

Bill as Introduced

HB 1680-FN - AS INTRODUCED

2010 SESSION

10-2498

04/03

HOUSE BILL **1680-FN**

AN ACT establishing the crime of aggravated harassment by an inmate.

SPONSORS: Rep. P. Garrity, Hills 14; Rep. D. Sullivan, Hills 8; Rep. Goley, Hills 8;
Rep. Baldasaro, Rock 3; Rep. Rhodes, Hills 22; Sen. DeVries, Dist 18;
Sen. Letourneau, Dist 19; Sen. D'Allesandro, Dist 20

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill establishes the crime of aggravated harassment by an inmate.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT establishing the crime of aggravated harassment by an inmate.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Assaults by Prisoners. Amend RSA 642:9 by inserting after paragraph II the
2 following new paragraph:

3 II-a. An inmate is guilty of aggravated harassment of an employee when, with intent to
4 harass, annoy, threaten, or alarm a person who the inmate knows or reasonably should know is an
5 employee of such facility, or the department of corrections, or any law enforcement agency, the
6 inmate causes or attempts to cause such employee to come into contact with blood, seminal fluid,
7 urine, feces, emesis, or saliva by throwing or expelling such substance either directly or indirectly at
8 the employee, thus contaminating the employee's work environment.

9 2 Assaults by Prisoners. Amend RSA 642:9, III-IV to read as follows:

10 III. For the purposes of this section:

11 (a) "Official custody" means custody in a penal institution or other confinement by an
12 order of a court.

13 (b) "Inmate" means an offender, as defined in RSA 21-H:2, [VII] VIII, a person in
14 pretrial confinement, or any person incarcerated in a local detention facility *operated by the*
15 *department of corrections.*

16 (c) "Facility" means a correctional facility or local correctional facility hospital, operated
17 by the department of corrections.

18 IV. The offense is a class B felony if it is an aggravated assault *or harassment* as defined in
19 paragraph II *or II-a*, or if the offense committed is simple assault as defined under RSA 631:2-a
20 unless committed in a fight entered into by mutual consent, in which case it is a misdemeanor. The
21 offense is a class A felony if the offense committed is first degree or second degree assault as defined
22 under RSA 631:1 or RSA 631:2.

23 3 Effective Date. This act shall take effect January 1, 2011.

LBAO
10-2498
12/18/09

HB 1680-FN - FISCAL NOTE

AN ACT establishing the crime of aggravated harassment by an inmate.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

HB 1680 FISCAL NOTE

AN ACT establishing the crime of aggravated harassment by an inmate.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Department of Corrections, and New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2011 and each year thereafter. There will be no fiscal impact on local expenditures or state, county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill will add RSA 642:9, II-a establishes the crime of aggravated harassment by an inmate and makes this crime a class B felony. The Branch has no information to estimate how many new class B felonies would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. The Branch states this type of case would be classified as a complex felony. The average cost of a complex felony case is \$661.17 in FY 2011 and each year thereafter. The Branch states it would take 16 additional felony cases annually to have a fiscal impact in excess of \$10,000. However, the possibility of appeals reduces the number of cases needed for a fiscal impact to the Branch in excess of \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states if an individual is found to be indigent, the flat fee of \$756.24 per felony is charged by a public defender or contract attorney. The fee increases to \$2,282.50 if it is a first degree felony assault. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge and \$4,100 for a felony charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

The Department of Corrections states this bill may increase expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted. The Department states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2009 was \$33,110. The cost to supervise an

individual by the Department's division of field services for the fiscal year ending June 30, 2009 was \$744.

The New Hampshire Association of Counties states to the extent an individual is prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained or incarcerated as a result of this bill. The average cost to incarcerate an individual in a county facility is \$35,342 a year.

The Department of Justice states the criminal offense created by this bill could normally be prosecuted by a local prosecutor or county attorney's office. If an appeal is filed, the Department would have increased expenditures. The Department is unable to estimate how many cases would be prosecuted by the Department or appealed to the Supreme Court. The Department assumes any increase in appellate workload would be nominal and could be absorbed within the Department's budget.

CHAPTER 174
HB 1680-FN - FINAL VERSION

04/21/10 1367s

2010 SESSION

10-2498
04/03

HOUSE BILL ***1680-FN***

AN ACT establishing the crime of aggravated harassment by an inmate.

SPONSORS: Rep. P. Garrity, Hills 14; Rep. D. Sullivan, Hills 8; Rep. Goley, Hills 8;
Rep. Baldasaro, Rock 3; Rep. Rhodes, Hills 22; Sen. DeVries, Dist 18;
Sen. Letourneau, Dist 19; Sen. D'Allesandro, Dist 20

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STATE OF NEW HAMPSHIRE

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1 174:1 New Paragraph; Assaults by Prisoners. Amend RSA 642:9 by inserting after paragraph II
2 the following new paragraph:

3 II-a. An inmate is guilty of aggravated harassment of an employee when, with intent to
4 harass, annoy, threaten, or alarm a person who the inmate knows or reasonably should know is an
5 employee of such facility, or the department of corrections, or any law enforcement agency, the
6 inmate causes or attempts to cause such employee to come into contact with blood, seminal fluid,
7 urine, feces, emesis, or saliva by throwing or expelling such substance either directly or indirectly at
8 the employee, thus contaminating the employee's work environment.

9 174:174:2 Assaults by Prisoners. Amend RSA 642:9, III-IV to read as follows:

10 III. For the purposes of this section:

11 (a) "Official custody" means custody in a penal institution or other confinement by an
12 order of a court.

13 (b) "Inmate" means ~~[an offender, as defined in RSA 21-H:2, VII]~~ **a person committed**
14 **by law to the custody of the commissioner of the department of corrections**, a person in
15 pretrial confinement, ~~[or]~~ any person incarcerated in a local detention facility **operated by a county**
16 **department of corrections, or a person in detention at a police department.**

17 (c) "Facility" means a correctional facility or local correctional facility hospital, operated
18 by the **state or a county** department of corrections, **or a police department.**

19 IV. The offense is a class B felony if it is an aggravated assault **or harassment** as defined in
20 paragraph II **or II-a**, or if the offense committed is simple assault as defined under RSA 631:2-a
21 unless committed in a fight entered into by mutual consent, in which case it is a misdemeanor. The
22 offense is a class A felony if the offense committed is first degree or second degree assault as defined
23 under RSA 631:1 or RSA 631:2.

24 174:3 Effective Date. This act shall take effect January 1, 2011.

25

26 Approved: June 17, 2010

27 Effective Date: January 1, 2011

Amendments



Amendment to HB 1680-FN

1 Amend the bill by replacing section 2 with the following:

2

3 2 Assaults by Prisoners. Amend RSA 642:9, III-IV to read as follows:

4 III. For the purposes of this section:

5 (a) "Official custody" means custody in a penal institution or other confinement by an
6 order of a court.

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8 *by law to the custody of the commissioner of the department of corrections*, a person in
9 pretrial confinement, ~~[or]~~ any person incarcerated in a local detention facility *operated by a county*
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15 unless committed in a fight entered into by mutual consent, in which case it is a misdemeanor. The
16 offense is a class A felony if the offense committed is first degree or second degree assault as defined
17 under RSA 631:1 or RSA 631:2.

Committee Minutes

**SENATE CALENDAR NOTICE
JUDICIARY**

- ✓ Senator Deborah Reynolds Chairman
- ✓ Senator Bette Lasky V Chairman
- ✓ Senator Matthew Houde
- ✓ Senator Sheila Roberge
- ✓ Senator Robert Letourneau

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: April 7, 2010

HEARINGS

Tuesday

4/13/2010

JUDICIARY

SH 103

2:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

Comments: FOLLOWED BY AN EXEC SESSION ON ALL REMAINING HOUSE FN BILLS

2:00 PM HB1642-FN relative to the registration of criminal offenders.

✓ 2:15 PM HB1680-FN establishing the crime of aggravated harassment by an inmate.

Sponsors:

HB1642-FN

Rep. Stephen Shurtleff

HB1680-FN

✓ Rep. Patrick Garrity
Rep. Brian Rhodes

Rep. Daniel Sullivan
Sen. Betsi DeVries

Rep. Jeffrey Goley
Sen. Robert Letourneau

Rep. Alfred Baldasaro
Sen. Lou D'Allesandro

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on **HB 1680-FN** – *AN ACT establishing the crime of aggravated harassment by an inmate.*

HEARING DATE: April 13, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds, Lasky, Roberge, Letourneau and Houde

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Representatives P. Garrity, D. Sullivan, Goley, Baldasaro, Rhodes and Senators DeVries, Letourneau and D'Allesandro

What the bill does: This bill establishes the crime of aggravated harassment by an inmate.

