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

cases. You have it in murder cases; you have it in all kinds of fraud cases; grand theft where you have false pretenses or larceny by trick or embezzlement, check cases, and certain other types of cases where the evidence is pertinent and relevant with respect to the issue of intent or guilty knowledge. In a 288 case, of course, one of the essential elements of the offense is a lewd and lascivious intent, the prosecution has to prove that as an essential element. There are certain situations in a 288 case where the acts of the defendant may be equivocal, it's a close question as to whether he had a lewd and lascivious intent or not. Certainly, in those cases, I think it would be sound legally for the purpose of showing he had a lewd and lascivious intent to admit other similar violations, similar offenses which are a violation of 288 committed by that defendant. Of course, as you know, other similar offenses between the defendant and the particular child are now admissible. All the relations between the defendant and the child are admissible, but I am talking now about similar offenses with respect to other children. Now, that might help. I think it would and I think it would be, we would be on fairly sound legal ground if such a law were passed.

With respect to our California law, I think—well, this isn't absolutely necessary but I think it might help, as I said before if we get a better definition of a sexual psychopath and under the Sexual Psychopath Act, a better definition of sex offenders—there was a new law passed in the 1949 Session of the Legislature about commitment of sex offenders—the question is what do you mean by sex offender? Do you mean a person who commits an act of intercourse with a woman by force or statutory rape under 18, or an act of incest, or a violation of 266, 267, 268 of the Penal Code—what is meant by a sex offender. I think there is room for clarification. I think consideration ought to be given to the elimination of the disparity or difference in ages mentioned in Sections 288, 647a subdivisions 1 and 2, and 644 of the Penal Code. As you know under Section 288 the age of the child is under 14, and 647a the reference there is to just a child—every person who annoys or molests a child is a vagrant and so forth—now what is meant by a child, what is meant by the word annoy. There might be room for a better meaning of the essential elements of that offense. Then in subdivision 2 of that section, every person who loiters around any school or public place at or near which school children attend—what kind of a school is meant there, elementary, high school or college or what—what is meant by school children with respect to the age. Then in 644, the habitual criminal section provides that the person convicted of certain offenses, and listed among them is—carnal abuse of a child under the age of 12 who has previously been twice convicted of enumerated offenses shall be judged an habitual criminal and shall be punished by imprisonment in the state prison for life. Then, subdivision (b) of the same section refers to three prior convictions. Well, there, when you consider it together and compare them, Sections 288, 647a subdivisions 1 and 2, and 644 of the Penal Code, you have a difference in ages. You have 644, the habitual criminal section, carnal abuse of a child under the age of 12 years, 288 it's under 14, in 647a the only reference is to a child and school children without any definition of age. So, from the standpoint of legislation I think there is room for consideration of some clarification with respect to those ages.



Another thing, I think we might strengthen our law somewhat by adding to Section 644, the habitual criminal section, the violation of 288 in the Penal Code, it's not in there now. The only thing that comes close to it is carnal abuse of a child under the age of 12.

With respect to strengthening laws of the State, some thought might be given to making the penalties with respect to 288a, it's now been raised as I recall it by the special session from 10 to 15, and 286 possibly rape by force and violence, not necessarily the latter, making the top on the penalty the same as it is in 288, one to life. In 286 it's one to ten—it's now 20, it's raised to 20. So, by doing that you would give the Adult Authority, which now has a great deal of discretion in determining the length of time a prisoner serves in prison, it would give them a greater discretion there and where they put them out on parole, it would give the Adult Authority an opportunity to have a longer period of time over which to supervise the prisoner while he is on parole.

