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SEX OFFENSES

Manfred Guttmacher and Henry Weihofen

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—EDITOR.

Today no area in legal psychiatry is in such a state of ferment as that of the problem of sex offenses. And there is doubtless no subject on which one can obtain more definite opinions and less definite knowledge. The attitude toward sexual behavior, like the attitude toward religion, is controlled by emotion rather than by intellect, even though we are loath to admit this even to ourselves. Both are dependent far more upon the spoken and unspoken teachings of our parents than upon the courses in biology and bible that we have had in college.

Individual sexual behavior is a complex pattern dependent upon biologic endowments, parental behavior, religious indoctrination, the basic relationship between the individual and his parents in early childhood, group mores, the educational level attained, accidental experiences during childhood and youth, and police prohibitions.¹ Although admittedly it is of the greatest importance to regulate and prohibit certain types of sexual behavior, it is extremely difficult to do so by legislation.

The history of the legislative process in regard to sexual offenses lends confirmation to the view that is founded primarily upon emotional reactions. A child is sexually abused and murdered and the community calls loudly for blood and for action. Bills are impulsively rushed through the legislature with new and dire regulatory provisions dealing with the widest variety of sexual behavior. Characteristically, action born of emotion is diffuse and lacks the fine focus of that which is intellectually motivated. The fact that the particular crime was carried out by an insane general parietic, who is about as responsive to law as a cat, is of no moment at such times. The supporters of such punitive

1. For a discussion of the factors which may lead to the commission of sex offenses, see East, *Sexual Offenders—A British View*, 55 YALE L. J. 527 (1946); Leppman, *Essential Differences Between Sex Offenders*, 32 J. CRIM. L. & CRIMINAL, 366 (1941).

measures now invariably refer to the decrease in kidnapping since more stringent penalties have been enacted. They totally neglect the fact that most crimes of kidnapping have, in part at least, an economic motivation and are under rational and conscious control, while brutal sex crimes against children are nearly always carried out in response to twisted unconscious and irrational impulses which the individual is incapable of understanding and controlling.

Since 1938 a third of the states have passed special statutes dealing with sex crimes and this legislating procession continues. It is reminiscent of the rash of sterilization laws enacted a generation ago. Between 1909 and 1913 eleven states passed such legislation. Much of it was ill founded because it was based on insufficient knowledge. Although thirty states enacted sterilization laws, only three still make extensive use of them.

COMMON MISCONCEPTIONS

Three widely held misconceptions have been responsible for most of the defects in the so-called sexual psychopathic laws. In the first place, sex offenders are treated as if they comprised a separate and homogeneous group of criminals. The reverse is true. There is as much difference between the average exhibitionist and the average rapist as there is between the shoplifter and the safe cracker. Secondly, it is believed that sex offenders regularly progress from minor offenses such as exhibitionism to major offenses like forced rape. Such a graduation is almost unknown. The exhibitionist is acting out an intrapsychic conflict, he has adopted this method of relieving an intolerable state of anxiety and tension. Paradoxically this has worked satisfactorily for him and he could not be induced to try a substitute. Then, there is the widespread belief that sex offenses are today rampant—that there has been a sudden alarming increase in their incidence. All of the careful investigations made recently have failed to demonstrate any persistent trend in that direction. A fourth major source of error is the belief that all sex offenders tend to be recidivists. In the last of the "Uniform Crime Reports" available, rape was twenty-fourth and "other sex offenses" twenty-fifth in order of recidivism among the twenty-six offenses listed. Some exhibitionists and some pedophiles have repeated arrests for the same type of crime—but among other types of sex offenders there is little tendency toward repetitiveness.

Laws on all phases of human conduct vary with the culture. Sexual morality with its rigidity and its taboos shows perhaps more sensitivity

to such variation than any area of behavior.^{1a} One of the most interesting things about our democracy is the rich variety of racial and cultural elements in the constituent states. Kinsey, in his very important work, has shown the correlation between sexual behavior and the socio-economic level as indicated by the school level attained. So that one finds a rich variation in the laws of the individual states governing sexual behavior. Recently, at the very time that New York was reducing the offense of homosexual relations between two adult males from a felony to a misdemeanor, with the maximum penalty reduced from twelve years in prison to ninety days in jail, California was increasing the maximum penalty for this offense from ten to twenty years in the penitentiary.

Many of the sexual laws have fallen into desuetude. Prosecutions for adultery, once numerous, are now rare. Several states have statutes punishing those who entice or allure others to masturbate. In Delaware a penalty of fifty dollars can be invoked for allowing a dog in heat to be at large, and in Missouri there is a maximum penalty of one year in prison and \$1,000 fine for permitting a mare to be served in public view.

TYPES OF SEX OFFENSES

It is important to realize that some individuals who commit isolated sex offenses are not real sex deviates. They often have poorly organized egos and under noxious circumstances their defenses are momentarily broken down—alcohol or some personal catastrophe can do this. We have seen a highly neurotic middle aged male, who suffered a severe claustrophobic attack on a bus, rush out of it and in a panic-like state invite a strange woman to have a mouth genital contact with him. He explained his actions by saying, "I figured I was having a nervous breakdown, like I was going out of my head altogether. I felt this woman would get my mind off myself." Then, there was the highly intelligent and sensitive German refugee who, having just discovered that he had been swindled out of his entire capital, exposed his penis to a small boy and girl, with the exclamation, "Did you ever see such a thing?" There is also the confused group of adolescents who are overwhelmed by the sudden force of their sexual drive and who become

1a. On the origin of sexual taboos and the causes of their extreme development in certain western societies having religions influenced by Judaic tradition, see Guyon, *The Ethics of Sexual Acts* (trans. Flugel and Flugel 1948) 111-125. See also Professor George P. Murdock's paper on *A Comparative Anthropological Approach*, in a symposium on *Sexual Behavior; How Shall We Define and Motivate What is Acceptable?* 36 J. SOCIAL HYGIENE 129, 133 (1950).

involved in various types of sexual offenses as a kind of instinctual groping.

Not infrequently a sexual offense may be the symptom of a psychosis. As a matter of fact nearly every variety of insanity may have this type of misconduct as a symptom. Characteristically the senile arteriosclerotic becomes involved in pedophilia, the postencephalitic in impulsive aggressive attacks, the schizophrenic in unsolicited amorous advances both homosexual and heterosexual, and the manic in exhibitionistic displays. But there is no constancy to this symptomatology.