Who supports the bill: Representatives Garrity, Sullivan, Shurtleff, Baldasaro, Cushing; Deputy Chief Ryan Martineau of Hillsboro County Corrections; Capt. Gifford Hiscoe of Hillsboro County DOC;

Who opposes the bill: No one

Others testifying: Attorney Ann Rice, Dept. of Justice;

Summary of testimony received:

- **Representative Garrity** introduced the legislation and explained that last May during the budget negotiations, they became aware of a situation in a facility whereby inmates were throwing bodily fluids at staff members. He said that they tried to file charges against the inmates, but these were "kicked back" because the officers were not actually being hit.
- He said that the legislation is necessary to protect our corrections officers (and their family members) as well as to hold inmates accountable for their actions.
- He said that this has been a problem at Hillsboro County facility, but also at other facilities.
- **Attorney Ann Rice** testified on behalf of the Attorney General's office and stated that they are taking no position on the bill.

- She asked that these offenses be clarified to include all county and state facilities.
- Senator Letourneau asked about individuals being held at local jails and the police officers who have to deal with the same problems.
- Attorney Rice responded that if anyone were being held for a length of time, they would be moved to a county facility. Senator Letourneau requested that the amendment be rewritten to include all facilities, local police jails, county and state correctional facilities.
- Senator Reynolds asked if there have been any other experiences with this problem. Attorney Rice said that the current language prohibits throwing at officers. Senator Houde asked if this could be prosecuted as an attempt. Attorney Rice said that the problem has been that the language has been unclear and that this would clarify exactly what the prohibited actions are.
- **Deputy Chief Martineau** testified in support. He explained that in his facility, this has been done with the intent to harass corrections officers. He said that one inmate had said to them: "as long as I don't hit you, there's nothing you can do about it." He said that officers would like this statutory clarification.
- Senator Reynolds asked if there is any context in time with these events – were they a more recent occurrence? Deputy Chief Martineau responded that it had particularly happened for a few months starting in December 2008. Senator Reynolds asked if prior to that, had it not been as prevalent. The Deputy Chief responded "yes," but that they have tried to go after them.
- Senator Reynolds noted that the room was filled with other employees of the Department of Corrections who are here in support of this legislation.
- **Captain Gifford Hiscoe** testified in support and explained the concern with causing the employees to have to come into contact with feces and other excrement and body fluids. He said that they felt it was important to make the statute clear and that they obviously view this as criminal activity. He noted that the inmates are impacted by the media, movies and television and that these are sometimes their "worst enemies." He asked that the members understand that every inmate does have a toilet in their cells. He said that these inmates are purposefully throwing the excrement onto the floors.
- He explained that this legislation is not designed to impact individuals with mental illness or who are on drugs or intoxicated – but to be able to deal with aggressive, harassing behavior. He said that they hope to slow down or put a stop to this action.
- He said that even though they were not successful previously when they started charging the inmates, it did have the effect of slowing down the behavior.

- Senator Reynolds noted that the conditions depicted here are appalling. The Chief responded that they house up to 600 inmates generally, and that probably only 3 or 4 would participate in behavior such as this. He said that while it is a small number, it is clearly a strong-arm tactic.
- Senator Reynolds asked if this language would help serve as a deterrent to the behavior. The Chief responded "absolutely." He commented that especially for folks who are going to be looking at a long sentence, they feel that they have less to lose with this type activity. He said that in his opinion, we owe it to the folks who cover these types of jobs and would be a deterrent to the behavior.
- Senator Letourneau asked again that the bill be amended to also include local police officers and jails and asked the Chief if he would have any problem at all with including them. The Chief responded that he would have absolutely no problem with that addition.

Fiscal Impact: See fiscal note

Action: Senator Letourneau moved "Ought to Pass with Amendment." Senator Lasky seconded the motion. The Committee voted 5 to 0 in support of the OTP/A motion. Senator Reynolds will report the bill out of Committee.

sfd

[file: HB 1680-FN]
Date: April 14, 2010

JMB

We are all aware of today's situation with communicable diseases. I also learned that you can't make the inmates clean it up; the corrections officers have to clean it up. So, it really disturbed me quite a bit and the reason for the legislation is not to circumvent the assault code RSA, but to hold them accountable for throwing the bodily fluids in their work areas.

I would be more than happy to answer questions, but there are many professionals behind me who will go into detail. I'm sure they have a presentation for you in reference to what has been going on. It is not only going on at Hillsborough County Department of Corrections, but statewide in all of other counties.

I am also aware that the Attorney General's Office would like to clarify some of the language in the bill. I'm not opposed to that and I'm quite sure that the Chairman of the Criminal Justice and Public Safety will come and speak to you folks also. I'm willing to answer any questions, but I believe the professionals behind me could get more in depth and deal with some of the issues that they are dealing with on a daily basis.

Thank you, Madam Chair.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Representative Garrity. Any questions of Representative Garrity?

Senator Robert J. Letourneau, D. 19: Just one.

Senator Deborah R. Reynolds, D. 2: Senator Letourneau?

Senator Robert J. Letourneau, D. 19: I see that there's an amendment here.

Senator Deborah R. Reynolds, D. 2: Yes. I think what we're hearing is that Attorney Ann Rice is going to bring that forward.

Senator Robert J. Letourneau, D. 19: Okay. Thank you.

Senator Deborah R. Reynolds, D. 2: Thank you. Any other questions? Thank you very much, Representative Garrity. I want to note for the record that Representative Daniel Sullivan has signed in in support, but does not wish to speak. Representative Steve Shurtleff has signed in in support, does not wish to speak. Representative Al Baldasaro is signed in in support, does not wish to speak. Representative Robert Renny Cushing has signed in in support, does not wish to speak. Senator Bob Letourneau has signed in in

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support, does not wish to speak. Are there any other members of the General Court who intended to testify or would like to testify? Otherwise, we will go to Attorney Rice. Thank you very much.

Representative Garrity: Thank you.

Senator Deborah R. Reynolds, D. 2: Call Attorney Ann Rice from the Attorney General's Office. Welcome.

Associate Attorney Ann Rice: For the record, my name is Ann Rice. I appear on behalf of the Attorney General's Office.

We have not taken a position on this bill. I just offered some language to clear up what is a little unclear in this proposal and to make sure that it is clear in the language that this covers both the Department of Corrections operated by the state and county facilities.

So, in Section 2, I have changed the definition of inmate to include a person committed by law to the custody of the Commissioner of the Department of Corrections; a person in pretrial confinement, or any person incarcerated in a local detention facility operated by a county department of corrections because, when we say Department of Corrections, it typically means the State.

And, similarly in subparagraph (c) of that section, I have included the words state or a county before department of corrections.

That's all I have. I'm happy to take questions.

Please see Attachment #1, proposed amendment language from Associate Attorney Ann Rice.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Any questions? Senator Letourneau?

Senator Robert J. Letourneau, D. 19: Thank you. This brings up to me another question. You did a nice job on the amendment. What about the local law enforcement officials that have somebody incarcerated in a local jail, not a prison, but a jail. We seem to have some issues there also. This doesn't cover them the way this is written.

Attorney Rice: It wouldn't cover it the way it is written. I don't have any information about whether that is a real problem. If anyone is going to be

held for any length of time, they would be taken to a department of corrections in a county as opposed to being held in a local police department.

Senator Robert J. Letourneau, D. 19: Just a follow up. I have just been told by my local police officers that they have had some issues with people in overnight lock-ups doing the same type of activities that we were talking about here earlier. So, I just didn't know if there was a way to modify this to cover all law enforcement.

Attorney Rice: Well, I think it certainly could be broadened. The inmate could be broadened to say any person incarcerated in a local detention facility or a detention facility operated by a county house of corrections. And, similarly the facility should include a local detention facility. So, if you would like me to just draft that, I'm happy to do that for you.

Senator Robert J. Letourneau, D. 19: I would. Thank you.

Senator Deborah R. Reynolds, D. 2: Attorney Rice, I have a question. Has the AG's Office had experience in trying to prosecute any of these cases?

Attorney Rice: We haven't had any experience. We were dealing with some issues out of Hillsborough County because the current language of the statute prohibits an inmate from throwing feces or urine and having a correctional officer come in contact with it. But, the way the language is written, it doesn't involve when someone throws it on the floor and they have to clean it up. So, we have been asked to appeal that. I believe there may be an appeal pending on that issue, but this would clean that up.

Senator Robert J. Letourneau, D. 19: No pun intended.

Senator Deborah R. Reynolds, D. 2: Senator Houde?

Senator Matthew Houde, D. 5: Presumably, you could prosecute that as an offense, even if an inmate threw it and it missed.

Attorney Rice: Well, then you, with an attempt, you have to say that they had a purpose to make the person come into contact with it. I think there is an argument to say yes, that could be an attempt, but the statute is a little unclear with this. So, this would certainly progress it by that.

Senator Matthew Houde, D. 5: Thank you.

Senator Deborah R. Reynolds, D. 2: Any further questions? Thank you very much, Ann, we appreciate your testimony. We do have several

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representatives from Corrections and Safety and Deputy Chief Brian Martineau. Deputy Chief Martineau is here in support. Welcome, sir.

Deputy Chief Brian Martineau: Madam Chair, Senate members of the Committee, thank you for giving me the opportunity to speak.