Another thing I think could be done to strengthen our law in respect to these cases would be set up or make provision for, on a district basis, good well equipped crime laboratories manned and operated by well trained criminologists. That takes money and the average county, even the ordinary city, just doesn't have the money to set up laboratories and to man them the way they should be manned. To do that you could, I think, pass a law to set it up on a district basis. You have recreation districts, hospital districts, and other districts which take in several counties sometimes, over county lines and the, it is financed by tax assesments within the boundary of the districts. If you didn't want to do it that way it could be done by the appropriation of State money, it might be better. You would get a uniform operation from a policy standpoint of such laboratories conveniently located on a district basis throughout the State so the smaller police departments and the smaller sheriff's offices would have available where they could get it quickly without too much trouble trained laboratory technicians, criminologists and will have the proper up-to-date equipment to do a scientific police job on cases. I think it would be particularly helpful in these sex cases. For instance, your ordinary 288 case where you have an adult committing a lewd and lascivious act upon a child of tender years, say four or five, six or seven years, a case like that always presents a difficulty from the standpoint first of qualifying a child and sometimes justice, in my opinion miscarries in spite of everything that the judge can do, in spite of everything that the police have done, in spite of everything the prosecutor does in preparation of his case and the presentation of it in court. As you know, where a child of tender years takes the witness stand, first the judge has to examine her and satisfy himself that that child is qualified and is a competent witness, that the child can accurately relate the facts which have occurred and has some sense of right and wrong and the obligation of an oath. It sometimes happens that those children are not able to qualify or if they do qualify the juries and the judges too, and I might add to that the prosecutor, have some misgivings as to how much is truth and how much is imagination or suggestion. Where you would make available by such district crime laboratories and personnel, where the law enforcement officer can quickly and shortly after the offense is committed be able to bring into play and to use the scientific type of investigation that larger police departments in larger cities now have, I think we would get probably more corroboration

than we now generally get in those cases where an adult commits a lewd and lascivious act upon a child of tender years, because when those acts are committed they are generally committed in private some place where nobody sees what is going on except the child who is the victim. We know that in scientific police work they are now able to match the fibers, hair, dust, blood and so forth, by scientific test. This is very satisfactory type of evidence when the work is done by men who are, who know their business and are properly trained. I have found in my experience. I have handled quite a few cases involved in that type of evidence in court, that it is very convincing and we get very good results with juries where that kind of work is done. There is a field in which the Legislature, in my opinion, might give serious consideration and make a real contribution to law enforcement generally, particularly to this problem, if it is a problem, of so-called sex criminals.

Now, another point I might make with respect to law. I think it is, some people might say it would strengthen the law a little bit as far as getting quicker trials in these cases—of course, quicker trials, prompt trial and prompt punishment is a good thing from law enforcement standpoint, prosecution standpoint in any case, but it is particularly true in these sex cases where you are dealing with children of tender years—the longer period of time between the offense and the trial, naturally the more the child is apt to forget. That is true of any witnesses, particularly true of a child and from the standpoint of the defendant, the longer time between the commission of the offense and the trial, the longer time there is in which the child may be influenced by suggestions from others and the child's own vivid imagination. So, I think anything that can be done from the legislative standpoint to speed up cases, trial of cases, getting them to trial as soon as possible after the offense and apprehension and getting the penalty imposed is a step in the right direction. I suppose one way of speeding up things is to have more personnel, maybe we need more judges, higher salaries, but the calendars are such, and I'm not being facetious about this, calendars are such that it isn't easy generally to get these cases to trial as quickly as we would like to. We have in Alameda County 12 superior judges, 10 of them are in civil cases and two in criminal. Well, I'm not criticizing the courts now, what I'm saying here is off the records as far as the press is concerned, but the fact is that the three additional judges which were appointed a couple of years ago have made somewhat of a dent but not any great dent in the pending civil and non-jury cases. It still takes you about nine months to get to trial after you have filed your memorandum to set. It's about nine months before you get it set. I'm saying that this is a problem here, when these things come up before the Legislature you want to consider the congestion there and if you can get cases to trial faster, I think you are going to get better results. The same is true in the police courts. We have in the police courts right now in the City of Oakland, 73 misdemeanor cases in which jury has been demanded. It is going to be quite a problem to get those cases disposed of. Some of those cases may involve misdemeanor sex offenses such as 311, 647a.

NORTON: Will your new municipal court speed that up any?

COAKLEY: I don't think that will help because the Legislature added one new judge to the municipal court. We were already using four judges in criminal cases because we were constantly borrowing



judge from Albany or one of the outlying township justice courts. Practically all the time they were running with four criminal judges and they were running with three in civil work so when this new judge is appointed we won't be any——

FLEURY: Well, Mr. Coakley, I think we had better get back to our subject. Would you give us a little dissertation on your experiences under this Sexual Psychopath Act?

