EXCERPT FROM TESTIMONY OF DR. FRANK F. TALLMAN

BROWN: Members of the Committee, this is Dr. Frank F. Tallman, Director of the Department of Mental Hygiene. You may proceed, doctor.

TALLMAN: I would like to make—I'll try and not duplicate material you have had presented to you but I would like to reinforce one or two points that no doubt Mr. McGee and Dr. Fuller have mentioned and that is point number one: I believe that one of the important factors in dealing with a sex offender is diagnosis. I think there is a tendency in all our minds to think of a sex offender as though he or she belonged to one particular medically isolatable group. As a matter of fact, there are several physical and psychological conditions that a symptom of which is a sexual offense. Without going deeply into that with you I would like to mention, for example, two or three of them. Very often in the older group of sex offenders the cause of the offense is a deterioration of the brain due to lack of blood supply which in turn is caused by hardening of the arteries. Now that lack of blood supply and deterioration of the brain cells removes from the individual their normal control of their natural and powerful instincts. That doesn't mean that anyone who has hardening of the arteries of the brain, everyone who has hardening of the arteries of the brain may commit a sex offense, it simply means that in that particular condition certain individuals may do so. Then there is the question of brain infection with a disease such as syphilis, then there is also an inflammation of the brain called encephalitis a portion of which individuals may commit such offenses. Then there is the group that we are particularly interested in because we know so little about it and that is what is commonly called the sex-psychopath, or the psychopathic personality whose abnormality of behavior is of a sexual nature. It should be kept in mind, I think, that the psychopathic personality may show his psychopathic behavior in alcoholism, in drug addiction, in stealing, in violent and sudden assault, or in a sex offense. Which means that when an individual is apprehended for an offense, I believe that in order to deal with it to the benefit of the individual and particularly to the safety of the people, the diagnosis is a very important thing. I think it helps the courts and the police agency to know how to deal with these people and I think if arrangements could be made for a satisfactory diagnosis for them wherever possible less mistakes would be made in releasing these individuals to the community without very much regard to their potential dangerous characteristics. Therefore, in this Special Session of the Legislature, the Department of Mental Hygiene felt there were two steps that might be valuable in dealing with the end result of the personality—the abnormal personalities. We felt that individuals who had difficulties of this type and were potentially serious criminals might be apprehended long before they commit a serious crime if we could offer some diagnostic help in the lower courts where it is rarely available, partly because it is not available in many communities and partly because of lack of organization. So we introduced a piece of legislation which required the lower courts upon the second offense against a child, sex offense against child under 14, the lower court was required to certify the case to the superior court who if they found that the person was guilty as charged and there was any reason to believe that the individual was a

sex psychopath that they would be sent for a period of not to exceed 90 days to one of our hospitals for an opinion.

I think that I will not take the time of the Committee except upon questions because it is a matter of record in statement and much more distinctly put; but, I do want to impress upon the Committee my feeling on those two ideas. I believe they are valuable in not only controlling but in also treating individuals who have this problem.

I would like to go quickly now to a few words about research. I think it has to be admitted by the most cautious psychiatrist that we don't know all there is to know about human behavior and I think we must admit that in this particular type of behavior we know perhaps less than we do in many other factors. I would strongly support a research program. I think it should be under the leadership of the Department of Corrections, but I want it clearly understood that the Department of Mental Hygiene and its facilities both physical facilities and personnel will be at the cooperative disposal of any particular agency that is given the responsibility of research. I hope very much that the Legislature will see their way clear to make a beginning in solving a difficult problem.

I have been impressed in going to meetings, and I was rather thoughtfully impressed at a meeting that was held in Sacramento where certain kinds of treatment were mentioned and always it was, the reply was that some people think it works and others think it doesn't work and then the question is: Well, what is the fact of the matter? The facts are very much as Dr. Fuller indicated a minute ago—we don't know enough to say this we know without doubt works, and this we know without doubt doesn't work. Any good research program arrives at the truth in two ways; by finding new facts, and by proving old suppositions wrong. There is a negative part to research as well as a positive, both being valuable.

Then I would like to go from there to what I think is an important thing for consideration. That is the organization of adequate counseling service in our schools. That seems, I think a far cry from the crux of what we are talking about. But, I want to make this point clear. You remember that I said that abnormal sex behavior can be a personality characteristic so to speak, which you see in the sex psychopath and can be the result of the loss of control of instincts through disease process. Now, if my belief from my experience, and here again it is a belief that hasn't been proven, it is a matter for research, but I do not mind stating it, it is my belief that an individual who commits such a crime as we are talking about in adulthood has had a long picture of maladjustment before he ever commits such a crime. Even though his crime is committed because he has lost control of himself due to disease, I believe in those individuals you will still find a maladjusted child in the background. I think that it is much more important for us to plan to prevent the very serious things that we are talking about rather than to spend our money wholly in either custody or apprehension or supervision after an individual has gone out and committed a crime. And that ties into what I said about providing examination facilities in courts. There is a tendency, which we all know, to deal with these so-called minor sex offenses by reprimand, by a short sentence or by suggestion that they move perhaps to another town or county and very often those are the very people who need treatment now and who if they don't get it cause serious crime. So, I keep advising the educators

which would have the responsibility of dealing with unhappy children who need help of all types but which would be really your first place of attack on this problem because as I said before, they have had problems of a sexual nature, perhaps not great problems, but that they have been worried and puzzled and confused about those things as young people and I think that, I hope that teacher-training institutions and departments of education will more and more include in their studies human behavior and how to deal with it effectively when it is beginning to show stress.

I think that pretty much covers what I wanted to say, that we hope we will get legislation, we hope that we will get research and we hope that we will be in a position in California to use those preventative techniques that we now have. Finally, I did omit to say that our Department is building an institution at Atascadero, where we will have a large section devoted to dealing with people of this type which in itself will provide a laboratory for research. My best guess is that we will have that institution ready in about 3½ years. Builders like to tell me that we will have it in two years but I have been through that business before.

SMITH: Just one question, doctor. Of all the different types of treatments, there does not seem to be sufficient information to know if they will cure or not. Am I correct in that?

TALLMAN: Yes. I think you are completely correct and I think one of the problems that we will have to face in this research is this, and I hope Mr. McGee gets the money and solves the problem, which gets back to the word that I used before, Mr. Smith, diagnosis. Because there isn't unanimity of opinion among psychiatrists as to what constitutes a psychopath you see. Now, I might say that these five men are psychopaths, they might have committed some sort of offense that we are talking about and I might treat them by castration and they might come out all right. But, you might come in and see them and say, well doctor these fellows aren't what I would call psychopaths and as far as I'm concerned your treatment didn't do any good because I don't think they are psychopaths. You see, there has to be a greater clarification than science now has as to what constitutes a psychopath. You gentlemen would involve yourself in a great amount of discussion if you had 50 psychiatrists here; you probably would have in detailed analysis 10 clearly defined different opinions. Therefore, I think that I might say the first phase of this research ought to be in the sense, there ought to, it seems to me we have to approach this now to some extent on a target research basis. I think what we need is a conference of scientists to say this area, this area, and this area are the main roads that we want to follow and this is what we want to do. These people will pick up the bits of information that are already here, and you finally arrive at a lot more interest than we have now. We should use the facilities of all the universities that we have here and if we need to create special laboratories they will have to be created. It must be a planned attack. That's why I'm in accord with Doctor Fuller when he says the first phase must be organization.

SMITH: Then you anticipate that if we do have that research we can look forward to a hope of some results?

TALLMAN: Very definitely.

EXCERPT FROM TESTIMONY OF DR. DAVID B. WILLIAMS

BROWN: Dr. Williams is present, is he not? This is Doctor David B. Williams, Superintendent and Medical Director of the Mendocino State Hospital. How long have you been at the Mendocino Hospital, doctor?

WILLIAMS: I have been there two and one-half years, Mr. Brown. I have been with the State of California in the Department of Mental Hygiene for the past 20 years.

BROWN: You may proceed, doctor.

WILLIAMS: I thought I would like to tell the committee something about what we are doing at Mendocino for the deviated sex offender, psychiatrically deviated sex offender. This morning at the Mendocino State Hospital we have 74 sexual psychopaths who have been committed by the superior court. We have 48 who are on probation through the court on a five-year probation as required by law. Of that 48, everyone is getting along well, has avoided any antisocial conduct with the exception of one who got into trouble about two weeks ago in Sacramento. We have had two return from probation to the hospital during the year 1949, one came back voluntarily because he felt he might be leading into some trouble. He felt that he was predisposed and he came back voluntarily and of course we took him in.

At the Mendocino State Hospital when a patient is brought in by the deputy sheriffs, we place the man in a maximum security unit. The Mendocino State Hospital, as you know, has the maximum security hospitalization for the Department of Mental Hygiene. In this maximum security unit he is completely examined. A complete psychiatric, neurological and physical examination is made, together with the psychological testing as we feel that the psychometric examination is part of a complete examination of this particular patient. Routine X-rays, of course, are taken of the chest and any other part of the body where it might be indicated.