I'm passing out a booklet. Inside the booklet there is approximately twenty pictures. These were taken literally from hundreds of pictures that we had. This kind of gives you guys an idea of what my staff has to work in.

Transcriber's note: the booklet of pictures submitted by Deputy Chief Martineau are not attached to this transcript, but are available in the original bill file.

Senator Deborah R. Reynolds, D. 2: Chief, just for the record, could you state your full name and who you work for?

Deputy Chief Martineau: My name is Deputy Chief Martineau. I work for the Hillsborough County Department of Corrections.

Senator Deborah R. Reynolds, D. 2: Thank you, sir.

Deputy Chief Martineau: Again, those are about twenty pictures taken over a period of three months to give the Senators an idea of what the staff are forced to work in by a few inmates.

When they first started this behavior, obviously it was an intent to harass, they thought it was funny. They would taunt the officers, laugh at them. They would remind the officers of the communicable disease they could catch, hoping that they would bring it home to their families and whatnot. Now, one inmate even boasted when talking with his attorney that he said, as long as I don't hit you guys, there is nothing you can do about it. Captain Hiscoe, the Assistant Superintendent and myself looked at it, looked at the current RSAs. We felt we met the guidelines to go forward and bring charges against them. Well, apparently, I guess there was a loophole in the fact that, I guess, the word contact was a little too vague and it got dismissed. That's why we're here today because we would like some clarification and that way there is no room for interpretation and pretty much hopefully deter this from happening again.

Senator Deborah R. Reynolds, D. 2: Well, first of all, thank you for all you do. You do an amazing job under difficult circumstances. The question I guess is, do you have a time contact? For example, is this something that has

2/13

happened more recently in the last few years or when did you first see this pattern start?

Deputy Chief Martineau: There was one inmate that got four or five other inmates involved. He was looking at a lot of time and obviously he didn't care about any additional charges. He was able to get, manipulate some other inmates to join with him and it was December of '08 and it continued until almost March of '09 with this type of behavior and it was pretty much they had one running toilet and they just chose to, again, go on the floor, push it out.

Senator Deborah R. Reynolds, D. 2: So, just as a follow up to that. So, your testimony would be that prior to 2008 it wasn't as prevalent. Is that what we're hearing?

Deputy Chief Martineau: Not as bad as this time period. Again, we immediately went after them to charge them with assault, hoping that it would deter the behavior. Again, once they figured out that there was nothing we could do to them, they just kind of encouraged them to do a little bit more. It happens periodically, here and there, but not as bad as it was in that three-month period that we dealt with these issues.

Senator Deborah R. Reynolds, D. 2: And, Chief, I'm seeing quite a few gentlemen and women here. Are they from the Hillsborough County House of Corrections primarily?

Deputy Chief Martineau: Yes, Ma'am.

Senator Deborah R. Reynolds, D. 2: And, we're glad that they are all here and they are in support of this bill as well.

Deputy Chief Martineau: Yes, Ma'am.

Senator Deborah R. Reynolds, D. 2: Thank you so much. Any other questions? Seeing none, thank you so much for coming, Chief.

Deputy Chief Martineau: Thank you.

Senator Deborah R. Reynolds, D. 2: The next person I have is Captain Gifford Hiscoe. Captain, welcome. Please come forward.

Captain Gifford Hiscoe: Thank you, Madam Chair. Good afternoon, members of the Committee. My name is Gifford Hiscoe and I am the proud Captain of Hillsborough County Department of Corrections.

To reiterate a little bit about what Deputy Martineau was talking about, I guess the rub is, I'm certainly not an attorney and I'm certainly not a player on television, but if you were to read the criminal code 642:9, assault by prisoner, there is verbiage in there that does talk about harassment. There is verbiage in there that does talk about causing employees to come in contact with, but for some reason, the court didn't view that as feces, urine, semen, any bodily fluids not come in contact with correctional officers. I think we need that criminal code. So, we felt it was extremely important for us to make this kind of a slam dunk and a no-brainer to have a criminal code that would clearly identify the fact that if you are purposely throwing your feces, your urine, your semen on the day room floor, covering your cell with it, knowing that a correctional officer has to go in there and come in contact with that and clean that, that that should certainly be viewed as criminal activity.

It is very important at the last session that I had the opportunity to speak, I did want to at least clarify that I do believe that the media, the movies, television shows are potentially our worst enemies. I would like to clarify that, at least in the Hillsborough County situation, I can't speak for all correctional facilities, I did want the Committee to be aware of the fact that we are talking about inmates that have a toilet in their cell, water in their cell because I know if sometimes you watch TV or you watch movies, perhaps you might think that they don't have a toilet in their cell and they may have to be removed from their cell to use a facility. So, we are talking about inmates who clearly have the opportunity to use a bathroom right in their cell and they choose not to.

This bill was also not designed, or the spirit of this was not designed to impact individuals with mental illness. I think that we have very intelligent staff here and are definitely able to separate those who are suffering from mental illness, those that perhaps come into our facility at intake and are intoxicated or on drugs. They may not be of sound mind and they urinate on the floor, perhaps by accident. We are absolutely talking about those individuals that are being incarcerated because they are aggressive, harassing, bullying type personalities and they are continuing to do that while incarcerated with inside our walls. We are hoping that this bill will at least slow it down or put a stop to what we believe is criminal behavior.

I would also just like to add on that I will take any questions, but I do have to say that when we started charging these individuals under 642:9, it absolutely did stop and deter a lot of the inmates from doing this. We do have one case that is still under appeal right now. Even though we were perhaps winning these, just by Hillsborough County taking inmates to court,

this was absolutely a huge deterrent. So, we believe that, if this bill were to pass, we believe that we would be absolutely able to help protect the correctional officers that sit in front of you and obviously are still back at the facility. I will be happy to take any questions.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Captain Hiscoe. I think that these conditions that you have had to deal with are absolutely understandable in bringing this forward. I guess my question is, it sounds as though it is sort of a mob mentality or one person starts doing it and then there is piggy backing on that. Is that accurate? Is it just a couple of people doing this? Can you maybe give us a context a little bit?

Captain Hiscoe: Well, I would definitely agree with that mob mentality. We do house on any given day up to 600 inmates and certainly you're talking about three or four inmates that would have such behavior. Unfortunately, I guess, the way our society is going, I do believe there is what we term as strong arming; perhaps some gang activity where stronger inmates might intimidate the weaker inmates and perhaps persuade them to do this and join in. We are definitely talking about a small majority of inmates. Absolutely.

Senator Deborah R. Reynolds, D. 2: And, just as a follow-up to that. Do you think this will definitely help you and the other corrections officers in terms of deterring the impact of this? Do you think it will?

Captain Hiscoe: Absolutely, with a doubt. Obviously, it is not going to stop everybody. Deputy Martineau made a good comment about those individuals that are looking at a lot of time, that have nothing to lose, our hands are tied. They realize that no matter what their behavior is, they are going to get a warm blanket, they are going to get fed, we do not go into their cells and beat them. We cannot force them to clean this up. So, when they reach a point where they realize that there is nothing else these individuals can actually do to me, and perhaps I am going away to state prison for thirty, forty, fifty years or life, I believe that perhaps those individuals this may not be the ultimate deterrent.

But, I will say, for the people that are sitting in front of you, they do have families, they do have children, they do have husbands, they do have wives, they do, as Senator Reynolds did refer, they do a very hard, difficult job. I think we owe it to them that, even though it may not stop everybody, at least they can hold their heads up high and have some pride and realize that these individuals will ultimately be held accountable for doing this.

So, again, even if it is not the ultimate deterrent, I think we owe it to the correctional officers in the state to support them, realizing that there is absolutely no need for this whatsoever.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Captain. Any other questions? Senator Letourneau?

Senator Robert J. Letourneau, D. 19: Thank you for taking the question. You probably heard me ask earlier of Ann Rice, the ability to add to this particular RSA local law enforcement officials. Sometimes under the conditions that they have overnight prisoners who are inebriated would do the same type of activity. Do you have any issues with including language that would protect local law enforcement officers?

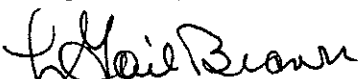
Captain Hiscoe: Absolutely not.

Senator Robert J. Letourneau, D. 19: Thank you.

Senator Deborah R. Reynolds, D. 2: Any other questions? Seeing none, thank you very much for your testimony and thank all of you for coming today. It is very important for us to listen to what happens. Thank you very much. I am going to close the hearing on HB 1642.

Hearing concluded at 2:35 p.m.

Respectfully submitted,


L. Gail Brown

Senate Secretarial Supervisor

8/24/10

1 Attachment

Attachment #1
Attorney Ann Rice

2 Assaults by Prisoners. Amend RSA 642:9, III-IV to read as follows:

III. For the purposes of this section:

(a) "Official custody" means custody in a penal institution or other confinement by an order of a court.