COAKLEY: To get back on the the track again, if I may say, finish what I had to say under this heading. I think consideration might be given from the standpoint of getting better results in sex cases to the difference in the number of jurors required to bring in a verdict in noncapital cases, or at least in misdemeanor cases. As you know, in either a misdemeanor case or a felony case you have to have 12 jurists who must concur in the verdict. Certainly, I think that misdemeanor cases, in view of the great number of jury trials we are getting now, nine to three in a misdemeanor case ought to be enough. Probably in felony cases which are noncapital cases or maybe nonlife, you might go for eleven to one or ten to two or even nine to three, that's a subject that has been considered a long time. It is certainly worthy of your consideration. I think some consideration ought to be given by law to a selection of jurists. Getting more information about the jurists. If you want to get information about jurists now, you have to make an investigation of the jurists or try and get somebody who does that kind of work. As a matter of policy in our office, we have never made any investigations of jurists because we have felt that if it was brought up in the trial it would prejudice the case so we just figured it would be better to take our chances and try to find out as much as we could. I think it would be a step in the right direction if the Legislature passed a law which would provide that the person who has the responsibility of selecting jurors would have a form of an affidavit to be filled out by each juror, each prospective juror, each person who has been summoned for jury duty, giving the pertinent facts as to that juror's family connections, experience and so forth and that that form would be on file and available to both prosecution and both plaintiff and defense attorneys or prosecution and defense attorneys and certainly it would save time in the selection of juries in court and I think that consideration might be given to something along those lines.

Now with respect to our experience under the Sexual Psychopath Act, that in our county has been used in every case where a petition was filed under the act and where the doctors recommended commitment. However, as you know, in the 1949 Session of the Legislature, they amended that Sexual Psychopath Act to provide that the commitment, that the hearing and the commitment should take place only after the adjudication of the guilt of the accused. As a matter of practice in Alameda County, that was the way it was done before 1949. As you know the judge had a discretion there. He could do it either before or after the adjudication of guilt and our judges insisted that the man either go to trial or plead guilty if he cared to do so and then they had the hearing if they wanted to file a petition after. Now, we had through 1947 to date—rather through 1946—1946, 1947, 1948, and 1949, we had 18 cases in which a petition was filed and there was a commitment under the Sexual Psychopath Act. It was in all cases after conviction or plea of guilty

As far as our experience is concerned, it has worked out satisfactory. We have had one this year so far. Were there any questions under that heading three, the Sexual Psychopath Act?

FLEURY: Yes, I would like to ask you one while we are on it here. Do you have any opinion as to whether it would be possible or advantageous to screen these people who are charged with misdemeanors with regard to sex crimes to determine whether or not they are sexual psychopaths and put the wheels of sexual psychopath crime into beginning in the misdemeanor courts?

COAKLEY: I haven't thought too much about that question but, of course, the Legislature passed in 1949, set up a procedure, 5600 of the Welfare and Institutions Code, whereby any member of the family or relative, where he is not charged with a crime, can file a petition and he can be put away as a sexual psychopath, sexual offender. Do you mean something more than that?

FLEURY: Automatically when you are in the misdemeanor court charged with any sex crime is there a study to determine whether or not you are a sexual psychopath?

COAKLEY: Well, if we had enough psychologists with enough personnel and enough money to do it it might be a step in the right direction to set up some kind of a procedure whereby you could give them a psychiatric examination and screen them. The psychiatric examination based alone upon an interview with the accused is in my opinion not quite enough, he might lie about it and a setup like that would be rather expensive where you had to examine the life history and the medical history, a setup like that would be too expensive and if you did it by law you would have to have a psychiatrist available in the county or else by a district basis together with enough personnel to develop the facts in the screening process. It could be done if the funds and the personnel were sufficient, it might be a step in the right direction. This is a subject, this abnormal sex behavior, is a subject which is still in the, being studied and I think there is a lot of room for more scientific information. Maybe that information ought to be obtained before we go very much farther with this from a legislative standpoint. Are there any other questions?

FLEURY: Do you have some more that you would like to bring out here.

COAKLEY: As far as No. 4 is concerned, I have the statistics as to the number of sex cases in our county from 1945 to date. In the county in 1946, there were 56 felony cases, that is 288, 288a attempted rape and rape. In 1947 in the same category there were 62, that included 5 sodomy cases. In 1948 there were 59, that included 288 and 288a, attempted rape and rape and no other sex cases. In 1949, there were 68, that included 288 and 288a attempted rape, rape and incest, there was one incest case.

SMITH: Will you identify the statistics as arrests, prosecutions, convictions or——

COAKLEY: These are the statistics taken from my records, records from my office as to informations or indictment filed in the superior court. Of course, this certainly does not apply to reported offenses where there was no arrest or where there was no complaint filed. I might say in that respect, that is a real problem in the enforcement of the laws in regard to abnormal sex behavior. Because many of these cases are reported to the police and then the parents of the child do not want to go ahead with the prosecution, just refuse to sign a complaint because of fear of publicity and all that sort of thing.