When the case has been completely worked up and all pertinent information incorporated, the case is presented to the clinical staff conference by the doctors who completed the examination. The clinical staff conference consists of all the doctors on the hospital staff plus the psychologists and the psychiatric social workers. Following discussion of the case by all the doctors a diagnosis is made and recommendations for treatment are added to the record. We find that in a great many of these cases that the sexual offense is a surface symptom of something deeper. A great many of these cases we find are mentally ill. Now, I don't mean that they are necessarily insane but they are mentally ill. They have associated conditions which require treatment and that we start treating right away. We find neurotic individuals, alcoholism and many of these organic conditions that Dr. Tallman spoke of. The patient is given an orientation course. The entire situation is explained to him so that he knows what to expect. He knows that he is not going to get out of the hospital in two weeks and is told just exactly what to expect in the way of treatment, how long he is going to stay, so it makes his stay there very much easier. Then, after about three months, depending upon the individual case, he is transferred to a less secure ward. However, it is a ward in which the doors are still locked, and he is given a job. He is given other activities to keep him busy. When the associated conditions have been

sufficiently treated then we start bearing down on his sexual deviation. These patients are pretty well hand picked and we pick those that we think are good bets to place back into society eventually and we put them into a group for psychotherapy class. This is a group of younger individuals that we feel will benefit from treatment, intelligent enough to understand and in this group therapy class, which convenes three times a week for two-hour sessions, we have assigned one doctor. He supervises this session, guides them along, he furnishes and procures reading material. He conducts the discussions and in a very short time after these classes are convened these men lose their embarrassment about discussing their problems and they gain pretty good insight into their sexual deviation. They go hand-over-hand back over their life and they are soon able to evaluate their entire personality themselves and we tell them that we are not going to cure them; I don't think medicine has the answer to this problem yet. I don't think we have cured any of them, but we do give them insight enough so that they can become useful citizens and can leave the hospital and avoid running afoul of the law and they will learn how to live with other people and to not engage in any antisocial conduct. That is all that we hope to accomplish. We feel that none of these men, regardless of how good their prospects might be, should be released from the hospital under one year. In fact, we don't even try to get them out until they have been hospitalized for at least a year. It takes, we have found from experience, at least a year before they can get enough insight into their condition to get along.

After the individual has completed 60 hours of this group psychotherapy, he writes a complete history himself, starting right back as far as he can remember in childhood and he explains the development of this sexual deviation himself, and it is quite surprising how they can arrive at the correct answer themselves after 60 hours of psychotherapy. This individual is again screened by the entire medical staff very carefully; his entire personality development is evaluated and then we try to arrive at a conclusion if he is a good possible prospect to recommend to the court for probation.

The way the law is at the present time, we have to recommend one of three ways: Either that he is cured and will not be a menace to the health and safety of others; or secondly, he has been sufficiently treated and will not be a menace; or third, that he is still a menace. In the law, this wording of menace has been somewhat of a stumbling-block to us because I don't know what a menace means and I don't know who is going to be a menace tomorrow. I might be a menace to somebody tomorrow or anybody in this room. How can you tell who is going to be a menace? But, we must state to the court whether we feel the man is going to be a menace or not.

Another thing that I would like to tell the committee that has struck me in talking to so many of these psychiatrically deviated sex offenders, is the number of times they have been arrested and incarcerated before. A large percentage, I would say, have been in jail repeatedly 30 days; they have been in the workhouse or rock piles for sex offenses. It seems to me as I understand the law now, that the man at the present time has to be charged with a felony before anybody can take sexual psychopathic papers and have him committed. I would like to see some way in the law that this thing could be nipped in the bud. I would like to see even a

justice of the peace who might be suspicious or a doubt rise in his mind either as to the mental condition of the man before him or perhaps there might be a doubt in the justice's mind or the judge that the man might be a sexual psychopath as defined under Section 5500 of the Welfare and Institutions Code. If such a doubt arises in the judge's mind I think he should have the legal power to order immediately a psychiatric examination. It might be that this sexual offense, as I remarked before, is a surface symptom of something deeper. It might be that this individual is predisposed to the commission of sexual acts and it might prevent murder of children as we see happening around the State. It would be one way of nipping the thing in the bud.

I have found in dealing with the courts most of the judges prefer, if they put these men on probation, they like to put them under probation to the psychiatric social worker in the Department of Mental Hygiene in that particular community. They feel that a probation officer, who is not an officer of the court, holds too much of a club over their head. He is going to supervise this individual by means of a baseball bat. So the judges, are well acquainted enough with the medical problem to prefer to place the individual on probation and under the supervision of the psychiatric social worker of the Department of Mental Hygiene. The social worker sees this individual freequently, makes reports, and is able from time to time to guide them along and give them good advice and counseling. As I say, we have 48 on leave from Mendocino all getting along well. One, two weeks ago, ran afoul with the law and is back in San Quentin.

I feel that the psychiatric sex offender should be confined either in an institution to themselves or in a segregated part of some existing institution, so they will be by themselves. They don't mix well with the mental patients. They take too much time of the medical staff. At Mendocino we have only eight doctors in the whole place to look after 8,000 people plus all the admissions that you must see. It works a hardship on the treatment of the mentally ill when we have so many of these. I think the Department of Corrections is the proper department to exercise this program with the full cooperation of the Department of Mental Hygiene, the University of California facilities. The Department of Corrections has so many of these cases and I believe the committee is to be commended for working out on this problem because it is ever increasing. In the year 1948, there were 28 sexual psychopaths committed to the Mendocino Hospital. In 1949, there were 58. It did double.

The extra-mural treatment, I believe is quite important. The Department of Mental Hygiene has mental hygiene clinics in the larger cities. We refer all of our patients who are placed on probation for a period of five years, we refer them to these mental hygiene clinics. We feel they should go there, let the psychiatrist in charge use his judgment as to how often they should come in, they should be seen, guided and counseled. They are doing that. The clinics are doing a fine job and I think that is one reason that we have 48 out on leave that are getting along all right. They aren't in any antisocial behavior. I would like to see more of the clinics established, not only for the state wards who are on parole, probation, leave of absence, but for the community in general to prevent a great many patients being committed to the state hospital. They could nip this thing in the bud.

I think I have nothing further Mr. Brown, other than I do want to emphasize the committing of a sexual psychopath. I would like to see something done for the crimes committed. I would like to see it like the mental illness law. Whenever a doubt arises in the judge's mind, either as to the mental condition of this man before him or perhaps there might be some suspicion or doubt in his mind that the man might be a sexual deviate, maybe by his mannerisms or his dress, something to attract the attention, I think he should immediately call for a psychiatric examination by two well-qualified psychiatrists who would report to the court.

EXCERPT FROM TESTIMONY OF DR. D. G. SCHMIDT

FLEURY: We have had some testimony here that when a person has reached say, any age over 21 and he is a sexual psychopath there is nothing that can be done to cure him. In other words, he is going to have that tendency for the rest of his life.

DR. D. G. SCHMIDT: It may be true that he may have the tendency but then every human being has tendencies to do wrong or to do the wrong thing and yet the average individual will develop sufficient control and sufficient understanding and insight into his relationships with other people that he doesn't do wrong. While the sex psychopath may realize that he is doing wrong he may not be able to control himself. He may be so emotionally or mentally unbalanced that he can't control his desires, his feelings and his actions. Those people need help and it may be on a basis of organizing their personality better on that basis. The psychopathic basis, for example is one of the most difficult to treat because they are content and happy with their life. They don't want any help. They reject you completely. They for instance take an effeminate homosexual, that has a large effeminate component, mind you they don't constitute but about 10 percent of this whole problem, but this psychopath won't want to be changed. He's satisfied with that life and that is one of the group that we have very little help for because he wants no help.

FLEURY: We have a bill, or the Legislature had one, that will—what is that bill—emasculation—I don't know what number it was—do you have any ideas on that?

SCHMIDT: Emasculation is a very difficult problem. We don't know sufficiently the cause of this type of psychopath we talk about now and very few would consent to such a procedure. There are some that have consented and have seemingly done well and there are some studies under way now in this field but in the past our experience has been that those that have been emasculated against their will were worse after the emasculation than before. We have actually had three or four that I have known personally in prison that were—that had this operation performed elsewhere and instead of just being problems once in awhile, they became problems continuously and became professional prostitutes, male prostitutes.

TOMLINSON: I think that, myself and probably one or more of the other members of this committee would like to have you explain, or put in simple language your interpretation of this treatment thing as between the prison and the hospital. Now we hear about the treatment, we have heard about treatment in the hospital under our Sexual Psychopath Law now, at the same time we hear about the attempt to treat in prison. Do we have a duplication, an overlapping from a staff standpoint from your psychiatric set-up standpoint?

SCHMIDT: You mean that you are specifically referring now to the treatment of sex offenders under this Sexual Psychopath Act?

TOMLINSON: That's right.

SCHMIDT: Actually we have had a confused picture there in that the people that were sent to the hospital would be sent to a hospital that was already overloaded and overcrowded and consequently probably

very understaffed to treat this type of problem by not having an adequate staff. Secondly, very few of the psychiatrists have had any experience in treating in this particular area. This is really a specialized field and a specialized area of treatment that requires a good deal of experience in order to understand——

TOMLINSON: I think that is quite obvious, but the point is, are we duplicating and overlapping our efforts here in sending one group to a hospital and those that don't make the grade under the Sexual Psychopath Act to go to the prison and there take up the treatment that you advocate?