It is not possible in this article to present a detailed discussion of the psychological basis or the social significance of the various sexual offenses. For a more adequate presentation the reader is referred to a small volume entitled "Sex Offenses," recently published by the medical author. However, it does seem desirable that there should be a brief consideration of the more common sex offenses.

Probably by far the most common is prostitution. Kinsey has estimated that in the average U.S. city of a million inhabitants there are 32,000 contacts with prostitutes in one week. Prostitution is primarily a socio-economic rather than a psychiatric problem. There have, however, been psychiatric surveys of prostitutes. These have shown a significant incidence of mental deficiency and schizophrenic psychoses.

Kinsey's studies have also shown the very high incidence of homosexuality in this country. He estimates that there are over six million males who are predominantly homosexual and that thirty-seven percent of the male population has had at least some overt homosexual experience to the point of orgasm after adolescence. His studies on the female are not yet available. Havelock Ellis was of the opinion that homosexuality was more prevalent among females than males.

Few law enforcement agencies attempt to control homosexual relations between adults. When such efforts are made they all too often degenerate into a source of blackmail and police corruption. The police do generally attempt to control homosexual prostitution and vigorously pursue adults who make use of minors in their homosexual relations. Although there is no satisfactory study on the influence that the initiation into homosexual practices during childhood by an adult exerts in establishing the homosexual pattern in the future, there is reason to believe that it may be consequential. There is no evidence to support the prevalent misconception that homosexuals are in general antisocial individuals.

Probably the next most prevalent offense is that of exhibitionism or

indecent exposure. This consists of exposing the genitals publicly and occurs only among males. Sometimes the exhibitionist indulges in masturbation at the time of exposure or immediately thereafter, but this is not the rule. Published reports indicate that indecent exposure is very rare among Negro males.

The up-to-date exhibitionist frequently carries out the act while seated in an automobile. Of four hundred seventy-one such cases reported in Los Angeles more than fifty percent were performed in this manner. One of the evidences of the neurotic character of this type of offense is that no effort is made by the perpetrator to obscure the license plate and thus avoid detection.

Although it is not possible to consider the psychodynamics at the basis of these paraphilias, because of the intriguing irrationality of exhibitionism, we might pause to consider the most acceptable theory in regard to its pathology. It is apparent from the examination of these offenders that the act does not represent a conscious striving after pleasure, but rather a compulsive need to reduce anxiety and tension. Freud stressed the importance of castration anxiety in many males. In the rivalry with the father for the affection of the mother the little boy fears that reprisal will take the form of emasculation. Such fears are, of course, repressed and forgotten. But certain males dominated by this unconscious fear feel the need to emphasize the integrity of their genitals by publicly exposing them to a strange female.

Closely allied to exhibitionism is its counterpart voyeurism, peeping, or as it is technically known, scoptophilia. Not infrequently both types of activity are found in the same individual. In many individuals both activities carried out in privacy play an important part in the sexual foreplay that precedes coitus. As such, it is of course considered normal.

Pedophilia—sex relations with children—is one of the most serious of the sex offenses. Many of the younger pedophiles are passive, immature and insecure individuals who lack the courage to attempt to make sexual contact with contemporaries, or fear the obligation of performing satisfactorily for a sexually experienced, and possibly critical, adult female. Another important group among the pedophiles, and one that is constantly increasing because of greater longevity, is the senile group. Many of them have begun to experience potency difficulties and do not want to be humiliated by adult women. Some are entering their second childhood and feel again a genuine compatibility with children. Others have lost their mates of many years standing and are in no position to make new contacts. Among the pedophiles one

also finds some hideously warped, sadistic individuals who brutally carry out forced relations with children. Many of them are suffering from an insanity.

The pedophiles illustrate perhaps better than any group, the danger of making any broad generalizations about sex offenders in general or even about those guilty of one specific offense. And there is probably no group of criminal offenders from whom the court can get more help in arriving at proper disposition through a complete psychiatric evaluation than the pedophiles.

Fetishism is the adoration of an object that stands as a symbol or substitute for the original. Interestingly enough this sexual deviation is also found only in males. Shoes, gloves, hair and underclothing are among the most common fetishes. Larcenies and burglaries in which attainment of fetishistic objects is the motive are not rare. Heirens, the seventeen and a half year old University of Chicago student who committed three murders in 1947 and more than five hundred burglaries, was a fetishist. When only nine he began stealing women's undergarments. At first the wearing of these garments produced sexual orgasms. Later the excitement of the burglary itself displaced the fetishistic objects as the chief source of stimulation. When his possessions were examined after his arrest, trunks full of women's sheer undergarments were found. He insisted that the murders were committed only to avoid detection.²

Bestiality, sex relations with animals, is more common according to Kinsey's survey than had been generally believed. It occurs most frequently in boys on isolated farms who are experiencing the suddenly heightened sexual thrust of adolescence. Among urban dwellers it is rare and is confined almost exclusively to the intellectually defective.

Mouth genital contacts are among the deviations that the law attempts to prevent by its sanctions. Such cases are infrequently prosecuted. It is doubtful that such relations can with accuracy be termed unnatural since their occurrence has been noted in most animal species. Since the social consequences of such deviations are negligible it would seem prudent for the courts to relinquish interest in these matters to religious bodies.

Statutory rape, sexual intercourse below the legal age of consent, and incest may in some cases be evidences of definite mental abnormality, but like prostitution, these offenses are generally primarily social in

2. KENNEDY, HOFFMAN AND HAINES, *Psychiatric Study of William Heirens*, 38 J. CRIM. L. & CRIMINOL. 311 (1947).

origin. They usually occur in groups with low cultural standards and in neighborhoods in which great overcrowding is prevalent.

Forced rape, the most grave of all the sexual offenses, has at least three basic motivational patterns. There is the rapist whose assault is the explosive expression of a pentup sexual impulse. Then there is the individual with strong latent homosexual components, for whom the rape is an irrational effort to deny the existence of the homosexuality. These are true sex offenders. Another type that is also sexual in origin, although not so manifestly so, is the sadistic rapist. Male sexual activity is throughout the animal world aggressive, so that the human male often shows socially modified sadistic elements in his normal sexual behavior. But, there are individuals with sick personalities in whom this aggressive element becomes abnormally exaggerated and manifests itself as a sadistic sexual attack. Many of these individuals have their deep-seated hatred focused particularly on women. Then there is the third type of rapist who, paradoxically, is not primarily a sex offender. He is the aggressive, antisocial criminal who, like the soldier of a conquering army, is out to pillage and rob. We have seen a number of young offenders, who in the course of a series of robberies or burglaries committed during one night, have also committed rape—apparently just as another act of plunder. Rapists are generally young, vigorous individuals. The statistics of the Los Angeles Police Department give the mean age of rapists as twenty-three, while that of pedophiles was forty-one.