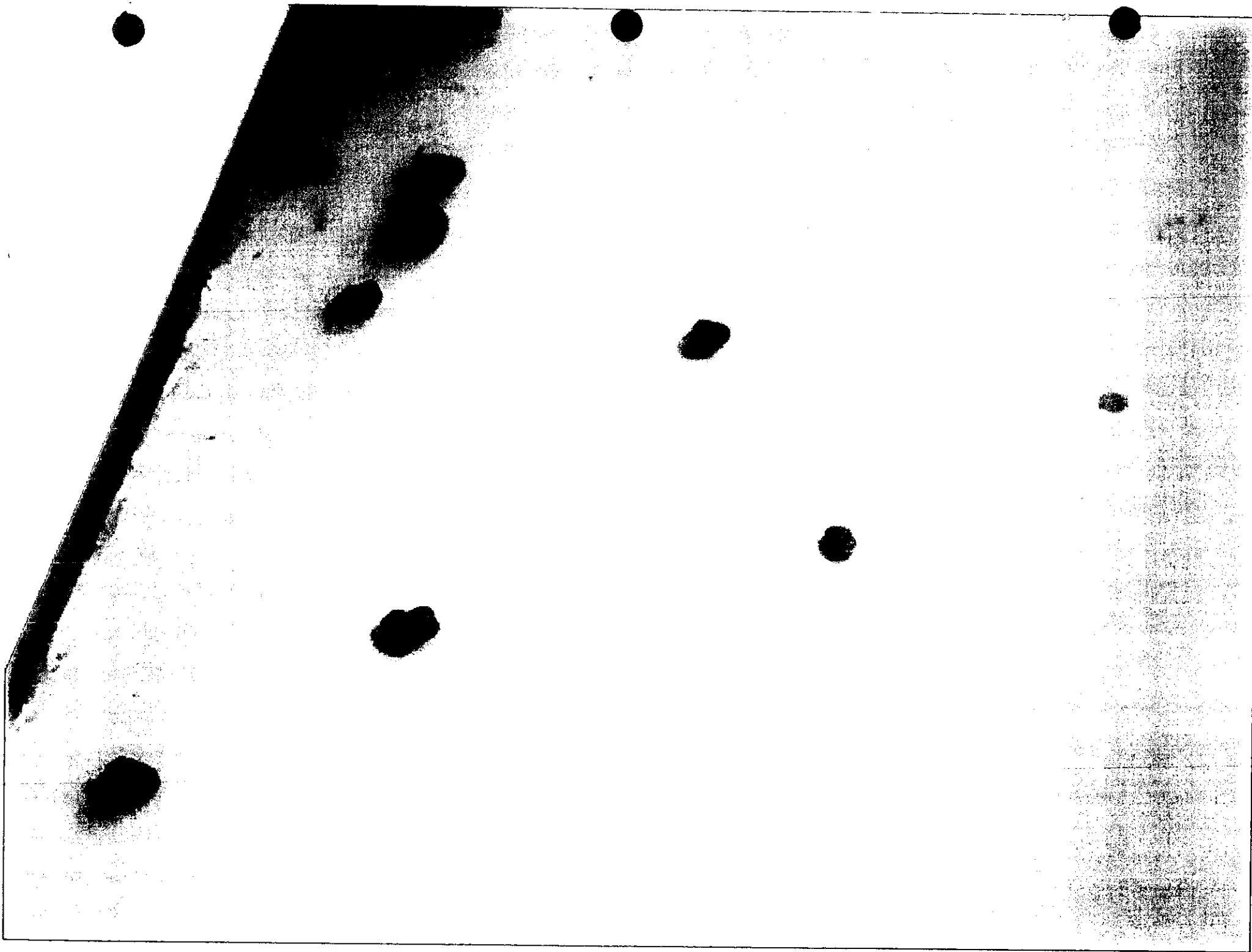
(b) "Inmate" means ~~an offender, as defined in RSA 21-H:2, [VII] VIII,~~ a person committed by law to the custody of the commissioner of the department of corrections; a person in pretrial confinement, or any person incarcerated in a local detention facility operated by the a county department of corrections.

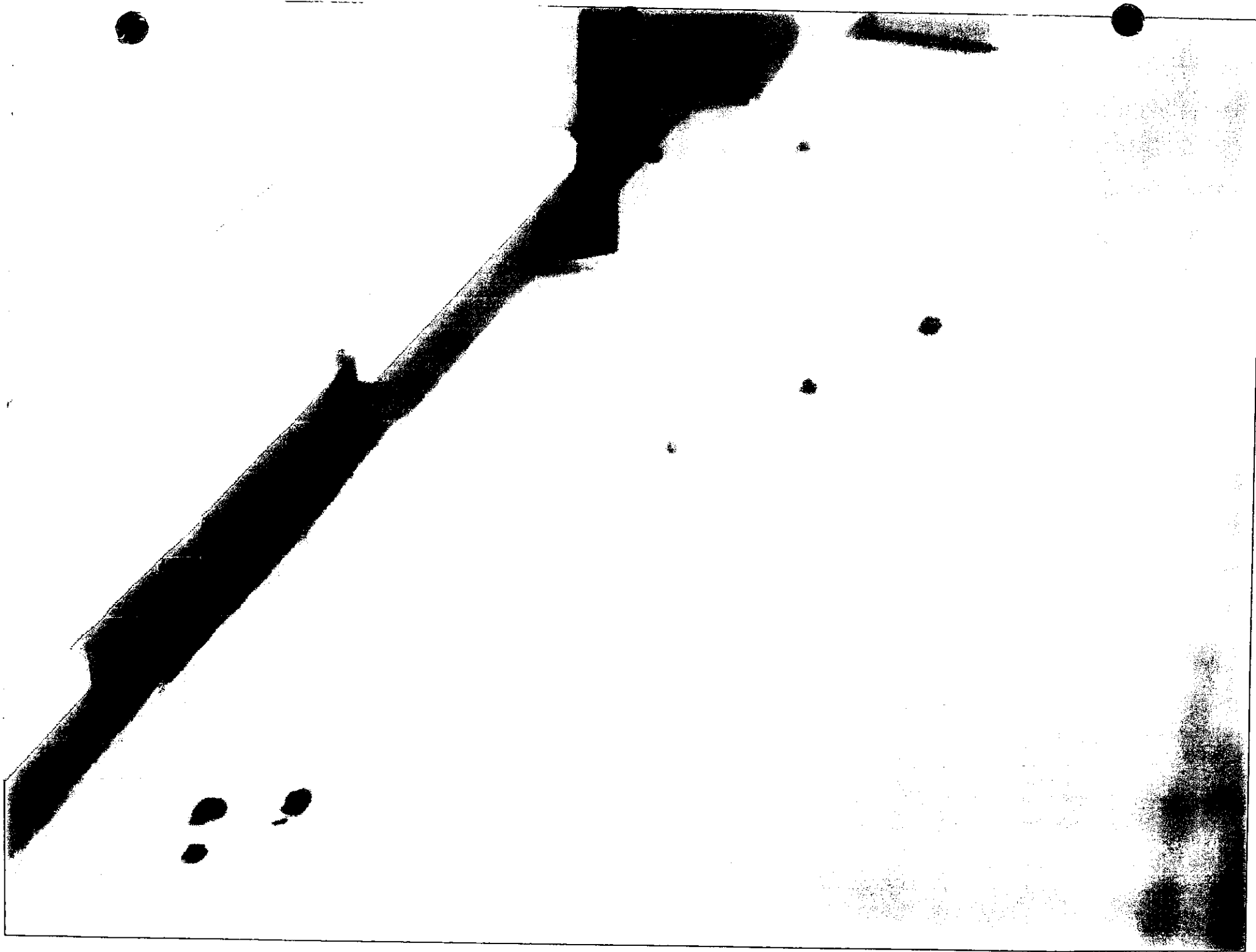
(c) "Facility" means a correctional facility or local correctional facility hospital, operated by the state or a county department of corrections.