SCHMIDT: If we had sufficient staff to treat them adequately in prison with psychiatric and medical personnel, it would be much easier to answer your question. If it had an adequate staff to treat them in the state hospitals situation, staff that had experience and had sufficient staff, it would be easier to answer you question. Actually we are doing so little treatment in both areas that it is almost pathetic.

TOMLINSON: Well, then, let's bring in a third element, research.

SCHMIDT: There you have hit the nail on the head.

TOMLINSON: Then we better start with that then.

SCHMIDT: There you have hit the nail on the head because we have so little staff now that we can hardly keep our head above water treating even a partial case-load, a third of what we have had recommended to us for treatment, that we have practically no time to research in this area which just needs research worse than probably any area that I know of.

TOMLINSON: Then with the research after a period of time we possibly could come up with some intelligent opinions as to what kind of a program we could set up, finance, appropriate for, and go forward for.

SCHMIDT: We have a gold mine here right in our prison in San Quentin of sex problems. We have about 700 of them that just are there—have been placed there by society, not only for treatment but for effective treatment, to find out what will work most effectively with these people and as I have illustrated we have about two hours per man per year to give him for treatment. Well, how much research can you do with that sort of situation?

TOMLINSON: Well, the whole thing is absurd. Utterly absurd, until we do get enough money to plan a research program that will bear some fruit.

SCHMIDT: I wouldn't say there was overlapping between the prison and the Mental Hygiene Department because I don't think either of them are doing enough work to overlap. They haven't the staff to do it.

HUTCHESON: Dr. Schmidt, following up Mr. Tomlinson's questions. How big a staff would it take for proper research at San Quentin, we'll say taking a limited group, not all 4,500, maybe limiting it to the 1,200 that you selected for the purpose of treatment and therefore you thought might be worthy of just doing research on.

SCHMIDT: We have a staff of five now. If we could double our staff of five psychiatrists, with two more sociologists or psychiatric social workers they are really the same type of individual, a couple of psychologists, we could do some real research. We could do some real treatment. I have a very strong feeling it would be one of the most scientifically productive steps that this State has taken in a long time.

HUTCHESON: And the product from that would be just a report, or what do you think they could produce, doing research investigating those cases and concentrating on that limited number of cases there at San Quentin?

SCHMIDT: Now mind you, this doubling of our staff, I'm thinking in terms of our limited selected group of cases. Doubling our staff alone wouldn't solve the picture—wouldn't be a total solution to the problem by a considerable degree. What we need more than just doubling our staff locally at San Quentin is a medical psychiatric facility, a hospital situation where we can put about 1,200 or 1,400 of these people and treat them in a hospital situation sufficiently staffed. We still will need doubling of the staff locally at San Quentin because there are so many psychiatric problems. But, in order to battle this problem and bring forth some productive research, you really need a hospital and its facilities that we have been contemplating in California now for ever since I have been with the State. We have had several appropriations, you probably may recall in 1939, we had an appropriation, in 1944 there was some moneys set aside and 1947 again we had quite an amount of money to develop Vacaville but it hasn't been implemented, it hasn't been into fruition.

HUTCHESON: Now, those figures that we have been talking about now are just for research and your thought shifts to the thought that just for research on 1,200 persons it would take about twice the personnel that you now have and should be done at a hospital facility.

SCHMIDT: For research alone you would need a staff of at least double the staff we already have.

EXCERPT FROM TESTIMONY OF DR. KARL BOWMAN

HUTCHESON: Doctor, the Langley Porter Clinic, what is it's relationship to the University of California and to this area?

BOWMAN: The Langley Porter Clinic is set up as a hospital in the State Department of Mental Hygiene and its budget comes from the State Department of Mental Hygiene. The Legislature in setting it up stipulated that the University of California should have exclusive use of the Langley Porter Clinic for teaching and research purposes and exercise clinical supervision over patients for that purpose. The Langley Porter Clinic is therefore set on land adjacent to the campus at the Medical School and the stamp of the Langley Porter Clinic is the Division of Psychiatry in the Medical School. they are really one and the same thing although there are some other doctors from outside part and non-salaried who come in as part of the staff. But, the general budget of the Langley Porter Clinic comes from the State Department of Mental Hygiene and administratively is under the State Department of Mental Hygiene. The University of California uses it as a teaching place for medical students, for doctors who want to become specialists in psychiatry, for nurses who want to get psychiatric experience and become specialized nurses in psychiatric nursing, or in training of clinical psychologists, and training of psychiatric social workers or occupational therapists to get field training and probably one or two others that I can't think of at the moment.

HUTCHESON: It is used by the courts in this area?

BOWMAN: Very little. We have accepted a number of cases for treatment that have been sent to us by the courts and that is not simply this area because we are a state institution and we are supposed to serve the whole State and get cases from all over the State. With only 100 beds it is a drop in the bucket, of course; but, we have, both from the Youth Authority and the Adult Authority, taken a number of cases on for treatment, cases that have been convicted and sentenced and under the authority of the Youth Authority or the Adult Authority, particularly of the Youth Authority and with Mr. Holton we have had them refer a number of cases that we have carried on, even some of them for a period of several years.

TESTIMONY OF DR. A. C. KINSEY

MR. BECK: Would you give your first name?

DR. KINSEY: Dr. Alfred C. Kinsey. For the last 11 years we have had a research project, as you know, under way at the university on human sexual behavior. It has been concerned with a great diversity of aspects of sexual behavior and has the advantage of having a background of the picture typical in the population as a whole as well as a special study of the persons who have been involved with the law as sex offenders. The research is supported by Indiana University, by the medical division of the Rockefeller Foundation, and by the medical division of the National Research Council at Washington.

Our study of sex offenders began 10 years ago early in the research, and we have given some very especial attention to that end of the problem. We have worked in penal institutions in a dozen of the states in the Union. We have had the advantage of working rather closely with courts in a number of areas, including some small town, larger courts, and with courts in a city as large as New York we have had constant contact over a long period of years. We have specifically the histories of about 2,000 persons who have been convicted as sex offenders and committed as such to penal institutions in various parts of the country, including both males and females, and in institutions of quite diverse types. We have had some contact with the federal penal commissions and we have had contact with Army and Navy, and contact with a number of state legislative groups. So much for background.

Thinking over the things that I thought you might be interested in, I think the first thing I'd like to emphasize is the fact that the problem of the sex offender is one that has been studied quite intensively and one on which there has been a good deal of legislation and experimentation in various states in the Union over a period of years, and I think that the groups that have studied most intensively, the states that have experimented most extensively, are still quite convinced that the problem is one that is not going to be easily answered and one which needs a great deal of actual investigation, scientific research and considerable experiment in administrative control. What I am saying right now is, that there is no group—psychiatric or medical or social or any other group—that is in any position to give the answer, and consequently any lasting solution of the sort of problem that you have had in this State is going to have to be coupled with a very definite research program.

There are 12 of the states in the Union which have passed so-called sexual psychopathic laws within the last five years. Those laws vary rather considerably. The Illinois and the Minnesota laws were the original models, but there are very material differences in the set-up of the law in different states. Those laws have been in effect long enough in a number of states so that it has been possible to do some surveying and get some evaluation of their effectiveness or ineffectiveness.

There are individual cities like New York that have been experimenting for five or six years with a totally new sort of policy in handling sex offenders. Since the City of New York contains—well, greater New York has about 9,000,000 in it, and in consequence, their experimentations have involved tremendous numbers of cases, and they have made very definite progress, I think, in the judgment of everybody. Both the courts, with all

the other people connected with social services and probation services, and so on, connected with courts, and the general public are quite impressed in New York City with the fact that they have made considerable advance in the handling of those cases.

The New Jersey State Legislature, in a great hurry last year passed a new law, but fortunately directed that the commission which was to administer the new law should also make a study of the situation and bring in further recommendations for a revision of the law to the legislature. I have sat with that commission within the last three or four weeks and know in detail something of the problems that they have faced.

There has been a group of the top psychiatric organizations in the United States, a Group for the Advancement of Psychiatry, a group of elective members who represent in the opinion of psychiatrists the Country over, the top group. That group—"gap" as we ordinarily call it—has been making a special study of the problem of sex offenders for a goodly number of years, and within the last year has arrived at specific recommendations on the handling of sex offenders. Those recommendations are in print—I happen to have one copy with me.

The British Psychiatric Organization has similarly had a group studying sex offenders. The British Bar Association had a similar group, which has been cooperating very closely with the British group.

You will be interested to know that, as a result of some extensive study, recommendations were made to the Swedish Parliament five years ago which led to a complete revision of their sex laws, and now with five years' experience it has been possible to make a study of the outcome of their revised legislation. I can tell you about their recommendations and the problems that these special groups have faced. There are still other groups that have studied these things, but between the 12 states that have revised their laws and these several groups who have studied them, there now is a rather considerable body of experience which could guide a legislature or any other group that was interested in sex law. The revision of any law, without taking into account the experience of these many other groups, is something which at least you should be conscious of.