These important facts in regard to rapists emerged from a recent study that the medical author made preparatory to delivering the Gimbel Lectures on Sex Psychology at Stanford University: only one of the thirty-six rapists had been previously convicted of any type of sex offense, while a third of those involved in the rape of adult victims had been convicted of burglary. These are important data to hold in mind when we consider the newly enacted laws dealing with sexual psychopaths. For, if these facts are confirmed by more extensive studies, and if the primary object of these special laws dealing with sexual offenders is to reduce the incidence of forced rape, it would seem wiser to give burglars indeterminate sentences than the individuals found guilty of minor sex offenses.

TWO CASE HISTORIES

In order to evaluate better the legal and social methods for the con-

trol and prevention of serious sex offenses it seems desirable to consider two cases in some detail.³

Clarence, the Negro lad, is seventeen. On a rainy spring morning at 2:15 A.M., a thirty-two year old white woman, the mother of two children, was brutally knocked down on the street and dragged into the vestibule of a house by this boy. She was beaten severely about the head and face and then raped. She finally broke away and ran. He gave pursuit and caught her, dragged her under a viaduct and again raped her.

The boy had been raised in a fairly typical socially underprivileged negro home. The father had died the year before, after five years of invalidism, and the mother worked during most of the marriage. The family was continually on relief. Clarence was the only child of this union, although his mother had had fourteen children previously. There was little affection in the home, the mother, a neurotically clean individual, was hostile to her husband who drank and could not work and toward her son who lied and was irresponsible. The family attended the Baptist Church, and the boy sang in the choir.

Clarence had always had school difficulties. He failed several times despite the fact that his I.Q. was above eighty. Because of his poor progress and truancy the school referred him at fourteen to the Behavior Clinic at Johns Hopkins Hospital. The psychiatrist there noted, "he shows a sullen attitude, assumes a superior air, talks about his troubles in school and his criminal tendencies in a matter of fact way." Commitment to a reform school was advised but not carried out.

The boy had been before the Juvenile Court many times. At thirteen he had been in a gang that burglarized a grocery store and broke school windows at night. He failed to cooperate with his probation officer. However, neither the record of the Clinic or the Court contained any suggestion of sexual offenses.

During the psychiatric examination by the Court Medical Officer, the boy was patently untruthful. He boasted of spurious school attainments and even claimed to have been a student at a religious seminary, which he confessed having left because he felt that he was not living up to its standards of conduct. He admitted heavy drinking and the smoking of marihuana. He denied masturbation and homosexuality. Heterosexual relations began at nineteen and occurred, he said, everytime he went to a girl friend's house.

He professed only a very hazy memory of his attack on the woman. He denied having smoked marihuana that night but said he had been drinking very heavily. He admitted that he had had "a fight with a white woman and had thrown a bottle at her."

The psychologist reported that "in the patient's fantasies there is very ready recourse to violence and impulsive beatings; shootings and killings figure prominently in his daydreams. There is no specific indication of sexual abnormality, although a sadistic coloring appears in his attitudes toward women."

The second boy, Charles, a twenty year old white youth, was found guilty of attacking a five year old girl in her bed, in the early hours of the morning. In his confession to the police he told of having gone to a party where he had danced and had drunk a half dozen bottles of beer. Early in the evening he had noticed two women dressing in the house next door. Before going home he decided impulsively to look for them. He made his way into the house but could not find them. He came upon a man asleep and in another room he found the little girl. "I knew she was young, but I could not control myself. I pulled off the covers and tried to pull down her pants. I wanted to rape her only to see what it would feel like. She was

3. These cases are reported more fully in GUTTMACHER, M. S., *SEX OFFENSES* (1951).

screaming so loud I tried to choke her." Luckily people heard her outcries and pulled the boy's hands from her throat while she was still alive.

The boy's medical history was important in that it was discovered when he was fourteen that he had an undescended testicle. Its lack of true significance was not explained to him. He feared that this together with his masturbation might produce either impotence or tuberculosis. He was a good looking, husky fellow.

He had graduated from parochial high school at eighteen, where he was highly thought of. The principal testified at his trial that he considered him an "unusually clean minded boy" and the last pupil in his school of whom he would have believed this. In fact, he said he could not believe it despite the testimony and the admission of guilt. During the two years since graduation he had worked in a stationery office.

Charles was the only child of parents who were over forty when he was born. The family owned their own home in a middle-class neighborhood. There was continual quarrelling, much of it over money. Then, his mother objected vociferously to the father's preference for going next door in the evening and listening to the radio with an old blind man to staying at home with her. Charles described his father as "an unhappy and unaffectionate man," while he said of his mother, "She's a very tender and affectionate person. I always told her she 'babified' me. She never let me play sports when I was small, she was afraid I'd get hurt. She said sports were for roughnecks and bullies. She is a constant nagger; she is always on one subject. About a month ago my dad picked up an iron and threw it at her. He is an awful big man, but I threw him across the room. It was the first time I ever put my hand to him."

Charles took no part in athletics and had been in only one fight in his life. He said that he had begun drinking three years before. He was by no means an alcoholic, but he did find it impossible to give up drinking altogether. He said that he did not care much for children. "I could never get attached to them. I was always afraid to touch them. I'm awkward and I might hurt them."

He was full of sexual conflicts. He stopped in drug stores to look at "art magazines," but would not listen to radio comedians because "the programs are getting so rotten with their dirty jokes." Masturbation began at fifteen. He had early worried that his penis was too small. Then he began to worry over his inability to stop masturbating and his undescended testicle. He said that he had "utter contempt" for homosexuality, but then admitted that he fantasied on this theme. His mother had warned him periodically not to "fool around with girls." He had little need of such warning because he was very bashful around girls. On the few occasions that he had dated he made no sexual advances. "I wanted to, but I had more respect and was afraid to." He complained of marked self-consciousness in crowds. He feared that people thought he was a "queer" because he rarely went out on dates. He had not had previous difficulty of any kind with the law.