Now, as far as convictions are concerned, we have no complaint to find with either the courts or the juries in that respect. The percentage of convictions through the years there as indicated, I have those statistics here, I will give you a copy of them if you want.

FLEURY: We would like to have that.

COAKLEY: Conviction by court and by jury are relatively high. Now, as far as No. 5 is concerned, recommendations as to bail, punishment, treatment, and so on, that is—so just to generalize, the records from our superior court indicate certainly no wave of crimes as far as sex offenses are concerned and it doesn't even indicate any appreciable increase when you take into consideration the increase in the population of the county. I was talking to a judge yesterday afternoon and we were discussing this problem, who has been on the bench in Alameda County for probably 35 years, he spent close to 20 years in the police court, he has been now about 15 years on the superior bench, all of that time in criminal cases and of course, he had a tremendous experience. He said he hasn't, as far as his observation is concerned, there is no appreciable increase in sex crimes since his time as a judge. He said there is about a normal increase which just about keeps even with the population.

Now, as far as these other things are concerned, that is a pretty big order, that number five, and I don't think time would permit, and frankly I haven't had time to give enough thought to bail, punishment, treatment, parole, probation, and sentencing. On that score, I might say what I said in the beginning, as far as California laws are concerned, I think they are adequate, if they are properly administered. What differentiation should be made in handling different types of sex offenses, I think that is a big order too and I think that is a better subject to be discussed by the medical men.

Now, as far as seven, views as to legal concept of insanity. I have very pronounced views on that. I think that the right and wrong test is satisfactory. It has stood the test of centuries. I can say on the basis of 25 years experience in law enforcement work, in the district attorney's office and doing a lot of work with police departments, investigation work; there is also another experience in which I had a large volume of criminal work. I was in charge of the general court-martial work in the Navy for the 12th Naval District for something over 6,000 general court-martial cases that were serious criminal cases went through the mill there so I think that on the basis of many many thousands of criminal cases with which I have had more or less direct contact—I mention this only because I am stating a conclusion and a person's conclusion is no better than his experience, his training and his knowledge, and from the basis of my experience, I think the right and wrong test is the most satisfactory and no change should be made. I know they are getting around now to talking about the irresistible impulse test or something like that. I think if you get over into that category you are going to make it awful tough for law enforcement, for juries. I think the results we get now are satisfactory. Pre-sentence examination, I don't know exactly what is meant by that. We have a type of pre-sentence examination provided for by law now. If a man, if counsel thinks a man is insane, he can

either at the time of offense or the time of trial, the law provides for an examination on the not guilty by plea of insanity plea, the court as you know appoints a commission and the psychiatrist examines the defendant at the expense of the State and county, and reports to the court. Of course, if there is a contention that he is not able to understand his predicament there again at any time prior to trial, during trial or even before sentence, the court can stop the criminal proceedings and have a hearing either by the court or by the jury as to his present sanity. So, there is, I think, at the present time pre-sentence examination provided for.

FLEURY: Mr. Smith, you have some questions on that.

SMITH: Just on a couple of these bills that have been placed in here. A.B. 46 was placed in and it has to do with, in 285 or 288 need not instruct the jury that the testimony of the complaining witness must be viewed with caution. I assume you probably went over that and are familiar with it. What do you think about that, is it good or bad?

COAKLEY: Well, I don't know. I have given some thought to this thing. I don't know whether we ought to go all the way and pass a law like that. I think you could do this, however, you could pass a law and put the cautionary instruction of some kind right into the Penal Code which the courts could give in all cases where they have children of tender years, where they are sex cases. There may be some reason or justification for precautionary instruction say for a child under 10 or 12 years but maybe you may not need it for a child over that age. That's a subject that I would like to give more thought to.

SMITH: This bill is a little too broad, is that what you think?

COAKLEY: I think this ought to be studied a lot more.

SMITH: All right, just one other question. Do you have any comments on the bill that was A. B. 39? Briefly it was the "little Lindbergh" act where they can be, where the jury can give them death or life imprisonment at their discretion if the victim suffers bodily harm.