I think it fair to say that there have been three trends which have developed in legislation in these other areas, and in the opinions of these groups of specialists that have studied. Of course, since 1890 there has been no capital punishment for sex offenses anywhere in this country, unless they were complicated by murder or some other crime committed in connection with the sex offense. The trend throughout the years has been toward a lessening of the penalties. The trend has been very definitely toward the elimination of sex laws. The New Jersey State Legislature complicated and added to their sex law a year ago, and their commission which was set up to study the thing and make recommendations for revision have within a year immediately reconsidered the thing and are ready to recommend a very considerable lessening of the sex law.

You who have legal background will realize that no man is technically a criminal until he is convicted, and consequently the number of offenders that you have in any area depends upon the existence of a law and in the second place, apprehension and conviction. There was a time when a vast portion of the population were violators of the speed laws, until the country got tired of its old speed laws and relaxed them very considerably. Most of the Middle West threw its speed laws out of the window completely, and thereby instantly and automatically reduced the number of offenders. And we had a very spectacular instance of that same thing in connection with prohibition, where the number of persons who both technically by conviction and in actuality by practice who were violators of the liquor laws rose to tremendous heights, until we threw them out of the window.

Now the third trend in this legislation and the studies of these groups—the third trend has been an attempt to recognize which of the sex offenders are in actuality psychiatric cases, and to treat those cases under much the same procedures as cases of insanity are treated under the laws of the particular state in which they occur. I have a few comments to make on that last point. There has been a great temptation for legislators the country over, when they have considered that the sex offender represented a problem that should be handled in some other way than the other criminal activities are handled, to prescribe that the individual be committed to some clinic or institution or what-not for psychiatric treatment. There is no state in the Union that I know that has psychiatric facilities for such treatment.

The New Jersey state law provides that the sex offender shall be kept in a psychiatric institution until cured of his psychiatric disturbance. At the Trenton meeting three weeks ago, the heads of each of the institutions were asked in front of the entire group at the meeting what facilities they had, and they all had to answer that there were no facilities. Now, it is the judgment of all of the scientific groups that I have named and some others that I haven't named that have studied sex offenders that it is only a small proportion that do in actuality represent psychiatric cases. There has been a tendency, fostered somewhat by textbook psychiatry, to believe that anybody who engages in sexual behavior which is contrary to the law must therefore, ipso facto, be a psychopath.

As some of you know from the data we have obtained in our study as a whole, we find that 95 percent of the population has in actuality engaged in sexual activities which are contrary to the law. Ninety-five percent of the males of any population could be committed to state penal institutions if their behavior were known and they were apprehended and sent to the institutions. Specifically, look what you have! There is at least 85 percent of the male population, and in some segments of the population a still larger proportion of the males, who have premarital intercourse, which, in most states under one law or another, is illegal. There is a good 50 percent of the males who have premarital intercourse with girls under 18 years of age. If you pass a law which is going to make such a crime one for which they can be committed for life if the law is effectively enforced, you can put 50 percent of the males of your population into penal institutions.

If you and if I don't like it, it doesn't alter the problem. There is 50 percent of the male population that has extra-marital intercourse, which in most states is illegal. There is very near the whole of the population that is involved in exhibition or peeping at some time or another in its life. There is between 35 and 40 percent of the male population that has some homosexual activity after adolescence. There is 25 percent of the male population that has a considerable amount of homosexual activity. There is anywhere from 15 to 60 percent of the farm boys in

means that the persons who are apprehended for these things are involved in behavior which may or may not be different from that of the rest of the population.

It is our finding, so far, that it is not more than 5 to 10 percent of the persons who are apprehended and convicted as sex offenders who are involved in behavior which is fundamentally different from that of a high proportion of the rest of the population. That same figure was arrived at independently at Belleview Hospital, where they are required by law to review every case of every sex offender before he is released from an institution there. That is the figure which the "gap," the group for the advancement of psychiatry, have used.

I repeat that it is our judgment that there isn't more than 5 or 10 percent of the persons who are convicted under the law who are involved in behavior which is fundamentally different from behavior which is widespread in the population. Now, that means that the problem of the sex offender in most of these other jurisdictions which I have described is being narrowed down to those specific cases which are psychiatric problems and those cases which are dangerous to society. The group for advancement of psychiatry has recommended that there be no special handling—no special psychiatric attention given to sex offender cases except those which involve behavior that involves force, and I think everywhere there is universal opinion that society has the right and the obligation to protect itself and its individual members from forced relations.

Secondly, society demands protection of its younger children from sexual activity forced on it by adults. And there is a third type of sexual activity which becomes a considerable nuisance and sometimes more specifically dangerous to society because it is compulsive and or repetitive. The technical psychiatric term "compulsive and/or repetitive" refers to the type of case which persists in doing something which offends society. The simplest instance of this sort is the exhibitionist. Now, again, there are very few males in the population who haven't deliberately exhibited for some erotic satisfaction some time or other somewhere along the line. The exhibitionist who makes a public nuisance of himself and repeatedly makes a nuisance of himself may or may not represent a psychiatric problem, and where there is a real psychosis involved, such an individual may graduate from that type of behavior into behavior which is socially dangerous.

The public, in general, thinks that all sex offenders are as dangerous as those sex offenders who murder or who force relations on younger children. Under the laws of the several states of the Union, there are 20 to 25 different types of sexual behavior which are criminal, and I daresay that there would be about that many in your own California laws.

The Swedish government has abolished all sex laws which do not cover the three items which I have just named.

In New York City there has been no change in either city or state law, but in the last five years there has been a radical change in the administration of the law, and it boils down to essentially that.

To take a single type of case, the public in general thinks of homosexuality as a perversion, and all persons who have homosexual activity are ipso facto psychopaths. Now, with that I can vigorously and specifically disagree, even with any psychiatric opinion that you bring. There

are persons with homosexual histories who are psychopaths and who, because of their mental disturbance, may become dangerous to society. There are many other persons whose homosexual histories are carried on in a fashion which does not threaten person nor property, even though it may threaten the concepts of morality which some other persons have.

Now, in New York City they were making about 20,000 arrests per year of homosexual cases before they started their new procedures in the courts. They were sending about 2,000 of them per year to penal institutions before they started their new procedures. Since they have set up their new development in New York City, they are not sending through more than three or four hundred cases per year from the city courts. The experience of the municipal courts on that score—the precise record of how cases are handled, and so on—is to be found in the chief magistrate's reports, which I don't happen to have with me, but which are the sort of thing which any group you set to study could, you see, have access to. They have had difficulty in setting up their program there, chiefly because of difficulty in working out a clinical program that was practical. It has not served to have a psychiatric clinic which makes diagnoses and has no practical procedure to recommend to the police department, to the prison administration, nor to any other group. They are now operating with a clinic which is accomplishing more than has been accomplished through their five years of experience, and the clinic is designed to weed out those cases. It is a pre-sentence investigation that this clinic undertakes. It is not mandatory, but the court persuades most of the persons who come before it to resort to the clinic.

The clinic is designed to identify those cases that will cause trouble, or those cases which cannot be readily helped by clinical redirection. The clinic, in consequence, recommends a minimum of cases of commitments, and the courts, in actuality, have reduced their commitments to 20 percent of what they were prior to this program. The program has been in effect for enough years so that the people of the city are quite conscious of it. It has been written up in magazines; it has been rather widely advertised over the city, and people of the city are very well pleased with it.

I should say this, that there are a great many of the sex offenders whose patterns of behavior are not going to be materially modified by any known psychiatric service, and it is a snare and a delusion for the law to provide that these persons shall be treated—shall be kept until cured of their psychopathy.

At the New Jersey state meeting the commission had called in a group of experienced persons from widely over the country. The psychiatrist in charge at St. Elizabeth, the government institution, was there, the psychiatrist who was in charge of all the Army cases of sex offenders in the European theatre during the war, the psychiatrist who was head of the committee of "gap" which made this special report on sex offenders, and what I am telling you would be substantiated by each and every one of the specialists that the New Jersey group had called in. What I am saying is that for a person who is completely homosexual and who has had a long-time homosexual history, for instance, there is not going to be any modification of the degree of their homosexuality by any known psychiatric treatment. We ourselves have never seen such a case

On the other hand, the New York State attempt, the present New Jersey attempt is to help these people make a social readjustment which does not go on the gratuitous assumption that they are going to drop their homosexuality, but does see to it that their activity is carried on, and help them to work out a pattern of behavior which may be carried on without affronting society.

There are some types of sexual behavior, I repeat, which are of real concern and against which society must protect itself. There is a very high proportion of the persons who are apprehended under sex laws who have merely offended custom and not persons or property, which is the point of all of the criminal law, and whose offense involves a readjustment of their pattern of behavior without attempting to cure them of a pattern of a particular type of sexuality.

I should be very glad to have you ask questions. I think it would be well to limit my preliminary remarks at this point.

MR. SMITH: On this last subject you were talking about the kind of treatment that is going to help the homosexual. Now, what others do you classify as being able to be helped by a psychiatrist? I don't know that they claim they can't help anybody; they don't like to admit they don't have a cure, that's it.