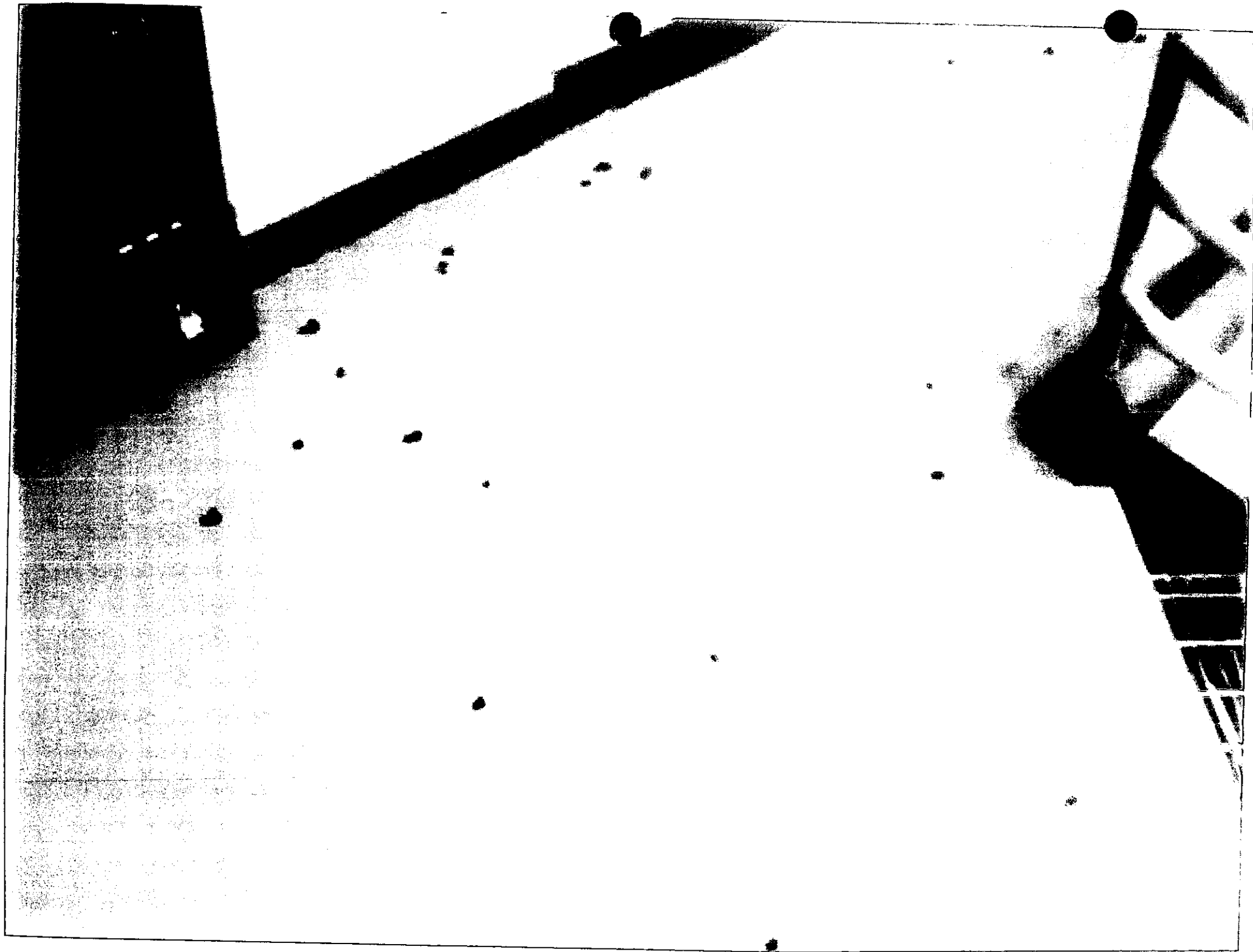
IV. The offense is a class B felony if it is an aggravated assault *or harassment* as defined in paragraph II *or II-a*, or if the offense committed is simple assault as defined under RSA 631:2-a unless committed in a fight entered into by mutual consent, in which case it is a misdemeanor. The offense is a class A felony if the offense committed is first degree or second degree assault as defined under RSA 631:1 or RSA 631:2.