He frankly admitted his guilt when he was examined, at the request of the State's Attorney, three days after the offense. When asked what he made out of the whole situation, he said to the psychiatrist, "I can't make anything out of it. I wanted something, I wanted to get an even break and in a way I feel innocent. I know it is not my fault. If my mother had not 'babified' me when I was young I would not have done it."

The psychologist concluded his report, "His only natural and congenial social contacts are carried out in a childish spirit; the cooperative pursuit of mature goals is foreign to him. He ordinarily imposes strict controls over himself. Any factor which would weaken them, such as alcohol, would be expected to make serious trouble."

These two cases illustrate, perhaps better than could any disquisition.

the complexities that society faces in controlling, and even in understanding, sex offenders. The only apparent similarity in these two cases, except for the social malignity of the offenses, is that both boys come from markedly unharmonious homes, dominated by nagging mothers.

Clarence presented the picture of an insecure, rebellious hostile youth who had been embittered by parental rejection and was out to get immediate satisfactions from the world at any cost. His sexuality had been vigorous and uninhibited. There is little to suggest that his crimes would necessarily have to be of a sexual nature. He might be expected, just as well, to commit a robbery or some other aggressive, hostile act.

Charles presented a striking contrast—a shy, maladjusted, extremely insecure youth given to neurotic worry over masturbatory guilt and possessed by sexual conflicts of all kinds who had attempted to wholly suppress all sexuality. It is difficult to conceive of his committing an offense that was not either an actual sexual crime or one that was symbolically sexual, such as arson. It was probably not pure coincidence that, with his marked feelings of inferiority and his emotional immaturity, he should have chosen a child as the object of his attack.

Finally, so as to complicate still further an already hopelessly complex problem, there are offenses which appear entirely dissociated from the sex impulse but which, in actuality, are in many instances sexually motivated. They are in the nature of symbolic sex acts. Many cases of kleptomania and arson are of this nature.

Psychiatry is today only beginning to get an insight into the basic makeup of the sexual offender. Everywhere there is recognition of the great need for intensive research, particularly in regard to the treatment of the individual offender and a program for the prevention of sexual offenses.

Enlightened leaders of the law have long recognized its inadequacy in dealing with such problems. Many years ago Professor Sheldon Glueck wrote: "In all such cases and in most of the cases of defective offenders the best of laws can do but little until society, through its machinery for legal regulation of the social order, decides to take the radical step of incarcerating such unstable offenders for a wholly indeterminate period, its actual length to depend not upon the wishes of the trial judge—who has had little opportunity, if any, to study the offender and his development under penal and correctional treatment—but on the judgment of highly trained prison officials who can study the behavior of the offender over a long period of time and who are

logically the ones to say when such offenders can reasonably be expected to make good in society."⁴

The very term sex "offender" echoes the traditional approach by which the sexual deviate has been regarded as a criminal offender, and subjected to the sanction upon which the criminal law so utterly relies, punishment. The criminal law traditionally recognized no middle-ground between "sanity," which meant full responsibility for one's acts, and "insanity," constituting a complete defense. And since most sex offenders are not insane within the legal test, but are, at most, seriously neurotic individuals or psychopathic personalities, the law took no cognizance of their mental condition. Punishment was the panacea, even for cases where it was medically clear that punishment would and could have no beneficial effect.

The first American departure from this pattern was the Massachusetts Briggs Law of 1911, which, in amended form, is still in operation. It allows the court to commit the defendant in a criminal case to a wholly indeterminate term as a defective delinquent instead of trying him for the crime charged, if the court finds that he is both a mental defective and a habitual delinquent or "shows tendencies toward becoming such," and that such delinquency "is or may become a menace to the public."⁵ New York had a somewhat similar law at one time, but found that it was subject to too much abuse. While it allowed commitment upon a mere charge of crime, expedited proceedings and avoided stigmatizing mental defectives with a criminal conviction, it also invited haling such defectives into court on trumped-up charges of crime in order to relieve their family or the community of responsibility for their care and supervision. New York therefore amended its law in 1931 to require conviction of crime before commitment may be had.⁶ Most of the other states having similar laws also provide for

4. GLUECK, *Mental Examination of Criminals*, 8 MENTAL HYGIENE 1, 15-16 (1924). See also GLUECK, MENTAL DISORDER AND THE CRIMINAL LAW (1925) 388; LONG, *Punishment v. Treatment in the Cure of the Criminal*, 2 JOHN MARSHALL L. Q. 560 (1937); OVERHOLSER, *What Immediate Practical Contribution Can Psychiatry Make to Criminal Law Administration?* 55 A.B.A. REP. 594 (1930); REINHARDT AND FISHER, *The Sexual Psychopath and the Law*, 39 J. CRIM. L. & CRIMINOL. 734 (1949); *Prison Association of New York, Recommendations to the Legislature* (1947), quoted in Note, 38 J. CRIM. L. & CRIMINOL. 55 (1947). Compare SUTHERLAND, *The Sexual Psychopath Laws*, 40 J. CRIM. L. & CRIMINOL. 543 (1950). To the effect that punishment does not deter sex crimes, see ALLEN, *Confinement of the Sexually Irresponsible* (United States), 32 J. CRIM. L. & CRIMINOL. 196, 197 (1941); HOLLANDER, *THE PSYCHOLOGY OF MISCONDUCT* (1942) 166, 189; DIXON, *Psychiatric Angles of Criminal Behavior*, 14 ORE. L. REV. 352 (1935); Comment, 37 MICH. L. REV. 613 (1937).

5. Mass. Gen. Laws, c. 123, §113. For a survey of the Massachusetts law in action, see HARRIS AND GORDON, *An Investigation and Critique of the Defective Delinquent Statute in Massachusetts*, 30 BOSTON U. L. REV. 459 (1950).

6. N. Y. Correction Law, §10b; Consol. Laws (THOMPSON, 1942) §§438 to 442. See ROBINSON, *Institutions for Defective Delinquents*, 26 J. CRIM. L. & CRIMINOL. 352, 354 (1933).

commitment of defective delinquents only on conviction.⁷ Although these laws are broad enough to authorize commitment of mentally deficient sex offenders, they do not reach sex deviates whose intelligence is normal. Beginning in 1937, a growing number of states have enacted laws specifically aimed at this group, usually referred to as "sexual psychopaths."