DR. KINSEY: There are psychiatrists of many different qualities, and there is honest divergence of opinion among psychiatrists. If you should call in for consultation some of the country's top psychiatrists, you would find agreement, for instance, on this point, that a person with a primarily or an exclusively homosexual history is not going to be modified. I will give you another instance. Our own studies indicate that the general pattern of behavior is laid down for most males early in their teens. By 16 years of age, 95 percent of the males have laid down their pattern. We have not seen, out of the many thousands of histories that we have looked into, any material change in pattern of behavior after 16 years of age. I don't mean that they don't modify some of the details of the way in which their activity is carried on. Let me give you a specific instance. There are 35 percent of the males—there are 85 to 95 percent of the males from that segment of the population that never goes beyond 10th grade in school, who have intercourse before they are 16 years of age. It is only 30 percent of the males from that segment of the population that ultimately goes to college. Conversely, the male who is ultimately going to college depends primarily upon masturbation for his pre-marital outlet. The man who comes from the lower educational level may have a bit of masturbation in his early history, but very quickly drops it in favor of the coitus.

Now, the problem of dealing with the individual from that segment of the population where pre-marital intercourse is accepted is not really an individual problem. It's a problem that involves a pattern of the whole community from which he comes. His segment of the community doesn't in actuality disapprove. His segment of the community in actuality expects. His segment of the community would be shocked at the idea of a boy who got along into his late teens without having intercourse. In consequence, when you are dealing with a person who has started a heterosexual adjustment with intercourse at that early age, you are not going to persuade him to quit intercourse for any period of years. He may go to prison for it; he may pick up venereal disease; he may get into all

sorts of social difficulties, but we have never seen such a pattern changed. Now, that doesn't mean that he has to have intercourse under situations which damage, which publicly affront.

I think the problem would concern Legislators most when it comes to the question of the age group in which these persons have intercourse, and there is one of the most difficult problems that I know, this attempting to change the pattern of a person who has learned to have intercourse at a very young age, and it is for that reason that all of these groups have agreed that such a person should be given special attention and needs all of the psychiatric help and commitment until there can be something done about it.

MR. SMITH: Including homosexual?

DR. KINSEY: With very young persons, irrespective of whether the behavior is heterosexual or homosexual.

MR. SMITH: Do you think that incarceration of homosexuals 30 days to 6 months helps the situation from an over-all standpoint, or do they merely have a field day in jail and then go out and immediately perpetrate the same acts again?

DR. KINSEY: I come back to it that we have never seen a homosexual history modified by any imprisonment, whether it be 30 days or 30 years, but we have seen these persons adjusted by the sort of social clinics which New York has set up, to learn how to conduct themselves without affronting by forcing relations and making public nuisances of themselves by carrying on with young persons.

Let me draw your attention to this, since you have mentioned the homosexual. You have at one end of the population, males who are exclusively heterosexual throughout their lives. Males who are exclusively heterosexual throughout their lives constitute about half of the population, and not more than half. Males who are exclusively homosexual constitute about 4 percent of the population. That means that you have about 46 percent of the population which has some combination of heterosexuality and homosexuality in their histories. Some of them have more of one; some of them have more of the other. Some of them may be primarily heterosexual in these years, primarily homosexual in some other years, or vice versa. Now the males that are exclusively homosexual, or nearly so, are the ones to whom I refer when I say I have never seen a pattern changed if there have been some years of experience. Now the persons who lie in that other 46 percent, you see, are persons who might be modified. Their behavior might be thrown one way or the other.

The surest way to make such persons exclusively homosexual is to send them to a penal institution. I can't conceive of any sort of therapy that is more likely to make them exclusively homosexual than to send them to a penal institution. It doesn't matter whether it's California or New York or any place else—male or female institution. It is a place where there is no opportunity for any other sort of thinking, irrespective of how much overt contact there is, no opportunity for any other sort of thinking. If, on top of that the institution rules out pictures of women and limits the number of contacts with women, and so on and so forth, any long stay in an institution will do a good deal to throw one of these males who is in the intermediate point, you see. It doesn't do very much to take the male who is exclusively heterosexual when he goes in, but it

individuals who are midway can be guided by a clinician. It need not be a psychiatrist necessarily—a social worker, a psychologist, a friend, a clergyman—they can be thrown, you see, to some degree. It's the exclusive cases at the two ends that aren't going to modify their patterns.

MR. BECK: What percentage are wholly homosexual?

DR. KINSEY: Four percent wholly homosexual.

MR. SMITH: Does it make it worse if they put all of them—segregate them—place them together—does that increase the problem or modify it in any way?

DR. KINSEY: Thanks to your state administration, we have had an opportunity to begin a study of that situation at San Quentin, where there has been some attempt to segregate a homosexual group. We have spent a good many thousands of hours so far on the thing. It will take many more thousands of hours before we have any answer. That is the sort of problem which you should have some agency for studying, you see. In this particular case we are doing that, naturally, very definitely.

MR. SMITH: Does the same situation apply so far as lobotomy is concerned, shock treatment, hormone, castration, all those on which we are still in the research stage?

DR. KINSEY: On most of those we are not in the dark. The answer is perfectly clear-cut on nearly all of those.

MR. SMITH: What seems to be the answer, pretty much, on those?

DR. KINSEY: Guesses and thinking—recommendations for procedures in regard to those things which do not take into account the known scientific data are, of course, negative. Lobotomy is an operation upon the front areas of the brain—the frontal lobes, so-called. It varies from the removing of a small piece to the removing of a major portion of the lobotomy. There is no known effect—it doesn't change the pattern of behavior: it doesn't increase or decrease the sex drive. Now, I can bring you the most authoritative information on that subject, because we are the persons who were chosen by the New York State Psychiatric Institute to do the sex part of the study for the biggest lobotomy experiment that has ever been conducted in the country. Most of the reports on the efficacy of lobotomies have come from physicians who have performed a single one or two, a half dozen at the most, here or there.

The New York State Psychiatric Institute has performed over 250 operations. It has called in a staff of 40 or more people—psychiatrists, neurologists, physiologists, psychologists, social workers—to make every conceivable study on these patients before the lobotomy was performed, and every conceivable study after. We will follow these same patients for many years to come, and in consequence our present remark is tentative, but at this stage we have been in these experiments for nearly four years, and at this stage the answer is that we have not yet been able to detect any modification of sexual behavior as a result of the lobotomies.

MR. ROSENTHAL: Have you been studying it from the viewpoint of a sex problem, or as a mental problem?

DR. KINSEY: Both. We have studied the effect upon the intensity of the sex drive, the frequency, the direction of the drive. A big volume reporting what is known so far as the result of these lobotomy experiments has been published within the last three weeks, and is now available, and that is the sort of thing, you see, which a research group would

have access to, and would take into account to advise you on such a matter.

MR. BECK: Could you give us the name of the text, or the report, for the record?

DR. KINSEY: The book is edited by Dr. Mettler, Fred Mettler, Neurological Institute, West 168th Street, New York City. I can't name the publisher for you, off-hand, but if you wrote Dr. Mettler, he would refer the request to the publisher.

MR. SMITH: Is it the same on shock and hormone and castration?

DR. KINSEY: On hormones, the biologists have had the answer for 20 or 30 years, and the small-town clinicians claim that the thing since then is not scientifically grounded. The answer there is that hormones have very different effect upon the young individual than upon the adult. If the pre-adolescent boy or girl is deprived of hormones before they turn adolescent or have acquired their full growth, there will be a very marked effect upon the growth of the total body, upon growth of the genitalia, upon the intensity of any physiologic activity, including the intensity of the sex drive. That means whether these hormones are controlled by a specific injection or by castration, the effect upon a pre-adolescent would be to materially reduce the sex drive, the frequency with which he is aroused sexually, and the frequency with which he has sexual activity.

I may remark, on the other hand, that castration of a younger individual has such a terrific effect upon them socially that you have all sorts of other complications coming up. A great many of them have no choice but to become homosexuals as the result of such castration. That is not the physiologic outcome of the castration, but the social outcome. A great many of them become so pepless and worthless that they become wards of society for the rest of their lives, if castrated at that point.

Now, castration on an adult, or injection or deprivation of hormones, modifies the intensity of the sex drive. It does not modify the direction of the drive. By which I mean that by all criteria the frequency with which an individual is aroused, the frequency with which a male comes to erection, the frequency with which they engage in complete sexual activity may be reduced by castration or by modification of the hormone level in any other way, or the frequency will be increased by the injection of hormones—of male hormones. There are many other hormones, of course, but in this connection we are always thinking of male hormones. Male hormones will increase the frequency of reaction. Consequently, the clinician who injects male hormones with the idea that he is going to reduce the sex drive is working diametrically opposite to all of the known biological experiments and all the known clinical experiments on any large scale. The direction of the activity, whether it be toward another male or whether it be toward a female, whether it be heterosexual or homosexual, is not in any case modified. There has been an abundance of animal experiment on this score, starting way back in the 90's, culminating in the 20's—as early as the 20's—so that the answer was perfectly clear-cut to the biologists, and consequently we are quite amazed to see medical experimentation with the thing at a later date.