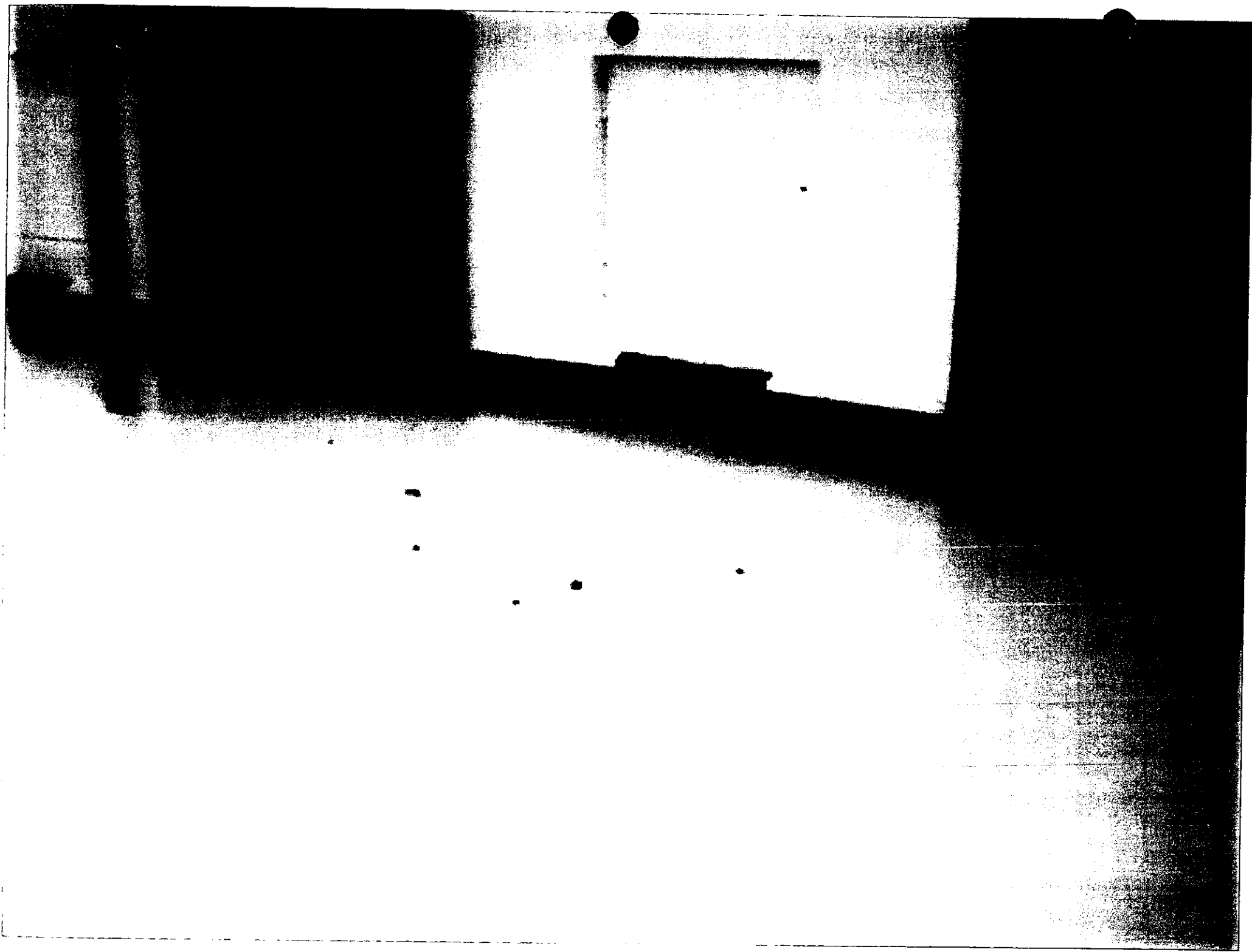
Speakers

Testimony



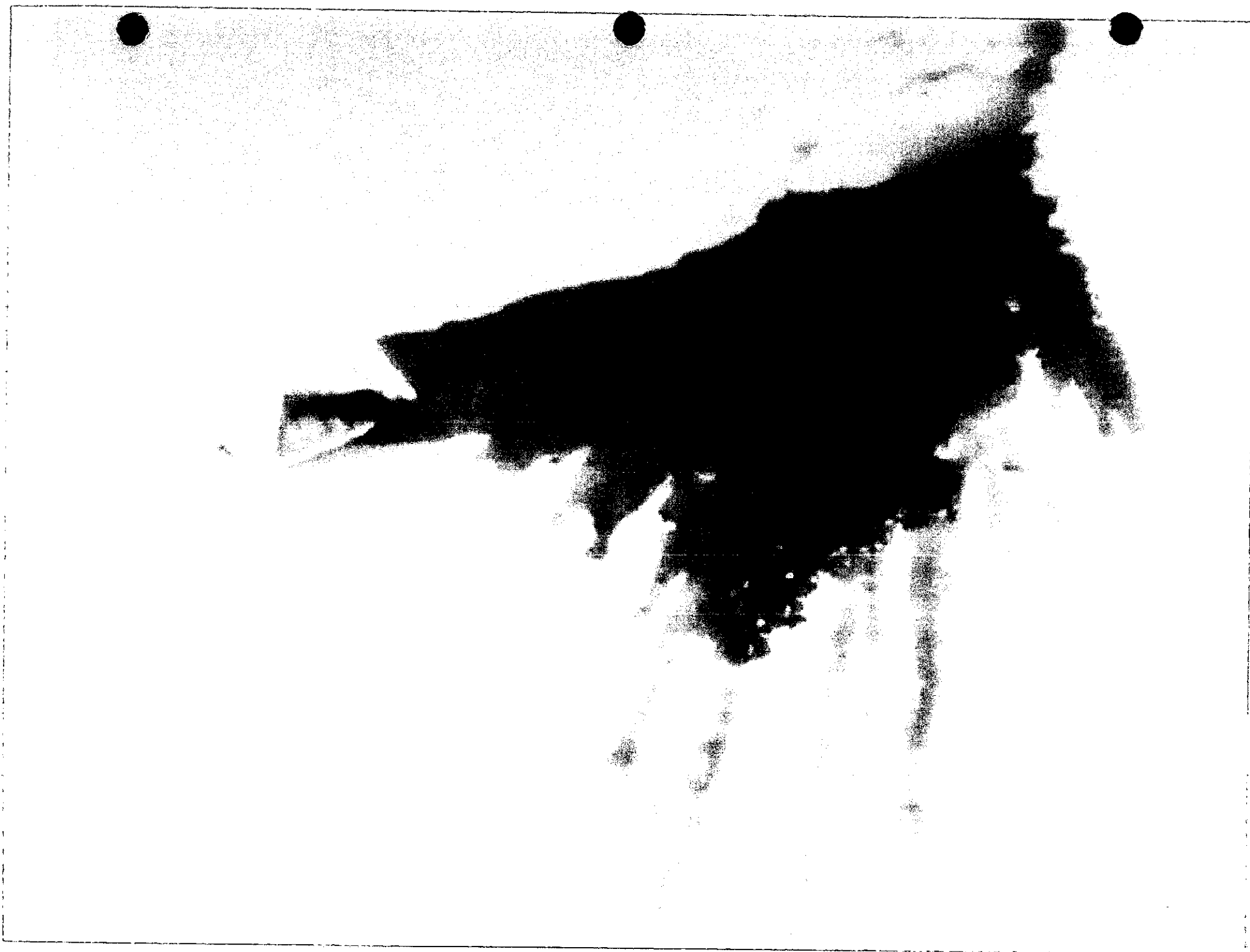




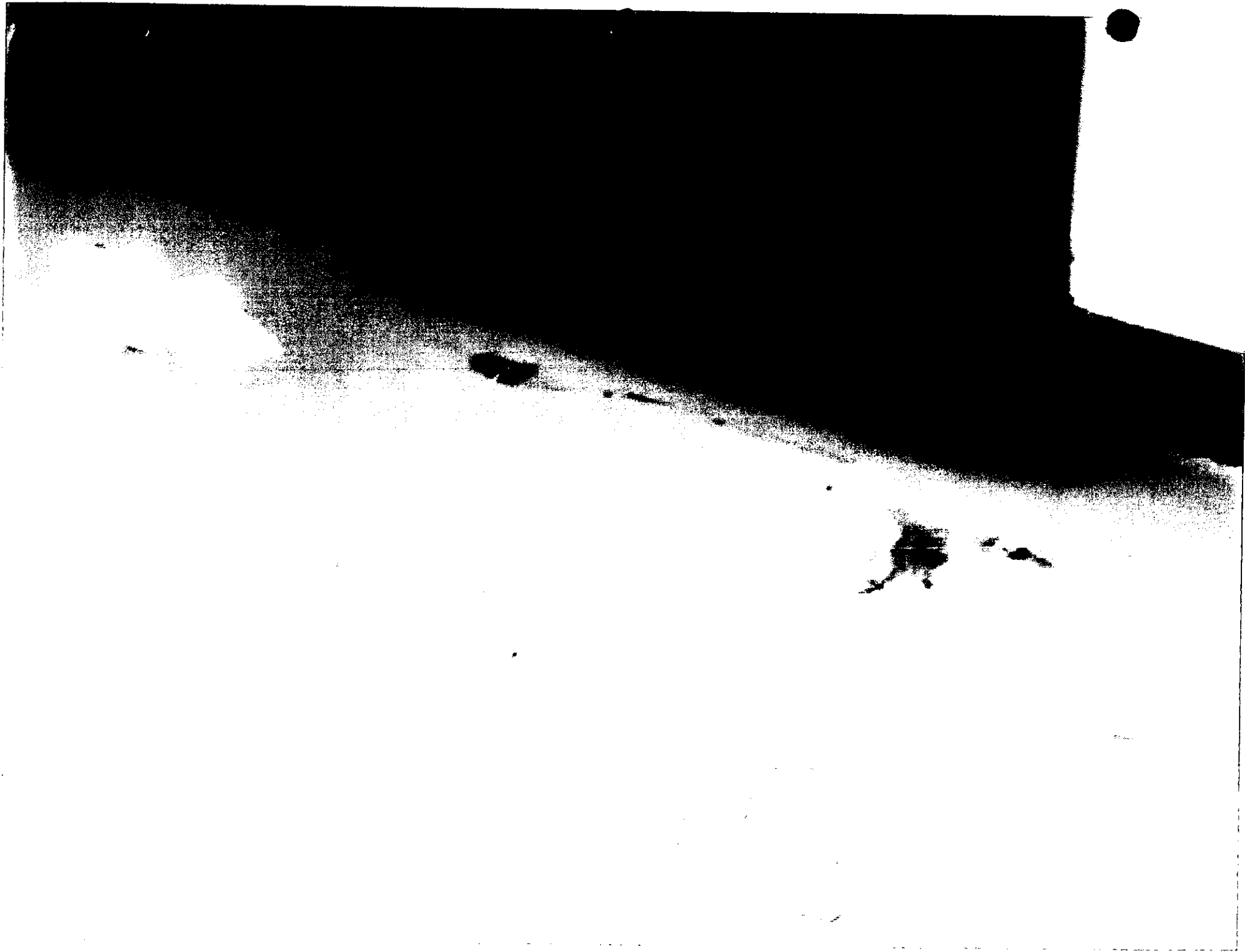


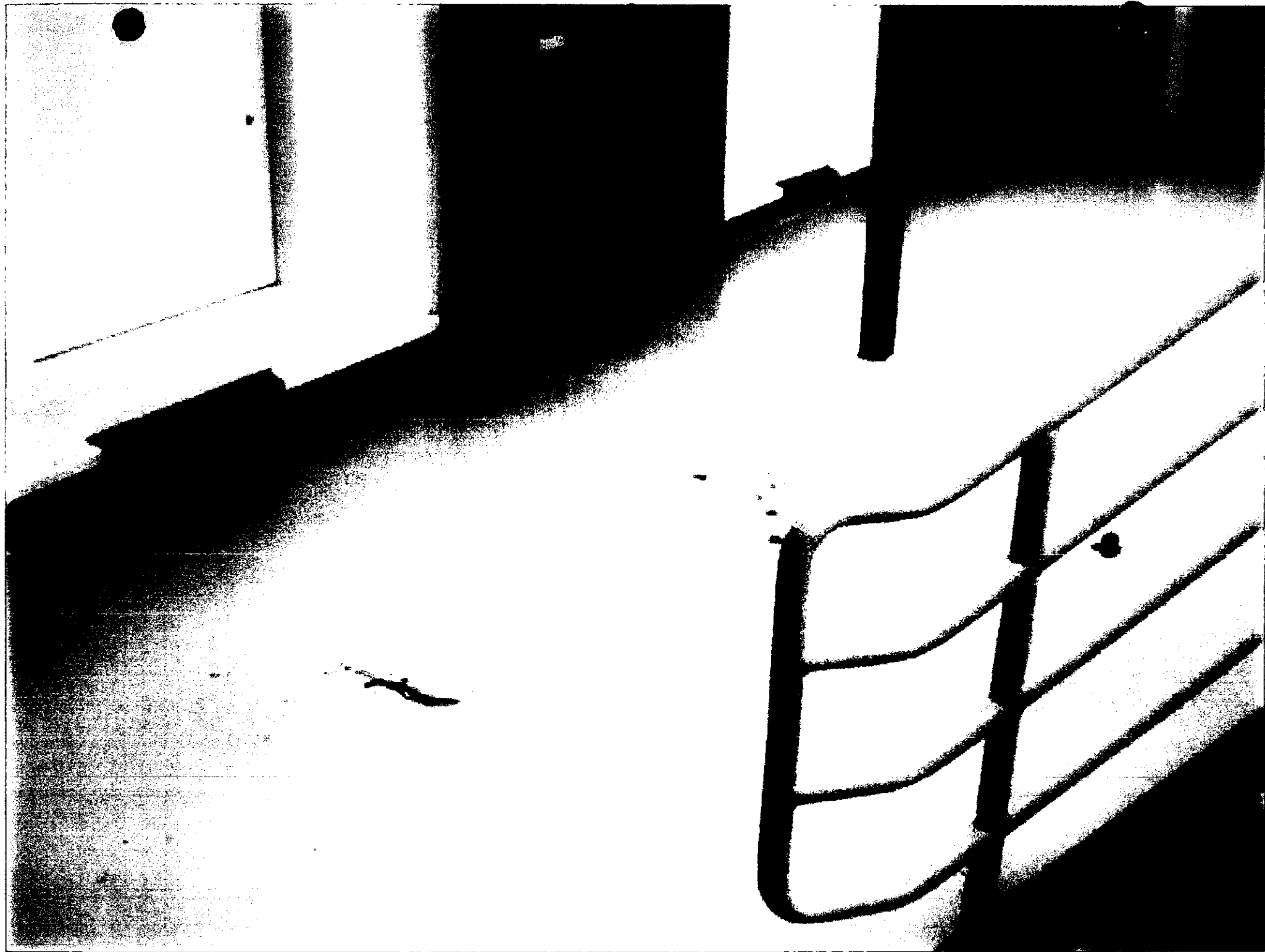


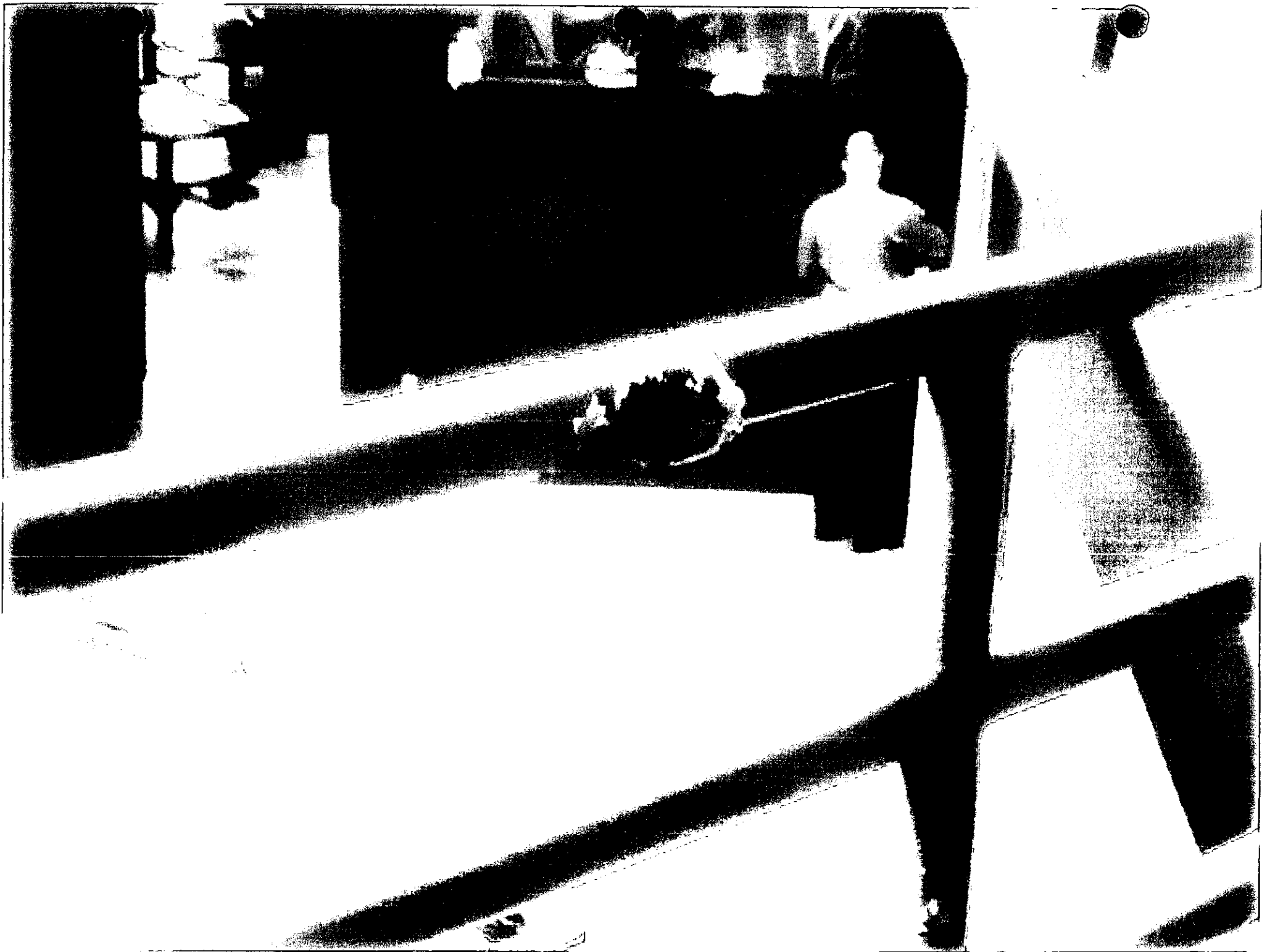




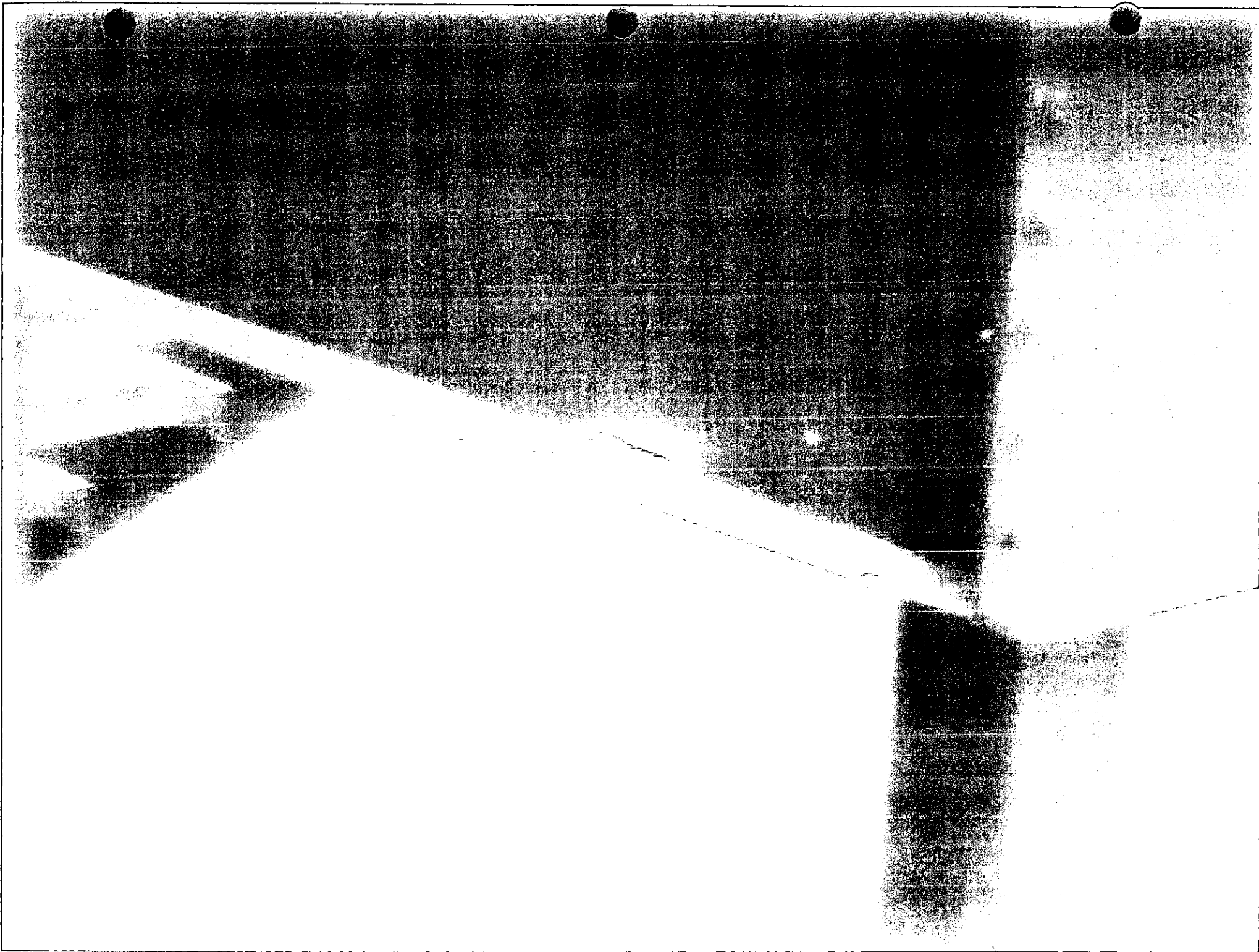








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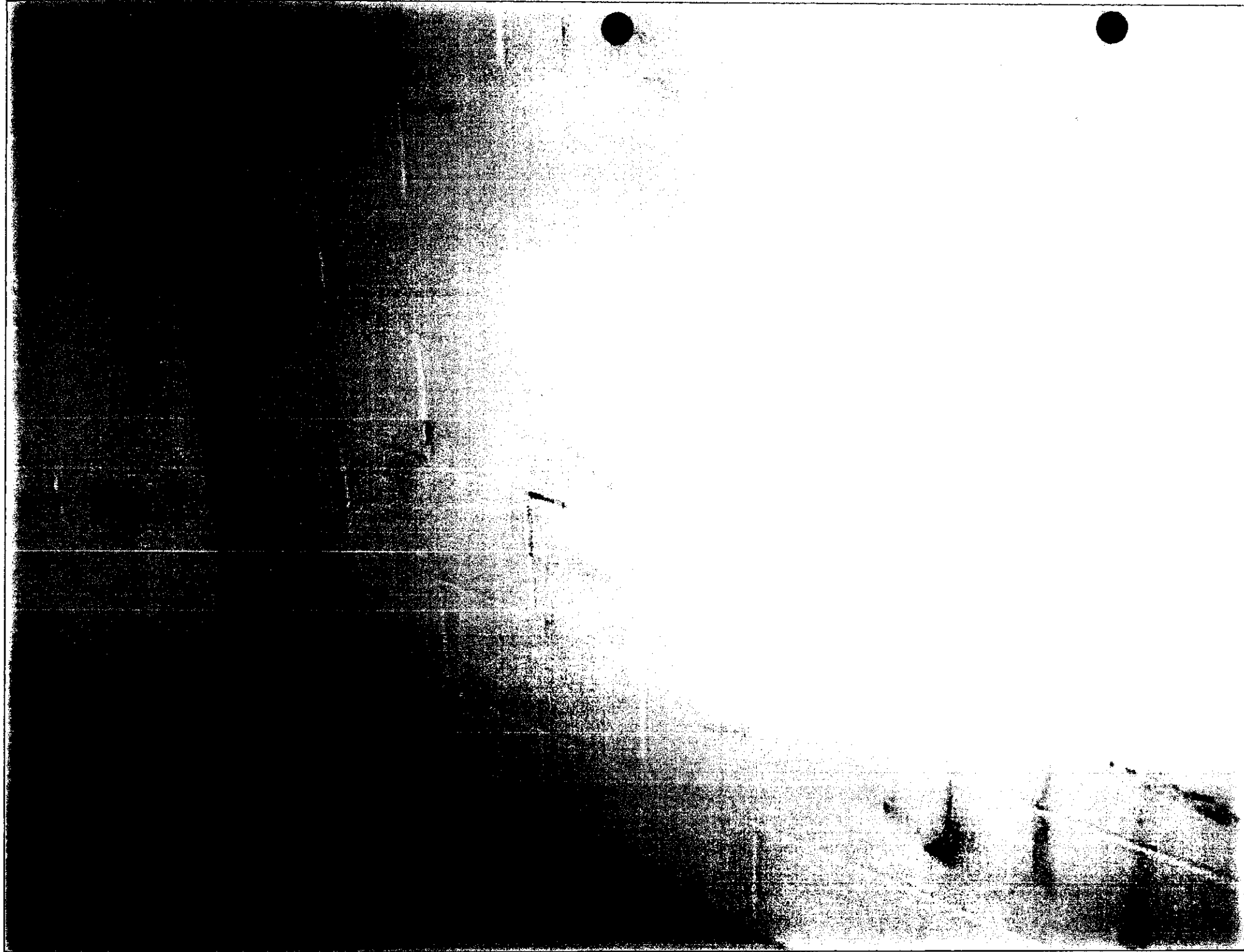


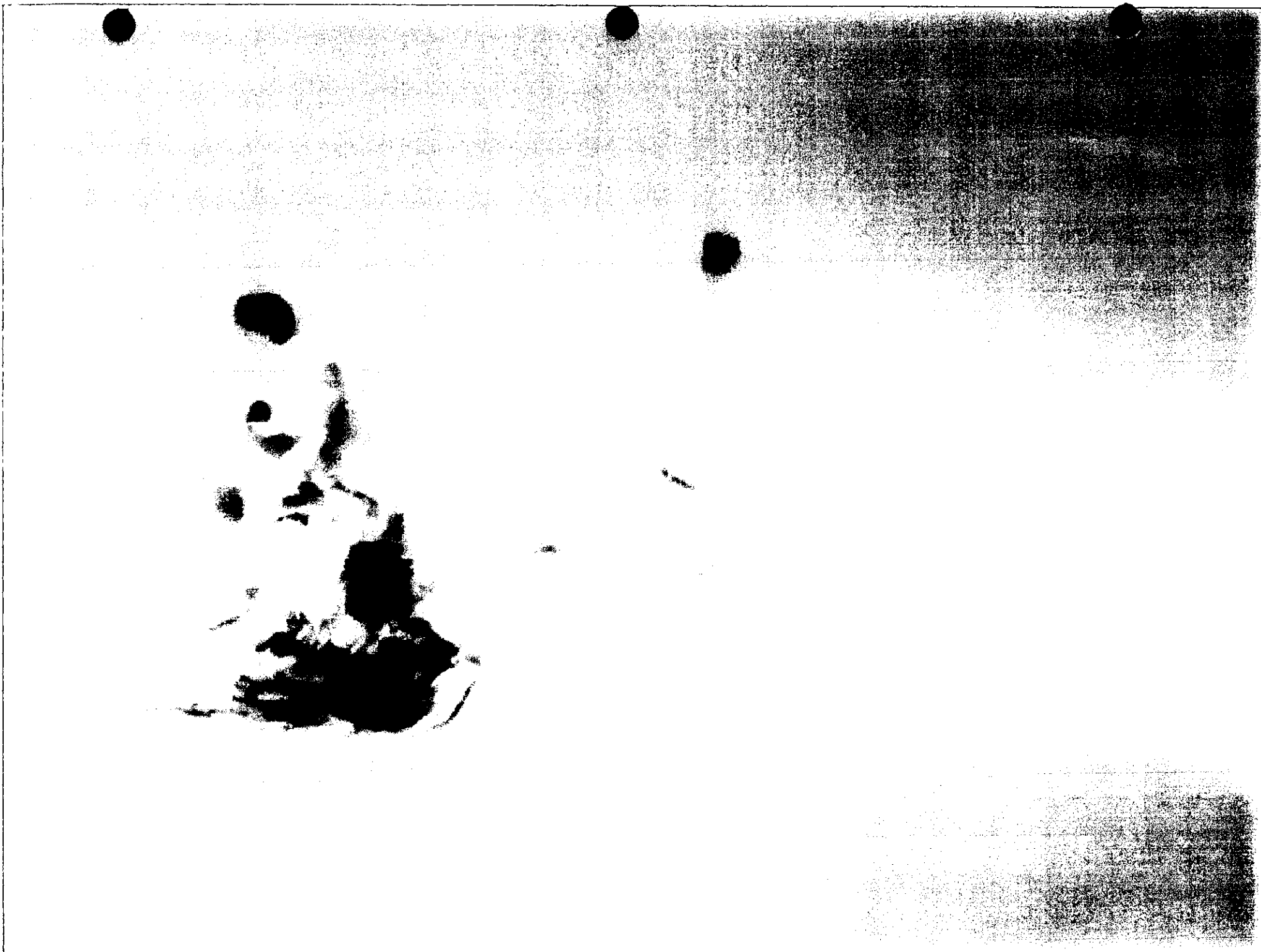












Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 1680-FN

Hearing date: 4/13/10

Executive session date: 4/13/10

Motion of: amendment

VOTE: 6-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Motion of: OTP/A

VOTE: 6-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Reynolds, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Letourneau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: April 15, 2010

THE COMMITTEE ON Judiciary