COAKLEY: That is one that I would like to think a lot more about. You know under that "little Lindbergh" act, if you hold a person, detain a person, for the purpose of rape, it's a violation of 209. Well, when you commit a rape, don't you hold a person? There is a question whether 289 contemplates a transportation for the purpose of rape, for the purpose of robbery. If you are going to add 288 to it I think—I'm not prepared to say whether I think you ought to add 288 to 289 or not.



## EXCERPT FROM TESTIMONY OF JOHN D. HOLSTROM

Chief of Police, Berkeley

FLEURY: We now have Mr. Holstrom, the Chief of Police of Berkeley. Would you please step forward. Did you have time to prepare a written statement, Mr. Holstrom?

HOLSTROM: Yes, of sorts. Mr. Chairman, would you like to have me read this statement?

FLEURY: I think that would be a very good idea and if we could have our copies we could follow right along with you, Mr. Holstrom.

HOLSTROM: This is a prepared statement, which has been requested in connection with a personal appearance before the Assembly Committee to investigate sex crimes, at San Francisco, on January 13, 1950.

During recent months there has been a considerable notice in public press concerning sex crimes in the country generally and in California. Many people have made statements both officially and unofficially. Unfortunately, many of these statements have been made on the basis of misinformation and others have been made with a lack of information.

To see the problem in its proper perspective, it seems desirable to point out that on the basis of the best available information, there has been no "wave" of sex crimes in California, but there is an increasing number. On the other hand, available information is not complete as to the volume of sex crimes. No one knows, with accuracy, the full picture in the State last year or in preceding years for the purpose of comparison. It is noteworthy, too, that in many conversations concerning sex crimes there is a failure to define what crimes are included in this phrase, which gives rise to confusion. Consideration of the subject then, should include recognition of these two factors.

Despite these factors, it is clear that there is a very substantial number of sex crimes in California.

There are a number of statutes enabling the police, the prosecution, the courts, and the agencies of government to process sex offenders. In the existing situation in California some of these statutes need amendment. Recommendations for certain amendments were made at the Governor's Conference on Sex Crimes, held in December, 1949, and some of those recommendations were acted upon at the Special Session of the Legislature in December. Others remain for consideration at a future session. However, if all 12 of the recommendations are enacted, the best result which can be hoped for is to improve the administration of criminal justice to some extent.

In many agencies of government which deal with sex offenders it is recognized that punitive treatment alone is inadequate. California is one of the states in which some special treatment has been provided.

Too often in a specific case the inclination is to hope for assistance from the medical profession, particularly from psychiatrists. And indeed in some cases, the physician has been and can be of assistance. However, on this point of psychiatric treatment, which people outside the medical field sometimes take for granted, it is evident that present knowledge concerning treatment of sex offenders is limited. Competent psychiatrists in California, both in and out of the state service, have said so publicly, but perhaps not loudly enough to be clearly heard.

In the American Journal of Psychiatry, the official organ of the American Psychiatric Association, in Volume 106 for November, 1949, on page 290, Henry A. Davidson, M.D., in Comment on Legislation Dealing With Sex Offenders, says this in part:

> The difficulty is that we have no way of successfully treating the sexual psychopath. Cures, if any, are extremely rare. The demand, therefore, that these offenders be "treated" is still a sterile one. When we do discover an effective method of treating the aggressive sex offender, we should insist on his transfer from the prison to the hospital. Today, we have nothing to offer but custody—a field in which the penal authorities are far more efficient than we are. Perhaps it is time to confess this is an area in which we may have been overselling psychiatry. It is, of course, a good thing that popular and legal thinking is veering away from the purely punitive. But it is not yet at the point where the psychiatrist can appear before the public as the man who has the answer.

My purpose is to emphasize that our society does not know how to treat the sex offender. To put it simply, we do not know what the problem is, we do not know why it is, nor do we know what to do about it.

The answer lies in providing for and financing medical research in the problem of sex offenders. At the Governor's Conference, the Director of the State Department of Corrections suggested a means of providing medical facility for this purpose. The Director of the Department of Mental Hygiene strongly endorsed the need for research and the need for requesting its financing.

The most important single recommendation I can make to this committee is to consider the fundamental need for a penal research institution. Our only hope lies in adequate research if we are to solve the problem. That's the extent of the prepared statement.



## EXCERPT FROM TESTIMONY OF JUDGE MILTON D. SAPIRO

BROWN: Our next witness is Judge Milton D. Sapiro. I might say for the record, Judge Milton D. Sapiro is judge of the Superior Court for the City and County of San Francisco. We have invited him to attend the meeting to discuss what information he may be able to give us relative to the so-called sex crime problem.