During the war there was rather extensive experimentation on this thing by one Army group, where they took a group of 300 men with homosexual histories and injected them with hormones. They had the worst homosexual problem on their hands that they had ever had, because they increased the intensity of the drive of these men, you see. It did not modify the direction of their behavior at all.

MR. BECK: Have you found that you can deprive a male of hormones and thereby decrease the sex drive?

DR. KINSEY: You can deprive them of male hormones in various ways, but of course chiefly by castration. The decrease in sex drive in that case, I should remark, varies considerably with individuals. We ourselves have histories of persons who have been castrated as long as 30 years ago whose sex drive would still surpass that of the vast majority of the population.

MR. BECK: Are they still capable of sexual intercourse?

DR. KINSEY: If it is simple castration, there is no interference with erection, and there is no interference with ejaculation. The semen does not come from the testes, as is popularly believed. It comes from the prostate gland and the seminal vesicles at the base of the penis. Consequently, if the castration is performed in any fashion which would be medically approved, it has no modification upon the individual's ability to perform sexually, with the exception of some slight lessening of frequency of activity for a portion of the adult population.

MR. BECK: We have received testimony that in one superior court in Los Angeles County they have had 50 of these castrations for sex offenses, and the testimony indicated that none of these individuals have ever again been charged with a sex offense.

DR. KINSEY: I think it would be important to point out to you that recidivism among sex offenders is lower than it is in any other criminal group, taking the country as a whole. I am not quite clear what your experience may be in California, but in the country as a whole the sex offender is the one who returns least often to court. There are loose statements made to the contrary, but every specific study that has been made bears that out.

MR. BECK: That wouldn't be true of the exhibitionist, would it, or the homosexual?

DR. KINSEY: It would not be true of any of the persons who are compulsive in their behavior. A compulsive is a person who carries on without regard to the penalty. A moth flying repeatedly into a candle flame until it burns itself to death is compulsive in its behavior. A moth that had sense enough to singe its wings once and then never again fuss with a candle flame, you see, would not be compulsive. So you have exhibitionists who might be involved once, but not compulsives, and what you need in the way of clinical help is some agency which will identify which of these exhibitionists are compulsive, because those are the ones against which you do need protection.

MR. BECK: How can that be determined?

DR. KINSEY: That could be determined by a qualified clinical staff in a high proportion of the cases, I think.

MR. McGEE: I might support what Dr. Kinsey said about the California experience on that. The next to first-degree murder parolees,

of violations, and of those, very few of them are violators by reason of having committed another sex offense.

MR. BECK: They were guilty of something else at this time?

MR. McGEE: Well, they are brought back for technical reasons.

DR. KINSEY: You see, for that reason your statement from Los Angeles that few of these people return isn't necessarily cause and effect.

MR. ROSENTHAL: Let me ask you a question. In view of that statement, Doctor, it seems to me that the arrest of a particular offender and incarceration has had a good effect insofar as the courts are concerned. In effect, what you are saying is that the arrest and incarceration of a homosexual is one of the ways of keeping him from doing it again. Now, he may do it again, but not be arrested for it.

DR. KINSEY: I would follow you in the first half of your remark, but not the second—the arrest and perhaps the court trial and the conviction has this effect, but look at New York City experience, where they arrest and convict and put 75 percent to 80 percent of their cases on parole immediately, and they similarly do not get them back in court. Now, the incarceration is a different story. There is no doubt that incarceration contributes materially to keeping some people from returning to such activity on the homosexual case. I repeat that I can't conceive of anything more cockeyed than the notion of sending one out who has been convicted of homosexuality to that segment of the population where there is more homosexual activity than any place else. This is not a problem of your California institutions. This is not a problem that is the burden of any particular warden; this is a thing which no warden anywhere in any institution in the United States, with one exception of which I know, has ever been able to hold down to the point that the activity occurs in the rest of the population.

MR. ROSENTHAL: For that 4 percent of the population that are homosexuals, incurably so, that are at least that way forever and anon, isn't that the only place for them? If we consider that since the crime can not be cured; they will inevitably remain homosexual.

DR. KINSEY: What is the population of your State?

MR. ROSENTHAL: Ten million.

DR. KINSEY: Ten million population will mean that there are 4,000,000 males in that population who are of an age that is active sexually—about 40 percent. That is on the basis of the national census. If you have 4,000,000 in the population who are active sexually, 4 percent of those will give you 160,000. All right, you have 160,000 males in this State whom you would have to consider incarcerating for the rest of their lives. Now, you have 8 percent of the population who is nearly homosexual or completely so; that means 320,000 of them.

MR. ROSENTHAL: You have 4 percent, you said?

DR. KINSEY: Four percent is completely so; another 4 percent is nearly so. That gives you a total of 8 percent. You have 18 percent of the population who have as much homosexual activity in their history as they have heterosexual, or more. That means that you are thinking in terms, if your law is to be efficiently enforced and justly administered—you are thinking in terms of tens and hundreds of thousands of individuals.

MR. FLEURY: Are all the homosexuals possible people that would commit crimes against children as far as sex is concerned?

DR. KINSEY: That is the point I have been trying to make, that it is not more than 5 percent to 10 percent of those persons with homosexual history, or with any other sort of apparent sexual history who would be dangerous in contacting children or in forcing relationship.

MR. ROSENTHAL: One question following that. Is it true as we have heard that a homosexual invariably resorts to a younger person for his practices?

DR. KINSEY: No, that is not true. We have the specific data on the age groups with which contacts are made on all of the persons who give us histories, both heterosexual and homosexual. It would be a very small portion of the population, whether heterosexual or homosexual, that would be having contact with persons very materially removed from themselves in age either younger or older. I can't give you the precise figure, but I should think again that it might be a matter of 5 percent or 10 percent at the most who would have contact with persons very much different in age.

MR. ROSENTHAL: What type of person or group of persons were you considering or thinking about when you said they neither affect person nor property?

DR. KINSEY: Persons who do physical damage in forcing sexual relations upon another person are among those whom we immediately think of as a person against whom society needs protection. Persons who use undue coercion—in the common law principle—that is in itself also assault. Persons who considerably warp another person's own pattern of behavior, and I suspect that that is the thing that leads society to object most to an adult starting a younger child on any sort of sexual activity. It exerts undue influence on their later pattern, even though force has not been used. Our sex laws protect property only at one very peculiar point, and that is in its protection of the husband's rights to his wife, which arises out of an old property right in ancient law.

MR. BECK: Are any of these tendencies inherited?

DR. KINSEY: There is always the possibility that there is some inheritance, but there is no specific evidence—there has been no study which has been able to show that there is inheritance. It is our own opinion that the thing that may most frequently be inherited is the intensity of the sex drive—the capacity of the individual to be quickly aroused, or the capacity of the individual not to be aroused. The direction of the behavior we have no reason for believing is inherited. Again, it is going to take long work to establish the thing: there are no positive data, you see. So far, there are nothing but negative data. There is a considerable study on the possible inheritance of the homosexual being conducted in the New York State Psychiatric Institute right now, and again our data is being utilized in the thing. It is again one of the areas in which any research group that we set up, you see, in your own state or anywhere else might properly concern itself with investigation.

MR. BECK: In your remarks here today, in forming some of your conclusions, how many interviews or units do you have as a base in order to form those conclusions?

DR. KINSEY: We have about 16½ thousand histories in our own survey. I would draw your attention that market surveys, public opinion surveys, and so on, usually use samples much less than that. If a sample is properly spread through the population, a sample the size of ours can

do a great deal; it represents the total population. Our remarks concerning sex offenders are based upon that 95 percent of the nearly 9,000 males in our histories and upon a smaller percentage of the females who have been involved in illicit sexual behavior. It is based specifically upon something more than 2,000 cases who have been apprehended, brought before the courts and convicted and sent to penal institutions as sex offenders.

MR. BECK: We have received a recommendation from one group that perhaps the best thing that we could do at this time was to appropriate approximately a half million dollars, or at least a large sum for research. What is your thinking as to whether that is too much, whether it is too little, or whether it would be helpful at all?

DR. KINSEY: Since we have had close contact with most of the research programs that have been conducted on sex behavior, I have had some opportunity to think that thing through. My present reaction is that it would be practically impossible to set up an agency, to find the personnel qualified to use $500,000 intelligently in a year. Such money spread over a period of years would be a very important background. Our own research project is costing something more than a $100,000 a year.

MR. ROSENTHAL: Is that nation-wide or just the state here you are operating in?

DR. KINSEY: No, our study is nation-wide. Actually we have limited personnel; there are 10 persons at present on our staff. We could have had access, through our sponsors, to much greater sums than that, and we have not been able to find qualified personnel to expand our staff more rapidly and beyond our present staff.

MR. BECK: Your thought is that $500,000 may not be excessive but it certainly would be for a period of a year?

DR. KINSEY: I think so.

MR. BECK: Is it possible that if the State did appropriate money for this purpose, we could receive funds from research foundations either to match or in addition to our own funds?