to which was referred House Bill 1680-FN

AN ACT establishing the crime of aggravated harassment by an
 inmate.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1367s

Senator Deborah R. Reynolds
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of HB1680

Docket Abbreviations

Bill Title: establishing the crime of aggravated harassment by an inmate.*Official Docket of HB1680:*

Date	Body	Description
12/21/2009	H	Introduced 1/6/2010 and Referred to Criminal Justice and Public Safety; HJ 6 , PG.247
01/12/2010	H	Public Hearing: 1/20/2010 10:30 AM LOB 204
01/26/2010	H	Executive Session: 2/2/2010 10:00 AM LOB 204 (Continued 2/2/2010 1:30 PM LOB 204 if Necessary)
02/04/2010	H	Committee Report: Ought to Pass for Feb 10 CC (vote 19-0); HC 13 , PG.524
02/10/2010	H	Removed from Consent Calendar (Rep Vaillancourt); HJ 16 , PG.748
02/10/2010	H	Special Ordered to Regular Place in Feb 17 Consent Calendar: MA Without Objection; HJ 16 , PG.783
02/17/2010	H	Ought to Pass: MA VV; HJ 18 , PG.937
03/10/2010	S	Introduced and Referred to Judiciary
04/07/2010	S	Hearing: April 13, 2010, Room 103, State House, 2:15 p.m.; SC15
04/15/2010	S	Committee Report: Ought to Pass with Amendment 1367s, 4/21/10; SC16
04/21/2010	S	Committee Amendment 1367s, AA, VV; SJ 15 , Pg.321
04/21/2010	S	Ought to Pass with Amendment 1367s, MA, VV; OT3rdg; SJ 15 , Pg.321
04/21/2010	S	Passed by Third Reading Resolution; SJ 15 , Pg.325
05/05/2010	H	House Concurs with Senate AM 1367s (Rep Shurtleff): MA VV; HJ 38 , PG.1882
05/13/2010	H	Enrolled; HJ 42 , PG.2153
05/13/2010	S	Enrolled; SJ 19 , Pg.640
06/18/2010	H	Signed by the Governor 06/17/2010; Effective 01/01/2011; Chapter 0174

NH House

NH Senate

Contact Us

*New Hampshire General Court Information Systems
107 North Main Street - State House Room 31, Concord NH 03301*

Other Referrals