SEXUAL PSYCHOPATH LAWS

The pioneer act, the Michigan law of 1937, was held unconstitutional.⁸ But valid legislation was enacted the following year in Illinois, and quickly thereafter by California, Massachusetts, Minnesota, Ohio and Wisconsin. Today, at least seventeen American jurisdictions have sexual psychopath laws on their books, although in about half of these the laws are seldom if ever used.⁹

Since the psychopathy of the sexual deviate is still inadequately understood, and since psychiatrists do not agree upon classifications or terms, draftsmen have some difficulty in describing the persons to whom the acts apply. While the California, New Hampshire and Wisconsin laws refer to "sexual psychopaths," Massachusetts and Minnesota speak of "psychopathic persons," and Ohio of "psychopathic offenders." Some laws apply only to persons convicted of crime ("felony" in Ohio); others, such as the Illinois and Michigan laws, to persons "charged with a criminal offense"; and still others, such as the Minnesota and Wisconsin acts, without reference to any criminal charge.

The Minnesota, New Hampshire and Wisconsin laws apply to any person "who is suffering from such conditions of emotional instability

7. Md. Laws 1951, ch. 476; Pa. Laws 1933, No. 78, p. 224; Va. Code (1942) §5058(8). A summary of the various state defective delinquent laws is contained in BALLARD, *Mental Hygiene Laws in Brief* (1941).

8. *People v. Frontczak*, 286 Mich. 51, 281 N. W. 534 (1938). The court held that the proceeding was criminal in nature, and failed to observe the safeguards constitutionally required of criminal prosecutions. The conclusion that the proceedings were criminal was premised largely on the fact that the act was made part of the code of criminal procedure. See Comment, 37 MICH. L. REV. 613 (1939). The Illinois act has been upheld although it too is found in the criminal code. *People v. Sims*, 382 Ill. 472, 47 N. E. 2d 703 (1943). Michigan has since passed a new law, which has been upheld. MICH. COMP. LAWS (1949) §§780.501 to 780.509; *People v. Chapman*, 301 Mich. 584, 4 N. W. 2d 18 (1942).

9. Sexual psychopath laws have been enacted in California, District of Columbia, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Vermont, Wisconsin and Washington. For descriptions of the various laws see 96 U. PA. L. REV. 872 (1948); 2 WESTERN RESERVE L. REV. 69 (1950); 1 STANFORD L. REV. 486 (1949); 40 J. CRIM. L. & CRIMINOL. 186 (1949); 60 YALE L. J. 346 (1951).

Dr. Paul Tappan, in a survey made for the New Jersey Commission on the Habitual Sex Offender, reported that the laws of Massachusetts, Michigan, Wisconsin and Washington are inoperative, and those of Illinois, New Hampshire, Indiana and Vermont are rarely used. TAPPAN, *THE HABITUAL SEX OFFENDER* (1950) appendix. The California act, on the other hand, has been used to commit several hundred persons since its enactment in 1939.

or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render him irresponsible for his conduct with respect to sexual matters and thereby dangerous to himself and to other persons." The Minnesota Supreme Court interpreted this to include "those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss or pain, or other evil on the objects of their uncontrolled and uncontrollable desire." The United States Supreme Court held that the act, so interpreted, was not too vague and indefinite to be constitutional.¹⁰ Apparently with an eye to bringing themselves most obviously within the ambit of this decision, the draftsmen of some later acts, including that of Massachusetts, have adopted the judicial interpretation as part of their statutory definition. But it is doubtful whether the interpretation contributes any degree of definiteness to an inherently vague concept.

Illinois and Michigan attempt to delimit the definition of "sexual psychopathic personality" by setting up three criteria: (1) possession of mental disorder not amounting to insanity or to feeble-mindedness; (2) continuance of such disorder for at least one year; and (3) exhibiting of propensities for the commission of sex offenses. The last of these, however, is certainly as vague as anything found in other states. Moreover, the distinction attempted in the requirement of a mental disorder "not amounting to insanity or to feeble-mindedness" leads to difficulties in administration and raises the question whether it is wise to deal with sex offenders by special legislation. The special acts by ignoring existing commitment laws frequently create ambiguities and doubts because of conflicting and overlapping provisions.¹¹ The model act governing hospitalization of the mentally ill, recently prepared by the National Institute of Mental Health as an aid to the states in revising their commitment statutes, makes no separate provision for

10. *Minnesota ex rel. Pearson v. Probate Court*, 309 U. S. 270 (1940).

11. The "utter confusion" of the California statutes is described in *Sane Laws for Sexual Psychopaths*, 1 STANFORD L. REV. 486 (1949). Another example is the conflict between the provisions for "mental defectives" in the New York Hygiene Law and the provisions of the Code of Criminal Procedure. See WEIHOFEN, *INSANITY AS A DEFENSE IN CRIMINAL LAW* (1933) 384. The Massachusetts sexual psychopath law of 1947 (Mass. Gen. Laws, ch. 123A) seems to overlap in part the defective delinquent act of 1911 (*id.*, ch. 123, §113), with the result that persons found to be sexual psychopaths who are subnormal in intelligence may be committed under either law, although the proceedings, treatment and methods of release under the two laws are drastically different. See HARRIS AND GORDON, *The Investigation and Critique of the Defective Delinquent Statute in Massachusetts*, 30 BOSTON U. L. REV. 459, 491 (1950).

sexual or other psychopaths, but includes them in its general provisions governing the "mentally ill."

It was to avoid the hazard of applying the loose norms with which we are forced to work in this field to persons who have not seriously threatened the public welfare and perhaps never will do so, that Maryland, New York, Ohio and some other states have restricted application of such laws to persons convicted of crime. This sacrifices a measure of social protection in favor of personal liberty. It would be socially desirable to apprehend and commit the potential sex offender *before* he commits an offense, but it opens the door to abuse to do so on the basis of vague constructs such as "emotional instability or impulsiveness of behavior, or lack of customary standards of good judgment."

Unlike ordinary commitment laws, the sexual psychopath laws typically do permit proceedings to be initiated only by the district attorney or the attorney general. To enable district attorneys to exercise an informed judgment, the statutes should contain provisions requiring probation officers, court clerks and state institutions to make available relevant records and reports. Experience under the Massachusetts Briggs Law has shown that devising workable statutory provisions to that end is not a simple task.¹²

The hearing provided under all these statutes is judicial. The court is required to appoint medical men to examine the person and report. In Minnesota and Wisconsin, the appointees are only required to be licensed physicians. At the other extreme, Illinois requires five years of practice devoted exclusively to mental and nervous disorders. California requires five years practice directed primarily to the diagnosis and treatment of such disorders, and also requires that at least one of the appointees be from the staff of a state hospital or county psychopathic hospital.

