on your right hand?"
- b. "How many fingers on your left hand?"
- c. "How many in all on the two hands?"

The child should answer all correctly without much hesitation or any counting. Answers "Four, four, eight," are accepted as correct, as some children will distinguish between thumb and fingers.

(19) Say: "Let me see how well you can count backwards from twenty to one. You begin with twenty and count back to one." If he hesitates, say: "Count like this; '20, 19, 18', and so on. Now begin, '20, —.'" The counting should be done in twenty seconds with not more than one uncorrected error, or in thirty seconds if done with evidence of care and effort and without any uncorrected error.

(20) Place a row of three one-cent stamps, and another row of three two-cent stamps before the child, or better, have a card prepared with the

stamps pasted on them about two inches apart, and ask: "How much will it cost to buy all these?" If the correct answer is not given after ample time, ask: "How much is one of the green ones worth?" "How much is one of the red ones worth?" Give him the correct values if he does not know, and then ask again, "Now how much are they worth altogether?" The child should give the correct answer either the first or second time.

These questions and tasks, numbered from 11 to 20 are taken from my revised Binet-Simon system of intelligence tests, two from each age from four to eight years. If used with ordinary care and skill, the results obtained with even this small number are much more reliable than is necessary to determine the presence of obvious feeble-mindedness in cases of eight to twelve years or more. If a case over eight years fails in six or more of them there will be no question about his feeble-mindedness.

The best single source of evidence of obvious feeble-mindedness with cases over twelve years, outside the results of a special mental examination, is the school record made by the case. The highest grade feeble-minded can on the whole, do the work of the fourth school grade, eventually; but they will be several years over-age for this grade, by the time they reach this point, and are then likely to be found in two or three grades above this, where they cannot do the work of the grade at all. They will not do equally well in all subjects, but are usually best in writing, and poorest in arithmetic, with their abilities in reading and spelling intermediate between these two. This is because writing is a more mechanical process than number work, and proficiency in it depends more on length of training than on intelligence. If a child is three or more years behind in his school-work his feeble-mindedness is practically a certainty, unless there is some very obvious explanation for it other than lack of intelligence. Most explanations of this sort, however, that are given usually greatly over-emphasise the importance of the alleged cause of the school retardation. Absence from school, or foreign language at home hardly ever explain it. A normal child will make up lost time in school in a remarkably short period because he has an intelligence more than necessary for the back work. Likewise, a foreign child will rarely be seriously retarded in school work because of language difficulty. He will acquire the English language in the course of the first year, and then rapidly make up the lost time, if he has lost any. On the other hand, a child twelve years or more, who is in a school grade within two or three years of the grade that is normal for his age, may still be obviously feeble-minded. This is chiefly because of the practise in many school systems of promoting children after they have repeated a grade once, irrespective of their inability to do the work of the grade that they leave. Likewise, a teacher's report that a given

child has done simply poor or even fair work in a certain grade is a very unreliable indication of the child's intelligence. The obviously feeble-minded receive the same grading of "poor", together with those who are only barely too poor to pass. All school standings are too subjective in their origin; too dependent on judgment, without definite standards of comparison. Again, it is almost universal to judge the intelligence of school children more or less entirely on the quality of school work done without taking the age of the child into account. Even the definitely feeble-minded may do good school work if they are put in a low enough school grade. Where the school record obtainable is questionable and does not help to decide the question of obvious feeble-mindedness, it is never a great task to roughly test the ability of the child in reading, writing and numbers. Select a passage from each of any standard first, second, and third grade school reader, and ask him to read it. Dictate a very simple sentence of five or six words and ask him to write it as nicely as he can. Give him a few simple problems in adding and subtracting two-place numbers, in multiplying a two or three-place number by a two-place number. If he succeeds reasonably well in most of these he cannot be called obviously feeble-minded. If he fails more or less completely in all without any very unusually good reason other than possible lack of intelligence being at hand, it is fairly certain that he lacks sufficiently in intelligence to be called obviously feeble-minded.