SAPIRO: Gentlemen—I have prepared a brief statement for you, having been informed of the fact that you were going to sit here and would like to hear from me.

Since April, 1949, I have served as judge of the juvenile court and have also presided over a criminal department wherein adults who have committed crimes against minors are tried. Practically all of these crimes are so-called sex crimes. This experience has given me the opportunity to observe both the offender and the victim of these offenses, and the statements which I now make are bases on my observations over these several months.

I am aware that certain recent extremely atrocious sex crimes have aroused the fear of our communities and have caused us to re-examine our laws to determine whether they adequately protect our communities and provide for the proper handling of sex offenders.

In general I feel that the laws are adequate. Particularly is this true, since at the recent special session of the Legislature some of the features that may have been considered weak were reinforced.

Much of the present discussion concerning this problem seems to regard the persons who commit these crimes as sex maniacs and tends to indicate that we should deal with them as mental cases. It is true that anyone who commits a sex crime does an abnormal act as measured by our moral standards, but it does not necessarily follow that the person who has committed that act is suffering from a mental disorder that predisposes that person to the commission of such an offense. Few persons, who can be characterized as sexual psychopaths, based on a record of sexual offenses, appear before our courts. This may be due somewhat to the fact that some of these offenders have not previously been found out. However, in most of the cases that we try, the persons involved could not be regarded as suffering from mental disorder, except as they are disturbed at the time of the commission of the act. This is just what you find in practically all criminal situations. Our experience indicates that a person, who has a previously good moral record, but who has possibly indulged in some drinking and then comes in contact with a youngster, or at times even without drinking has suddenly been in close promixity to a small girl, suddenly finds himself released from the moral restraints that ordinarily control our sex impulses. It would have been impossible to have found out these persons before the offense was committed, and to have determined that they contemplated such an act so as to have prevented its occurrence. Our court files would illustrate cases involving men who have lived many years of respectability, raising families, and whom nobody would ever have thought of being capable of committing such an offense. Yet the facts show that they did. There is no measuring stick which science or experience has created by which we would know in advance that such persons were going to throw over civilized bonds and molest young children. Ordinarily the persons who

those who violate other laws which are set up to maintain the moral standards of a community. Some few are mental cases, but this group comprises but a small proportion of those who have come before our court. I feel that the law as it now reads as to sexual psychopaths, particularly since such finding is only to be made after a determination of the guilt of the charge, is sufficient to care for this group.

Our laws well cover the handling of sex offenders. Prompt and forceful law enforcement and education of our children will assist in preventing the occurrence of this type of acts that have aroused our indignation.

Prevention is in a great measure a matter of education. Insofar as the individual himself is concerned, such prevention will only come through complete conditioning of human beings so that they will have learned to maintain that self-control which is necessary to prevent them from letting down the bars that regulate us in our sex attitudes. This mental hygiene must start with youth.

Parents play a great part in prevention, first through the process of sex education of their children which may result in the kind of control of sex impulses that would prevent these offenses, and second in training so as to teach children not to place themselves in situations with strangers where these occurrences might happen. It is true that our court experience shows that sometimes even friends of the family are guilty of committing these offenses as well. However, children may be able to protect themselves somewhat from such situations if they have had some instructions from their parents as to what to avoid. Children must be taught to confide immediately in their parents when anything does occur to them, and parents must be willing to report such occurrences to the authorities and permit their children to testify in court proceedings. Cases should be quickly handled so that the memory of the incident will not rest long with the child. The law now requires such cases to be given priority.

Where is it necessary to send a sex offender to prison he ought to be confined until it is determined that he is no longer a menace to the safety of others. No person convicted of a sex crime should be released until certified to be so safe by the staff of one of our mental hospitals or by equivalent psychiatric authorities. This will permit some assurance of protection, although we never can have complete assurance. Likewise, no person should be permitted to be released on probation by the judge of a court unless so certified by such psychiatrists. These requirements should be definitely written into the law. I might say that the present law does require that before you admit on probation that he should be examined by a psychiatrist but the present examination seems to be merely to the effect that he is sane. They do not go as far as they do on the return, for instance, of sexual psychopaths.

FLEURY: You just suggest that he be examined.

SAPIRO: Yes, that's all. My experience is that the examination that is given them is a very casual examination and is not sufficient for any positive action on the part of the person who has to make the decision.