In Illinois, a jury trial is mandatory. California, Maryland, Michigan and Wisconsin grant a jury trial on demand, and Massachusetts leaves the matter to the judge's discretion. It is unnecessary to say again

12. The "Briggs Law" provides for the routine psychiatric examination of all persons charged with crime, who are known to have been indicted for other offenses more than once or to have been previously convicted of a felony. It was found difficult to obtain records of prior indictments and convictions. At first the law put the entire duty of reporting proper cases on the court clerks. Due perhaps in part to negligence but also to lack of records, the clerks failed to report many cases. In 1925, the act was amended to provide a fine for clerks who wilfully neglected to give notice as required. This did not prove adequate, and in 1927 the act was further amended to require the probation officers, who already had the duty of investigating the records of persons charged with serious offenses, to notify the court clerks of prior indictments or convictions.

that a jury is incompetent to determine such a question. This is perhaps more true of sexual abnormality than of mental disorders generally. Where the person is charged with a minor offense, a jury may deem it "unfair" to commit him for an indeterminate period, although his act may to a psychiatrist be symptomatic of a very dangerous personality. On the other hand, where the offense is a particularly shocking one, the jury may refuse to allow him to escape "paying for his crime."

Where the question is tried without a jury, the determination of whether the person is a sexual psychopath is left to the judge's discretion, but a refusal to so find, in the face of undisputed expert testimony that the person is such a sexual psychopath, may be a reversible error which can be raised on appeal from a criminal conviction.¹³

The Massachusetts, Minnesota and Wisconsin acts permit the hearings to be closed to the public. Since these statutes are not criminal in nature, there seems to be no constitutional objection to such a provision for excluding the curious and the morbid.¹⁴

If found to be a sexual psychopath, the person is committed indefinitely, until he recovers and may safely be discharged. Under the California-Illinois-Michigan form of statute, applicable only to persons "charged with a criminal offense," the question must be answered what becomes of the criminal charge? The same question is likely to arise also in other states, where although a person need not be under a criminal charge to become subject to the law, in a large proportion of the cases the person is under charge at the time. In most states, the criminal trial is merely postponed, and the charge hangs over the patient's head as something to be faced on his recovery. Actually, unless the period of commitment is fairly short, it will be difficult for the state to prosecute effectively after recovery. Witnesses will have died or moved away, resentment cooled or evaporated. Even if prosecution is had, the court in sentencing the defendant for the crime will probably take into account the fact that he has already spent years under commitment, and lighten the sentence accordingly. These probabilities apparently have led the California lawmakers to provide that if, within thirty days after certification by the hospital superintendent that the person is no longer a menace to others, the committing court does not order him returned for criminal proceedings, the hospital may parole him;¹⁵

13. *People v. Barnett*, 27 Cal. 2d 649, 166 P. 2d 4 (1946).

14. On the procedural requirements for such civil commitments as distinguished from those in criminal proceedings, see Notes, 32 J. CRIM. L. & CRIMINOL. 196 (1941); 2 WESTERN RESERVE L. REV. 69 (1950); 5 ARK. L. REV. 214 (1951).

15. In a California case, a defendant charged with molesting a ten-year old girl was adjudged a sexual psychopath. A year later, and again five years later, he was returned

and have led Ohio to provide that the period of commitment shall apply as time served on the sentence. But while all this may indicate that a patient *may* not have to undergo criminal punishment after he recovers and is discharged from the hospital, he cannot be sure. And the prospect of having to face a criminal charge as soon as one is cured is not conducive to cure. There are those who believe some abstract concept of "justice" is served by subjecting a person to criminal punishment for an act prompted by a sexual disorder, but little practical deterrence or reform will be accomplished. The sensible solution is that adopted in Michigan and New Hampshire: commitment as a sexual psychopathic person disposes of the criminal charge.

THE NEW YORK AND NEW JERSEY STATUTES

A fresh approach to the problem is found in the 1949 New Jersey and the 1950 New York statutes.¹⁶ Instead of postponing or abandoning criminal proceedings in cases where it appears that the defendant is a sexual psychopath, these laws provide for carrying through the criminal trial, and if the defendant is found guilty of a sex crime, his mental abnormality is examined into as a basis for determining what the sentence should be. The New York law goes one step farther than that of New Jersey in providing for wholly indeterminate sentence where that seems indicated, which may run from one day to life.

The New York law was enacted following a report on a study which the legislature had directed the Commissioners of Correction and of Mental Hygiene to make, and which made four recommendations:

1. To remedy the inadequacy of psychiatric service available to the Department of Correction and the Board of Parole, legislation should be enacted placing responsibility on the Commission of Mental Hygiene for providing psychiatric and psychological service to the state's correctional agencies. By placing this service under centralized administration, it was hoped that the positions would be made more attractive to qualified personnel.

2. Research should be continued, with a view to the eventual

to the court on a report by the hospital superintendent that although he was not cured, further treatment would be of no benefit. The California law provides that upon such report, the person is to be returned to the court "for further disposition of his case." Both times the court suspended criminal prosecution and recommitment him over his objection. The second recommitment was on the express ground that it was impractical to try the criminal charge. The witnesses had scattered and the girl's memory of the facts had become blurred. On habeas corpus proceedings, it was held that when the defendant was returned for "further disposition of his case" the court was without authority to return him to the hospital. *In re Stone*, 87 Cal. App. 2d 777, 197 P. 2d 847 (1948).

16. N. J. Laws 1949, c. 20; N. Y. Laws 1950, c. 525.

establishment of a permanent Institute of Criminal Behavior to promote research, psychiatric work with offenders and training of personnel.

3. All persons convicted of sex felonies should be examined before the court imposes sentence, by a team of publicly employed psychiatrists making use of psychological testing and social work reports.

4. The present practice of sentencing dangerous sex offenders for limited periods and then releasing them regardless of whether there has been any improvement in the mental or emotional condition which caused them to commit abnormal crimes should be abandoned, and legislation adopted providing that when any offender is convicted of rape or sodomy involving the use of force or violence, or against small children, or convicted of felonious assault involving a sexual purpose, the court after psychiatric examination may sentence him to serve an indeterminate sentence of one day to life. When an offender is sentenced to such an indeterminate term, the Department of Mental Hygiene, the Department of Correction and the Board of Parole shall give his case prompt and intensive study, to be followed where possible by therapeutic treatment, to the end that he may be rehabilitated and released whenever it may appear that he is a good risk on parole.