If the court cannot decide with certainty that the case is obviously feeble-minded, an examining board is called for. If the Board of Control on being notified, does not send a special examiner to examine the case and advise the board, the procedure of the examining board may be largely the same as already outlined for the determination of obvious feeble-mindedness, unless by chance the examining board includes a member who has had sufficient experience with the feeble-minded and its diagnosis to direct the procedure in more detail. But in any case, the examiners should consider further whether the case comes properly under the second phase of the definition, as well as the first. Can he pass the social test, and if not, can his failure be attributed more to other factors than to lack of intelligence? If the Board of Control sends a special examiner it is still always an advantage to consider the problem of the determination of feeble-mindedness of the case in question distinctly from these separate standpoints, and in borderline cases it is necessary to do so. Is the case mentally defective? Does he or will he fail in the social test chiefly because of mental deficiency? The special examiner can, from the mental examination he gives the case, answer the first question. He will not be in a position to gather hurriedly much reliable evidence on the social reactions of the case. If the case is not found so mentally defective as to not

require considering his social reactions, the court should furnish the examiner this evidence. Let us, therefore, consider separately, first, the mental examination by the special examiner, and second, the factors in the ability to pass the social test, which decide whether or not a case with some mental deficiency requires state supervision and guardianship.

The special mental examination should be made before the hearing and in a private room free from disturbances. No third person should be present. The first thing necessary for the examiner is to establish and maintain a state of mind in the person under examination wherein he can put forth his very best effort, free from embarrassment, distractions or disturbances of any sort. This is entirely impossible in a court room in the presence of others, and under circumstances all of which make the case self-conscious and force his mind from the tasks given him in the examination. If the court wishes information on the nature of the examination given, the examiner may furnish this later. It might be added here, however, that few experienced examiners now-a-days are willing to testify on the feeble-mindedness of an at all questionable case without the results of formal mental tests. This nearly always means the use of the well known Binet-Simon tests in one or other of their several forms. The general validity of the results with these tests has now long been known and is generally conceded. Unless the court is already familiar with them, witnessing an examination with them, simply, is not likely to give helpful information. To the contrary, it is almost sure to lead to a great many misunderstandings. These tests seem very simple and are so in appearance, but are exceedingly complex and technical in the principles underlying them and in the correct interpretation of the immediate results obtained with them. The over one thousand books and articles written about them since their first appearance in 1908 gives some evidence of this fact. Their general nature and manner of use can be described in a very few words. My own revision and extension of them consists of the equivalent of 129 different tests adapted to all ages from birth to fifteen years, inclusive. It has been found that mental development in its basic functions is completed approximately at the age of fifteen. The tests involve mental tasks of a great variety. Those already described may serve for illustrations. They are roughly grouped into different age-groups, giving eight tests for each age from three to fifteen years. There are twenty-five tests for ages below three. The tests have been tried out on thousands of normal children of all ages to determine how many of them the average child of each age can pass, and they have been so adjusted that the average normal child of any age will pass eight more tests than the average normal child just a year younger, and eight less tests than the average normal child just a year older. Since mental deficiency is essentially simply an