DR. KINSEY: There are two groups of foundations which have been the chief support of large scale projects. The private foundations, I think have almost never gone into the support of a state-sponsored project. Our project at the Indiana University is more typical of the sort of support that the private foundations have given it. The Federal Public Health Service has a division of mental health which has been appropriating funds to states and to counties and other agencies for a great variety of studies in a variety of areas. A study of other possible sources might disclose something else, but those are the chief answers that come to my mind immediately.

MR. BECK: Mr. Brown has a question.

MR. BROWN: What type of an agency for the State, for example, would be the best? A school, a department of mental hygiene, or any other state agency, or should it be a separate one, or should it be tied in with any state groups?

DR. KINSEY: I have told you some things that are the result of many years of gathering this specific data. My answer to your immediate question would have to be off the cuff. I can see considerable advantage to hooking it up to one of your penal institutions which is actually

handling sex offenders or in connection with some other law enforcement agency. If you would like my opinion, I would suggest that I think one of your dangers would be to consider that your entire problem is psychiatric and that your problem should be handed over to a psychiatrist. I have told you that it is a limited number of cases that need psychiatric help, that the great majority of cases need social readjustment, and having seen clinicians at work for many years, I am quite sure that there are many people in social work, in psychology, and various other areas that have dealt with human animals that could give you as intelligent, or more intelligent help on certain aspects of the problem.

Again, I bring you the opinion of the psychiatrists who were called in by the New Jersey State Commission. At the end of their session with the New Jersey State Commission, the unanimous opinion of the group was that the administration of sex offenders, of their clinics for sex offenders, and the decisions as to whether or not sex offenders should or shouldn't be kept in an institution should not be left entirely to the hands of the psychiatrists. If you remember that this group is largely a psychiatric group that was called in, you should be impressed by the fact that they themselves recognize the importance of bringing in these other agencies.

MR. BECK: Following out Mr. Brown's thought, would you recommend that some state commission handle the research rather than tying up to a university or to a penal institution or to a mental hygene institution—a new commission entirely?

DR. KINSEY: I will not give you an answer on that point. It is one that I think needs careful study. You have such agencies as your State Department of Corrections, your State Crime Commission, your Adult and Youth Authorities already in existence. The possibility of utilizing university help is something that might well be considered, the possibility of some sort of coordination between them. There may be other agencies; that is one of the things that should definitely be studied, I think, in setting it up. I don't know that anyone has the wisdom of this without further study as to what groups such things should be handed over to.

MR. SMITH: We have this very serious problem from the society standpoint now. We have had some rather extensive hearings—psychiatrists, doctors, and everybody—and we have listened to them for several days, and primarily we see no increase in sex offenses according to statistics given us now over 10 years ago. True, some increased in cities, but no more in population, but more has reached the public where the public is demanding that this be done and that be done. To us it looks like a vast over-all problem that can't be handled in two or three days, or a week or any such time. Now can you give us any specific things from your experience that we could do or recommend to start to cope with this problem and how we should start to handle it?

MR. ROSENTHAL: Have I the time to introduce a couple of questions?

MR. BECK: Sure.

MR. ROSENTHAL: Do you think that it is essential at this time or at any time, or beneficial, that the present penal laws be increased, as a way of retarding the apparent growth of sex offenders? Such as

increasing the penalty from 10 years to 20, or castration, or segregation, or life imprisonment, or the gas chamber? Do you think that would retard it?

DR. KINSEY: I should recommend that any——

MR. BECK (to Mr. Rosenthal): Have you got some more questions?

MR. ROSENTHAL: One more.

MR. BECK: Well, throw the question then, because it will be tied in with the same question that Mr. Smith just asked.

MR. ROSENTHAL: The second one is, have you any suggestions as to the manner in which we can apprehend the sex offender before the crime is committed?

MR. BECK: After all those questions, then, what are your recommendations and what should we do at the present time? We can see this whole problem very easily——

DR. KINSEY: On the next point there is grave doubt among all penologists as to the value of a more severe penalty as a deterrent rather than a less severe penalty. Some penalty deters, but there has been grave doubt for many years among penologists and those engaged in law enforcement whether an increased penalty ever deters to a greater degree than a smaller penalty would. I come back to the experience of the New York City courts that by lessening the penalty—still arresting, still convicting, but lessening the penalty—they have worked out a much more satisfactory solution than they have had before.

MR. BECK: You mean by granting parole?

DR. KINSEY: They grant parole immediately in 80 percent of their sex cases. There is no one that can give you accurate statistics on the occurrence of sex crimes. I think we are the only people who have ever had data available as to how often certain acts are performed. The statistics that are usually quoted as statistics of the incidence of crimes merely represent the degree of activity of the police and efficacy in securing conviction. The FBI figures are figures for arrest, not even figures for convictions. It depends upon the degree to which the public is stirred up as to how the police act. It depends upon the personnel of the police chief and the particular political party that is in control and so on.

We have made numerous studies, and we find that the figures of arrests and convictions fluctuate on the basis of public interest in these things. To give you one sample. The frequency of arrests for prostitutes in the State of Indiana—this goes back pretty nearly a 50-year period—the frequency or arrests for prostitutes ran along on much of a level until the onset of the first World War, when they rose considerably. They dropped after the war and went along on a level until the second World War, when they arose considerably and dropped again. Now, if you take those figures alone, you could conclude that there had been a very considerable increase in the amount of prostitution. Now if for the same area, Indiana, you take the frequency of arrests on fornication and on adultery charges, you will find that they went along on a level until the first World War, when they went down. That was the period during which the arrests for prostitution were going up, you see. They came back to a level after the war and ran along until the second World War, when they went down again. If you add together the arrests for prostitution and the arrests for assault and battery, you get a line that runs right straight through all those years. Meaning that when the public was interested in prostitution,

as they were stirred up to be interested during first and second World Wars, the judges called them prostitutions, sent them in on prostitution charges, or the police charged them with prostitution in the first place. After that flurry of public interest was over, they called it something else. It is exceedingly difficult to interpret any crime figures.

Now our figures for frequency of sexual activities of various types have been available from younger generations and from the oldest generation that is living today. We have made a comparison in Chapter IX of our book, and we can not find that there is significant difference in the frequency of such activity through about a 60-year period covered by these two populations, on such things as premarital intercourse, extramarital intercourse, and homosexual activities. Interestingly enough there is one new phenomena that has arisen in the course of those years. The younger generation is doing what the college boy calls petting to a degree that his forefathers did not, but on your sex crimes we have no measure at all that there has been any material fluctuation.

MR. BECK: What are your recommendations, doctor, that you could give us that will be of help?

DR. KINSEY: I have one over-all recommendation and that is that a commission be established which will have sufficient time and access to sufficient expert advice—

MR. ROSENTHAL: How much time would be required in your opinion?

DR. KINSEY: A year.

MR. SMITH: What would the personnel be? I don't mean specifically, but I mean, would we want a psychiatrist, a psychologist—

DR. KINSEY: I should recommend that there be someone from the legal profession who has had experience with criminal law as an attorney, rather than as a law enforcement officer. I think there is grave danger in the recommendations made by psychiatrists and some other clinicians of transgressing human civil rights. You need someone on that commission who will see that you don't go astray there. You need some psychiatrist who will help you get in touch with the top psychiatric groups in the country who have made special study of this thing, not merely pass his own individual opinion on to you, with the idea that ultimately you might call in specialists in each of these areas from over the country. New Jersey State called in people from half way over the continent.

Your psychiatrist will give you help to become aware of the actual clinical experience in a variety of other areas. There are some of us, of course, like ourselves, who are making special studies of sex problems who have material to give you. I am very sure that there are experienced social workers who would give you valuable opportunity to take those things into account. A sociologist, Dr. Paul Tappen, of New York University, who has made a special study of delinquency, is the sociologist whom the New Jersey State Commission has called in for making a number of special studies, which would have been completely missed if your commission had been entirely a psychiatric group.

I should think that someone from any of your state agencies that have already had contact with these problems would be of use to you in adapting the thing to your particular situation. Your correctional commission, your two parole boards, adult and juvenile authorities, and

some other agencies which you probably know better than I might supply one or two or three of the persons for such commission.

MR. BECK: You would have law enforcement agencies, judges, district attorneys, sheriffs?

DR. KINSEY: I should think very definitely law enforcement should be represented. It has been, frankly, the unfortunate experience of some of these areas that such committees have sometimes been made up only of law enforcement people. I should think that you should very definitely have at least one, and possibly more, of your legislators on the thing, who understand the realities of the problems of handling legislation, persuading a legislative group, and interpreting public thinking on the matter.

MR. SMITH: A psychologist?

DR. KINSEY: I think a good clinical psychologist, a good clinical sociologist, a good clinical psychiatrist. I did not intend to leave out the psychologist.

MR. BECK: Would these individuals work full time or merely direct the study?

DR. KINSEY: The New York State legislature passed a bill in a hurry in the midst of an excitement like this a year and a half ago. Governor Dewey immediately vetoed it, and with special legislative funds set up a commission to make this sort of study. There is another agency which I haven't previously named for you, you see, which has in actuality been studying and working definitely toward recommendations to the state legislature. That commission was a full-time commission. It set itself the problem of studying the individual sex offender. Any sex study is a very long-time study. It will take several years. That is not the thing that I am suggesting here. I have already suggested that your commission, no matter what laws you pass right now—your legislature or your commission—should set up an investigating group; that's a different agency.