All of these recommendations were accepted by the legislature. The act passed commands the Department of Mental Hygiene to provide psychiatric and psychological services for the correctional and parole agencies and to assign personnel trained in psychiatry and psychology to operate clinics, and empowers it to establish training courses for such personnel and conduct research into the nature and causes of criminal behavior and methods of therapy. Various sections of the penal law are amended so as to authorize indeterminate sentencing having a minimum of one day and a maximum of life for offenders convicted of sodomy in the first degree, rape in the first degree, or sexual abuse while committing a felony, or assault with intent to commit sodomy, rape or carnal abuse. Moreover, such indeterminate sentence may also be imposed upon one convicted of any felony or attempt to commit a felony, if he has previously been convicted, whether in New York or elsewhere, of any of the sex crimes mentioned above. Before sentence is passed on an offender convicted of any of the crimes for which such indeterminate sentence may be imposed, a psychiatric examination must be made of him and a report submitted to the court.¹⁷

17. That courts should be required to obtain the advice of a duly qualified medical expert before sentencing a person found guilty of a sex offense has also been recommended in Great Britain, in two important reports, one by a joint committee of the British Medical Association and the Magistrates' Association, the other by the Scottish Advisory Council on

It is in providing for detention for one day to life that the New York law differs markedly from that of New Jersey. The New Jersey law applies to persons convicted of rape, sodomy, incest, lewdness, indecent exposure, disseminating obscene literature or pictures, indecent communications to females, or carnal abuse. One so convicted must be committed for mental examination prior to sentence, and where it appears that he is suffering from any form of mental illness resulting in the commission of any of the sex offenses enumerated, he is to be committed by the judge to an appropriate institution as designated by the Department of Institutions and Agencies for a term which shall not exceed the maximum provided by the law for the crime of which he was convicted—in other words, the offender serves his time in a mental rather than in a correctional institution.

This form of law differs from the older pattern found in other states in that the New York and New Jersey legislatures have not essayed any psychiatric judgments. The act does not assume that there is any definable group of "sexual psychopaths" for whom the legislature can prescribe special procedures. Instead, the legislature has restricted itself to (1) requiring psychiatric examination before sentence of persons convicted of certain sex felonies, (2) authorizing (in New York) wholly indeterminate detention of those who such examination indicates are in need of it, and (3) providing for research and therapy, so that those who are treatable may be rehabilitated and released, while the incurably dangerous are held for life.

The provision for sentence of one day to life seems to be the first truly indeterminate sentence provision in this country for any class of criminal offenders.¹⁸ So-called indeterminate sentence laws common in many states for various crimes invariably have relatively narrow limits, such as a minimum of one year and a maximum of ten. In extending the limit to the ultimate for sex offenders, the New York law carries the movement to substitute flexible for fixed sentences to its logical extreme. The draftsmen of the New Jersey act felt, as apparently has been felt generally with respect to indeterminate sentences, and as expressed by

the Treatment and Rehabilitation of Offenders. The Criminal Law and Sexual Offenders, *A Report of the Joint Committee on Psychiatry and the Law* appointed by the British Medical Association and the Magistrates' Association (1949); *Psycho-Therapeutic Treatment of Certain Offenders with special reference to the case of persons convicted of sexual and unnatural offences*, Scottish Home Department (1948). For a brief summary of the various recommendations made in these reports, see MANNHEIM, *Two Reports on Sex Offences*, 12 MODERN L. REV. 488 (1949).

18. As already indicated, the defective delinquent and sexual psychopath laws permit indeterminate commitment, but these are deemed "civil" actions by the state acting in its capacity of *parens patriae* for the welfare of its wards, and not criminal. In re Kemmerer, 309 Mich. 313, 15 N. W. 2d 652 (1944); Note, 32 J. CRIM. L. & CRIMINOL. 196, 198 (1941).

Dr. Paul W. Tappan, the technical adviser to the New Jersey Commission for the Study of the Habitual Sex Offender, that the power to hold individuals in confinement indefinitely is far too great a responsibility when we are still so little able to predict the convict's future course of conduct and when we have so little assurance that the types of treatment we employ will be more effective if extended indefinitely.¹⁹

SHORTCOMINGS OF THE STATUTES

One weakness of the New York and New Jersey acts is that they do not reach all antisocial conduct impelled by sexual abnormality. Dr. Ben Karpman has described the case of a youth who suddenly stabbed a girl sitting in front of him in a movie theatre. This boy had an abnormal sex drive that made him want to kill women by torture.²⁰ Neither the New Jersey nor the New York law would apply to such a case, or to murders, robberies, arson or other crimes not patently sexual, but which may nevertheless be sexually motivated.

A criticism that can be leveled against all the sexual psychopath laws is that they are based on a fallacious premise in assuming that sex offenders are a distinct type, more recidivistic than other criminals, and that they can be treated by special techniques. Actually recidivism among sex offenders varies widely, as already pointed out, and the available statistics give little support to the idea that as a group they are more recidivistic than other criminals. The causes of their behavior are likely to be similar to those motivating non-sexual criminality. As stated in the report on the study of one hundred and two sex offenders at Sing Sing prison, which led to the enactment of the New York law: "There is no distinct dividing line between sex offenders and other law violators . . . sex offenders have been found to suffer from no single category of mental pathology; the same varying symptoms of basic difficulties are also found in thieves, murderers, burglars and extortionists. Moreover, as police and probation records disclose, men who are primarily sex offenders often commit other types of crime; and vice versa."

"Sex offenders are in a separate classification only because of society's concern about their particular type of acts, not because they differ widely from other criminals in the basic causes of their antisocial behavior."²¹

Perhaps the only valid justification for separate legislation for

19. TAPPAN, *The Sexual Psychopath, in Crimes of Violence, The Report of a Conference on Crime* sponsored by the University of Colorado, August 15-18, 1949.