arrested rate of mental development it is a relatively simple matter to determine with these tests how far a given case has fallen behind the average normal child in this mental development. The case may be twelve years old, let us say, but it may be found that he can do no more of these tests than can the average normal child just six years old. We then say, in the terminology of these tests, that this case has a mental age of six years, though he is actually twelve years old. Not all children whom we call normal are just average in mental development, that is, have a mental age exactly the same as their real age. But if they fall below average too much we call them mentally defective, and if they are mentally defective enough, we, in the terms of our legal definition, call them feeble-minded, because we have learned from extended experience that when a case does fall below a certain point he will permanently require supervision and guardianship. It is obvious that a mentally defective will fall behind the average normal child more and more as he grows older, since he is developing at a slower rate. Consequently a year behind at the age of six represents a greater degree of mental deficiency than a year behind at the age of twelve. Grade of mental defect is not, therefore, expressed directly by the number of years difference between age and mental age. It has become customary with most users of these and similar mental tests to use the ratio of mental age to age to express this grade of deficiency, to which ratio some give the term of "intelligence quotient". Thus a child of twelve with a mental age of six has an intelligence quotient of six divided by twelve, or .50. In other words, his mental development is taken to be fifty per cent. of what it should be for his age. This intelligence quotient remains much more nearly the same as the child grows older than does the difference between age and mental age. In fact, it was at first thought that it remained practically the same at all ages for the great majority of defective children. It has been found recently, however, that there is a general tendency for the intelligence quotient of defective children to decrease as they grow older. For a very few it increases, and in very, very rare instances it increases enough in time to take a child out of the class of mentally defective and place him in the class of normal.

The first question that arises in this connection is, How low must the intelligence quotient be before we can say with certainty that the case is so mentally defective that it requires state supervision and guardianship? The second question is, How high must the intelligence quotient be before we can say with certainty that whatever failure the case in question may have met in meeting social requirements, this failure is not chiefly and primarily due to mental deficiency? The answer to these questions is the first and chief practical contribution that the special mental examiner can make in helping the court to decide on the alleged feeble-mindedness

of a case. We may safely put the lower limit at .70, and the upper limit at .85. I, myself, practise putting the lower limit at .75. This does not mean that there are not some mentally deficient adults with an intelligence quotient somewhat below .75 or .70 who for the time being are making good. We know that there are a great many. It only means that such adults will not be able permanently to make an independent, honest living, without supervision and guardianship, under any and all circumstances they are likely to meet in their lives. The chances of their doing so are practically nil, and the risk of leaving them unprovided for is too great. *The first practical and very important conclusion we arrive at is then, that, if the court is satisfied that the special examiner is properly qualified to conduct an examination and he finds the intelligence to be below .70 or above .85, this result alone may be taken as conclusive.* It is only for the borderline cases with an intelligence between .70 and .85 that further inquiry needs to be made. This applies to children as well as to adults. The laws do not ask the court to consider possible changes in the future, in the present intelligence of a case. It is on the basis of the intelligence found at the time of the hearing that a decision and classification is called for. In fact the laws distinctly recognize the possibility of such a change in providing for a re-hearing of cases once committed as feeble-minded, to determine whether state guardianship is still necessary. As already noted, cases of definite feeble-mindedness that do improve sufficiently to become classifiable as not feeble-minded are exceedingly rare and are chiefly among quite young children.

We come now to the consideration of the borderline cases, with an intelligence of from .70 to .85. *The further inquiry in regard to these should not be an attempt to get further evidence on the degree of mental deficiency of the case. The results of the mental examination given by the mental examiner should alone be allowed to decide that.* Not to do so would be like trying to somehow average the results of two physical measurements, one made with an accurate scale, the other with an inaccurate scale, in order to correct a possible error made with the accurate one. There is no difference in opinion among experienced mental examiners who have used the mental test method together with other methods, concerning the reliability of the mental test method as against all other methods. It is agreed that the former gives a far more reliable result than any other. A mistake very common in court procedure is the hearing of testimony by the defense to establish the fact that the case in question has not been regarded as feeble-minded by his associates, that he has been remuneratively employed and perhaps to the satisfaction of his employers, and so on. When all this has been established as a fact, as it sometimes can be, it proves nothing either in regard to the mental deficiency of the

case, or the need of state guardianship. Mental deficiency even below an intelligence of .70 is very frequently not recognized by associates in the ordinary intercourse of every day life. In fact the majority of cases of about this intelligence are not recognized definitely as feeble-minded until after the case meets some social disaster. Likewise, nearly all of this grade are capable of remunerative employment and of giving at least temporary satisfaction to employers. Most entirely unskilled labor requires no greater intelligence than this for moderate success. It is not in this that these cases fail to meet social requirements. The further inquiry in regard to these borderline cases should be directed toward discovering what other factors there may be, personal traits of the case other than mental deficiency, as defined, and extraneous circumstances, which, together with the degree of mental deficiency already found, may be regarded as contributing causes of inability to pass the social test.