The New Jersey State Commission has at least one full-time man, the executive secretary, who is Dr. Tappen, who I have just mentioned. I am not clear that any of its other members are full-time, but I know they have spent a great deal of time in meetings.

MR. BECK: Which would you recommend—a full-time commission like the New York Commission?

DR. KINSEY: No. I should not recommend the New York Commission. The New York Commission has a double obligation of trying to work out recommendations for immediate legislation and trying to make a study of sex offenders, and those two things do not go together.

MR. ROSENTHAL: When were they created—do you know?

DR. KINSEY: That commission?

MR. ROSENTHAL: Yes.

DR. KINSEY: I know, because they came immediately to me. I think it would have been about a year ago in May.

MR. ROSENTHAL: Have they made a report yet—do you know?

DR. KINSEY: There has been a tentative report, yes, but no recommendation for legislation yet. It's about a year and a half that they have been in existence.

MR. SMITH: Do we want any type of a citizen on this—an educator, or somebody from the public standpoint—a high-class man to help us out, to calm the public over a period of time?

DR. KINSEY: I should think some of these other persons would satisfy that description, but if it did not, your commission would be wrongly constituted.

MR. BECK: What size would you say would be the maximum for such a commission?

DR. KINSEY: Something between six and a dozen. I should think it the primary function of such a commission, through each of the special interests represented on it, to help the commission obtain access to the work that has been previously done by other groups in this area, to pool the information that is thus brought to it, and on the basis of that, to make recommendations to your legislature.

MR. BECK: But they would not go into research itself.

DR. KINSEY: The research itself is a full-time job for many years for a large staff.

MR. BECK: Is there a possibility that any agency throughout the nation, other than yourself, will in the future conduct research on the sex offender problem?

DR. KINSEY: I don't know of any long-time agency so set up. I am quite sure that the agencies that are backing us have had it in mind to put all of their backing into our own activity, and our work on the sex offender has expanded and will expand very materially in the course of the next two or three years.

MR. BECK: So that it is possible that your own group might possibly carry on further in the research?

DR. KINSEY: Precisely. And you know that we have been making a study of the sex offenders in your own state over the last year.

MR. BECK: No. I didn't know that.

DR. KINSEY: Yes.

MR. BECK: Mr. Fleury, do you have some questions?

MR. FLEURY: No, I don't.

MR. BECK: Mr. Smith, any further questions?

MR. SMITH: No.

MR. BECK: The question is relative to senile males molesting young children. The question pertains to the problem as to whether or not they can be cured of that, and if they are incurable, should they be incarcerated for life?

DR. KINSEY: We have a good many histories of older males who have been brought before the court on charges of involvement with younger children. We have been surprised at the small number of sex offenders the country over who are wrongly charged. In prison parlance, there are fewer bum raps among sex offenders than we had ever anticipated, but among the older offenders there are more bum raps than there are among any other sex offenders. We are quite convinced that many of these older persons have never been involved in any activity which is actually a menace.

The child is not a good witness. The law decides at one point that the child under seven is incapable of a great many things, and then at the next point, it decides that the child is so capable of being a witness that you don't even need corroboration of its testimony, and there are

psychiatrists and psychologists, people in social work and in other fields who have found, as we find, that the testimony of the child is very often incorrect. The child insists "there was an attempt to handle me," when in actuality all it amounts to is that the child has been patted on the back or grasped in the old man's hands and hugged.

I have seen cases of children who have sent men to state penal institutions for life on the insistence that they had had intercourse.

They were sent through, in spite of the fact that the medical records showed that there had been no intercourse, but the jury and the community were so stirred up that they took the child's word that there had been actual intercourse. I have subsequently interviewed the child and worked with her for a period of days and become absolutely convinced that the child hadn't the least conception of what intercourse was. There are a great many of the younger children who don't know at all, and what had happened in that particular case was the case of an older man patting the child, kissing it, and that, to the child meant intercourse.

Now, there are other cases—other cases that are right now too patently apparent in the public's mind—where there has been complete forceful relationship, and so the problem of the older offender is a problem of many different sorts and situations. Where there is public hysteria on the thing there is more injustice worked there than there is at any other point in the administration of the sex laws.

The other side of the question is one that has disturbed a good many of us who have been working with children. As part of our own study, we have done work with, so far, about 500 children under seven years of age very extensively, trying to determine the beginning of attitudes and of sexual patterns which ultimately determine the patterns of adults.

The leading child psychiatrist in the country is Dr. David Levy of New York City, and he and I have been in conference, and we have had conferences with various people who have worked with children, and we are all agreed that there is no greater damage that can be done to a child than to scare it concerning any situation, and we are also agreed that the parent's reaction to the child who says that a man "stopped me and kissed me" in more cases has done more damage than the man himself had ever done.

Right now you have in many of the cities of your own state, school teachers who are under orders to warn every child when it leaves school in the afternoon to go home directly and not allow any man to touch it, and I can see tens of thousands of maladjusted marriages coming out of that simple procedure. It is out of that sort of thing that you get the restrained woman, who never lets herself go freely. She hasn't, as a child; she started out with that sort of fear of males; she holds it through her teens; and she arrives as an adult at a marriage where she just doesn't let herself go, and I am sure that psychiatric advice will tell you that that early beginning of that sort of fear is the thing that does it.

Now, a man who does in actuality very much upset the child can do very great damage, whether he has done physical damage or not, but so also can the parent or the school teacher.

MR. BECK: To come back to my question as to the curability of the senile people who do molest children. Is that a behavior pattern that is not curable?

DR. KINSEY: I should say in a portion of cases, it is not curable, and those are the cases which your clinic should identify and advise to be segregated for as long as necessary from society. There is another portion of cases where I am not sure that you have any psychiatric problem.

MR. FLEURY: Where you do have, actually you would lock them up then?

DR. KINSEY: We don't know. I don't think there is any group in the country that has made an adequate study. We have studied a number of such cases and we aren't in any position to reach a conclusion. It's again one of the things that any research group would have to go into.

MR. ROSENTHAL: What about castration of an old man guilty of this crime?

DR. KINSEY: Fifty percent of those that we have interviewed who have been apprehended and sent through on such charges, 50 percent of the older men, are incapable of sexual performance anyway. They are already near castrates.

MR. BECK: I think that's the answer. Dr. Kinsey, I want to say that the committee certainly appreciates the information that you have given us, and the fact that you have come from the Bay area to give us this information I think will be very helpful in the conclusions which we will make as a result of our interviews. It is very much appreciated.

DR. KINSEY: It has been very nice to meet with you.

EXCERPT FROM TESTIMONY OF J. FRANK COAKLEY

District Attorney of Alameda County

FLEURY: Our next witness is Mr. J. Frank Coakley, District Attorney of Alameda County.

You know what our problem is here, that we are investigating sex crimes and their aspects. Perhaps you have an informal statement that you would like to make preparatory to our asking any questions of you.

COAKLEY: Yes, I received from you a letter which Mr. Hutcheson sent me with a list of topics which I have read and on which I have some ideas.

FLEURY: Why don't you just go ahead. We have a good half hour or 45 minutes that we can devote to you and if you would make a statement, then Mr. Hutcheson and perhaps some of the members of the committee would like to ask some questions.

COAKLEY: The first suggested topic is, weaknesses in California laws dealing with sex criminals. In the first place, I think consideration should be given to a better definition of what is meant by sex criminals and sex offenders and sexual psychopaths. I think there is room for improvement there. In the main, however, I believe that the laws of California are adequate to do the job and that the room for improvement lies mainly in the administration of the laws. Probably better equipment in the police departments with respect to scientific criminology work would help. Probably some of these police departments are understaffed and more personnel, better trained personnel, better paid personnel would get better results. In our county, Alameda County, there hasn't been any wave of sex crime, there hasn't even been any appreciable increase in sex crimes considering the increase in the population. The results over there have been, in my opinion, satisfactory as the statistics will show. With respect to this topic number one, whether or not there are any weaknesses in our laws in this State, while in the main I believe the laws are adequate, there are a few things that might improve the situation somewhat. For instance, while we haven't had anything or particular difficulties in getting satisfactory results, we haven't had any particular difficulties in getting convictions, still I think there are places where they may have had such difficulties, it might help some and I think some consideration might be given to the idea of admitting, providing by legislation, for the admissibility of similar offense evidence. There was a bill, as you know, in this last session of the Legislature to admit evidence of other offenses, violations of 647a and 261, and 285, 266, 267 and all of those offenses. I personally think that that bill went too far. The similar offense evidence has been well defined by the cases, by the case law of this State, and it means just what the word says—it's a similar offense, it's a method, the M O, the manner in which the offense was committed was similar. For instance, if you had a 288 where the manner in which the offense was committed was similar to the manner in which other offenses were committed, other 288 offenses were committed by the same defendant, I think that a law which would admit such similar offense evidence as distinguished from other offense evidence would be sound legally. You have similar offense evidence permissible in some types of