20. KARPMAN, *Felonious Assault Revealed as a Symptom of Abnormal Sexuality*, 37 J. CRIM. L. & CRIMINOL. 193 (1946).

21. Report on Study of 102 Sex Offenders at Sing Sing Prison (1950) 20.

sexual psychopaths is a pragmatic one. Such legislation permits experimenting with new procedures in a limited area, procedures which would be considered too radical for more general acceptance. If they prove themselves, they can be extended in scope later. Thus, the wholly indeterminate sentence is introduced in the New York law for handling persons convicted of sex offenses, although it has seemed too extreme a step to be accepted as a method of handling convicted criminals generally. If the New York experience proves satisfactory, we can expect to see the device adopted in other states and extended to other offenders. Of course, commitments of the insane are everywhere wholly indeterminate. The recently enacted Maryland Defective Delinquent Law is unique in that it includes individuals who are emotionally defective; i.e., severe character disorders, as well as the intellectually defective.

The sexual psychopath laws typically make no special provision for treatment. The public demand that the legislature do something about "sex fiends" spends itself with the enactment of a law providing for commitment, and the problem of providing a place to which to commit is not faced. Existing state hospitals are already overcrowded with psychotics and adult mental defectives. Hospital authorities and psychiatrists therefore naturally object to having to care for sex deviates who do not respond to treatment and who are dangerous or obstructive. On the other hand, prison administrators contend that such prisoners are fundamentally psychiatric problems, for whom penal institutions cannot provide the facilities or the atmosphere needed to carry out the therapeutic purposes of the legislation. Some of the statutes, such as that for the District of Columbia, provide that the individual committed must be retained in the hospital until "he has sufficiently recovered so as not to be dangerous to other persons." But some of these individuals are not amenable to treatment and may never recover. Dr. Winfred Overholser, superintendent of St. Elizabeth's Hospital, has therefore urged consideration of an amendment to the law, providing for transfer to a correctional or penal institution of such persons when they prove unamenable to therapy, to avoid the steady accumulation of such persons who do not mix well with the psychotics and who do not profit from residence in a mental institution.²²

The problem of the medical and psychiatric treatment of the individual sex offender is a very complex one. The most time-honored form of treatment is that of castration and in many parts of the world

22. 1950 Annual Report of Federal Security Agency, St. Elizabeth's Hospital (1951) 3.

it is still widely employed. It has been generally viewed in this country as a cruel and inhuman punitive measure rather than as a therapeutic device. Doubtless it deserves careful re-evaluation and, if really effective, might be less inhuman than penal incarceration for life. In England extensive use has recently been made of the injection of female sex hormones in male sex offenders. This may prove to be a valuable measure. Electroshock therapy and even brain surgery have also recently been advocated but, on the basis of our present knowledge, they would seem to have a very doubtful value at this time.

Psychotherapy of various types has been used in selected cases. For some cases of a neurotic nature deep psychotherapy of the classical analytic type is doubtless the treatment of choice. But the virtual impossibility of carrying out such treatment in the ordinary highly restrictive institutional environment, its time-consuming character, and its great cost, limit its use to only a small number of offenders on probation, and only such of these as can profit from it and want it. Doubtless shorter methods making use of hypnosis and abreactive drugs may have more to offer, from a practical point of view. Recently several centers have begun making use of group psychotherapy in the treatment of these cases. This seems highly promising not only because one therapist can treat large numbers of cases in this way, but because there is probably something inherently therapeutic in the group process for behavior disorders of this nature.

Another shortcoming of these sexual psychopath laws is that they neglect preventive work and concentrate efforts on putting people into institutions only *after* they have become seriously abnormal and perhaps incurable, and usually only after they have demonstrated their dangerousness by committing serious crimes. In New York the provision for "research into the nature and causes of criminal behavior and methods of therapy" may lead to the production of data demonstrating the need for combatting abnormal sexual behavior by getting at its source. The study of one hundred and two sex offenders which led to the New York legislation illustrated once again what psychiatrists have recognized for some time, that sexual misconduct very commonly has its course in an emotionally twisted childhood. Domineering, brutal or overindulgent parents cause children to develop hates, fears and emotional desires and needs which ultimately manifest themselves in antisocial acts. Sex offenders are not typically "over-sexed," as laymen tend to believe. On the contrary, they are often undeveloped and immature emotionally and sexually. The California Legislature has

recently appropriated \$100,000 annually in support of research on Sex Offenses, to be conducted by the Psychiatrist in Chief of the Langley Porter Clinic of the University of California, the results of which are to be reported to the legislature to guide them in future legislation.

PREVENTION OF SEX OFFENSES

Probably the most constructive measures for combatting sex criminality are informal community-level educational programs, aimed at seeking out and treating deviational characteristics among children; particularly the excessively aggressive or passive children in the schools—getting teachers to realize, for example, that the boy who is *too* quiet and *too* good may be as much a problem child, and as likely to grow into a dangerous criminal, as the boy who is obviously bad.

Psychiatrists and educators have developed some sensible rules of child rearing which, if properly applied, would doubtless decrease the incidence of sex crime. Parental over-protection and parental rejection account in large measure for the great number of emotionally immature and dependent persons that we have in our society. And many of them are incapable of achieving mature sexuality. A far greater number of parents than we imagine seduce their children psychologically, binding them with chains from which they attempt to free themselves by abnormal, and sometimes violent sexual behavior.

The English psychiatrist, Clifford Allen, includes in his prescription for preventing sexual deviates: breast feeding of the infant on demand rather than on the basis of a rigid schedule, gradual weaning, minimal anal stimulation through the use of suppositories and enemas, an environment with abundant affection, divorce for unhappily married parents, an appreciation of the facts that sex is normal and desirable and not monstrous, and coeducational schooling. He also recommends that we frankly teach that masturbation is harmless and continence harmful. He considers movies a bad influence in their exploitation of sex as “glamour” and in their representation of the ideal male as “a tough guy.” He feels that our social order should strive to make it possible for every young person to have the “economic right to marry before the age of twenty,” although it might be wise to delay the establishment of a family.

Sandor Ferenczi, a noted European analyst, emphasized the disastrous effects that may come when a parent, having wished for a child of a different sex, treats the child in fantasy and even in actuality as if it were of the desired sex.

Freud's significant statement on the role of parental relations should be heeded in any campaign to reduce abnormal sexuality: "Quarrels between parents and unhappy marital relations between them, determine the severest predispositions for disturbed sexual development or neurotic disease in children."

Realistic sex education has been a part of the high school curriculum in Sweden since 1935. There is reason to believe that this would be an important step in the progress of prevention. It will take continued educational efforts and publicity to convince the public that it is a sound investment to expend money in preventive work, rather than to wait until a sensational sex murder shocks us into enacting legislation by which we undertake to support for life individuals whom we have unconcernedly permitted to become incurably dangerous.