Granted, then, an intelligence between .70 and .85 for a given case. Such a case is mentally defective, and this deficiency will contribute towards a possible failure to meet social requirements. But if he possesses no other unfavorable traits, and if there are no unfavorable extraneous circumstances he can reasonably be expected to succeed in the sense that he will *not require state guardianship*. What are these other traits and circumstances? The first are age and sex. Assuming that a child's home is not objectionable, there is no urgent reason from the standpoint of the state to put him under state guardianship, unless he shows special delinquent tendencies. Young children are not likely to commit offences against the law. Home conditions, and the benefits to the child to be derived from them, cannot be created for the child in a state institution. By remaining home, however, he will in all probability not receive the special training the state could give him, and which would be a great advantage to him later.

The tendency to delinquency of all mental defectives is a well established fact. More than twenty-five per cent of our reformatory inmates is usually definitely feeble-minded. This is not because the defectives are naturally vicious and inclined to law-breaking. They are not. But they lack common sense, judgment and insight into moral situations. They do not comprehend the wrongness of immoral acts, do not foresee consequences, and above all, they have not the will power to resist temptation. These traits lead them to wrong-doing and unlawful acts. This tendency is nowhere more striking than in the sex-offences of mentally defective girls. Reliable statistics have shown that more than one half of the professional prostitutes are feeble-minded. Probably about the same figure holds for the occasional sex offenders and the mothers of illegitimate

children. This makes sex a very important consideration in determining whether the borderline mental defective requires state guardianship.

We are just learning that training is a much more important factor than has been generally supposed. Both moral and occupational training need to be considered. The influence of other unfavorable traits can be largely overcome by training. The study of the success and failure of groups of high grade feeble-minded at large in society has recently shown that failure in meeting social requirements is as much if not more dependent on direct moral traits, temperament, and home training than on the exact grade of intelligence. Good morals can be inculcated into mental defectives as well as in normal children, but it requires more persistent and intelligent effort. It has been a frequent observation in individual instances that feeble-minded girls do not go wrong if they have been rigidly brought up in good homes and receive a minimum of guardianship. High grade mental defectives even less intelligent than the borderline grades we are now considering can be trained to good behavior, so that they will habitually follow the ordinary rules of everyday conduct that will keep them out of trouble under all ordinary circumstances. They can be taught also to save their earnings, or to spend them less foolishly, to avoid being misled by the unscrupulous and to largely escape the many other acts that usually mark the behavior of the defective. But to do so each line of behavior must be made a special object of training. If a defective conducts his affairs with credit it is not because he grasps general principles of moral and other behavior which he applies in the concrete instances, but because he has learned to do so as a matter of habit in each case. Occupational training is also important. The borderline defective is intelligent enough to earn a living by most any kind of unskilled labor. But if he has learned a definite occupation or trade his earning power not only is increased, but it serves as an important means of keeping him steadily and permanently employed. He will stick to his trade as a matter of habit, whereas without such a trade or occupation he would be more likely to follow his natural tendency of drifting from job to job, with all the attendant possibilities of unemployment, financial want, contact with undesirable associates that belong to this class, and lack of friendly council from those that have come to know his shortcomings. It does not occur often that we find a borderline or other defective who has had a special training along occupational lines, or has learned a trade. The opportunity, therefore, is not often given to take this factor into account. In the consideration of training as a factor in the ability to pass the social test we are limited usually to an inquiry into the kind of home in which the case has been brought up, together with the general character of his associates and environment. The importance of doing this should be clear.

This brings us to the consideration of the character of the guardianship as a factor to take into account. Remembering that all borderline feeble-minded are likely to require some guardianship when adults as well as when children, and that the parents have been the chief factors in determining their past training, we should inquire as to what kind of parents they have been, and are. If they are both living, are intelligent, interested, and not too old to maintain a guardianship and supervision over the conduct of their grown-up child, and especially if they comprehend its weaknesses and needs, the urgency of state guardianship is very much reduced, if not entirely removed. Mental defectives, however, are not likely to have such parents. The chances are against both parents being even normal, and against either being an intelligent, satisfactory guardian of mentally defective adults. If the case in question is employed away from home and relatives, or if parents are dead, he may be regarded as entirely on his own resources. Employers are too rarely self-appointed guardians of a mentally defective employee to justify his ever being considered as such without special knowledge of the facts. They rarely recognize any deficiency, and when they do, are more likely to dismiss the defective from their service than to attempt to give him special attentions. Let us not blame the employer for this condition.

Environment is closely related to training and guardianship in determining the need of state guardianship. Two observations are to be made in regard to it. The first is that the mentally defective are usually in the poorer environments. Localities that have no attractions for the intelligent and capable are soon deserted by this class, if by accident they should find themselves in such. The less capable remain, or are forced into such localities because they offer cheaper land or cheaper living conditions. This has been proven in a number of instances. The result is that mental defectives are thrown into association with others of their kind. The mutual influence increases the tendency to dissolute conduct and living. A weak minded person might continue to earn a living, live decently and not become a dependent or otherwise delinquent if surrounded by the example of respectable associates. But in the slums of the city the conditions that make them slums feed upon themselves. The other observation to be made about environment as a factor to consider in the determination of the feeble-mindedness of a borderline case is the more obvious fact, that the simpler the environment the easier it is for a defective to pass the social test. In such, the standard of living is lower. It takes less to make a living. Temptations and pitfalls are less numerous. The defective has less opportunity to go wrong. It has become a trite saying, but which is truer now than ever before, that a person may be normal if he lives in the country but may be feeble-minded if he moves into the city.

Temperament is also a factor, often the predominant one outweighing all others. Many different personal traits are customarily included under this term. No attempt needs to be made here to define it more closely. Normal traits of temperament are frequently exaggerated in the mentally defective. The tempering influences of good judgment, will power and good breeding are here removed. A further special pathological basis is probably also often present. I refer here to such traits as excitability, impulsiveness, negativism and antagonism, "hot-headedness", sullenness, moroseness, melancholia and more definitely psychopathic states in various psychoses and hysteria. An exaggerated trait of this class is very frequently the deciding factor in the failure of a case to pass the social test. It is sometimes the cause of failure with cases of entirely normal intelligence, more or less frequently mistaken for feeble-mindedness of a much lower grade of intelligence.

Lastly, heredity is a factor to be considered. The prevention of descendants of the hereditarily mental defective is, by many, placed at the head of all considerations for the public welfare. The individual in question may not require state guardianship, but he is the potential parent of children some of which will very likely need it. It is presumably within the scope of the law to prevent an individual from injuring the public welfare by becoming the parent of feeble-minded children as well as to prevent him from injuring it in a more direct manner.

The enumeration of these many factors other than mental deficiency, or lack of intelligence, can serve to direct a hearing along necessary lines. It can do but little more. The special mental examiner with his wider experience may help to interpret the findings. But there is no objective method of evaluating them. When we are dealing with the borderline case, as here defined, our conclusions must in the end be based chiefly on personal judgment. We are in a realm in which the "experts" will inevitably sometimes disagree. It will be noted that I have throughout interpreted the law to mean that a case is to be regarded as feeble-minded when his mental deficiency is found to be the predominant cause of his failure to meet social requirements. It need not be the sole cause. It would not, however, simplify matters greatly to have it otherwise. When several causes combine to produce a result, it is usually folly to argue their relative importance.