Under a recent decision of our appellate courts, in re Chiapetto, 93 A. C. A., 628, the term to which a person can be sentenced under Section 702 of the Welfare and Institutions Code has been limited to one year. This came about as the result of a conflict in code provisions. I



believe the penalty provisions of Section 702 should be amended so as to restore at least the original term of two years as provided by the Legislature. Many of the offenses that come under Section 702 are such as might ultimately lead to greater and more disastrous sex situations. Offenders should be made to realize the gravity of their offenses, and the court should be given a discretion to impose a more extended penalty than is provided through the one-year term, so as to work out some of these problems. The original intention of the Legislature vested the court with such discretion and it should be restored by reenactment of the penalty provision.

I have examined the bills sent to me through your committee. I noted that A. B. 41 provides for the establishment of a clinic and for the diagnosis and treatment of pupils under the Department of Education. Such a clinic might be very helpful, particularly as it would work in conjunction with the juvenile court. Often we have to deal with a juvenile who has participated in a sex practice where it is difficult to determine whether his act resulted from sex curiosity or from some possible weakness in the makeup of the individual. We do attempt to give such juvenile psychiatric treatment, but facilities are limited. If there was an operating clinic to which they could be referred, it certainly would be of valuable assistance in preventing subsequent offenses.

Likewise, A. B. 43 providing for the further study of the problem of sex offenses seems to me highly desirable legislation, for our knowledge of the subject is still slight. If we could develop, through research, any information that would give us the understanding that could prevent the happening of some of these situations, then the expenditure would be worth while. Certainly further effort must be made to find out why human beings deviate from normal standards, particularly where it causes such injury to others as our communities have experienced.

## EXCERPT FROM TESTIMONY OF MR. FRED FINSLEY

MR. FINSLEY: Fred Finsley, Chief State Parole Officer, Bureau of Paroles.

Mr. Chairman, I don't have a written report as such. I have a couple of reports containing statistics released at the Governor's Conference yesterday by the Department of Justice and the Department of Corrections. There are just one or two things that I'd like to point out and then turn over the copies to you.

According to the Department of Justices' statistician, the reported arrests from all counties and agencies, except the Police Department of Berkeley and the Sheriff's Department at Los Angeles, show that for the crime of rape and lewd lascivious acts of children, beginning the first half of 1947 to date—by halves, 5½ years—that there actually is no increase in the reported figures to the Bureau of CII. There's the reports on that.

Another interesting chart of statistics (while I'm sorting this, there are two more you can look at. I'll give you the one I have as soon as I'm through with it). That the convictions, over the last five-year period, broken down by years, shows for January 1, 1945, through November 30, 1949, in other words four years and eleven months, that the ratio, a relation of total sex offenses to the total number of convictions, was 8.8. And for the first 11 months of 1949, that same ratio is 8.5, which would actually be—make the current year of slightly less than the average of the five years—it is not the lowest year in the five-year period, but runs along about average as you can see there. This report also contains percent of the total convictions in the State for that given period. Figures for Los Angeles County are in this chart; you can look them over at your leisure. I don't know just what you would want me to say of these. I'll turn them over to the Committee. One or two things particularly concerning parole on some of these crimes, that these tables do show is that, for instance, the intelligence of the two major sex offenses, rape and your lewd and lascivious conduct with children, that the intelligence quotient is much higher in the L and L than the rape. If that has any significance or bearing, I'm not prepared to say.

MR. BECK: Do you show anywhere in your statistics the time they actually served?

MR. FINSLEY: Yes. The median for rape, the sentence fixed by the Adult Authority for the crime of rape is 10 years, and for that middle area, taking off the 10 percent top and bottom, leaving the middle percent segment, the range, rather, is five to twenty years. For L and L, lewd and lascivious with children, that is, the median sentence was 12 years and that range in the middle 80 percent is 7 to 20 years. Now the actual time served for those who have been released upon parole from various categories, rape was 36 and 3/10ths months, assault 37 months, L and L 44 and 4/10ths (almost four years), sodomy 30.3, sex perversion 32.5, and incest 46.5.

MR. BECK: Are those statistics taken before the Indeterminate Sentence Law went into effect?

MR. FINSLEY: No.

MR. BECK: Well, I mean some of these where you have 20 years, the law hadn't been in effect then.



MR. FINSLEY: Well, that's the sentence affixed; it hasn't all been served, you see. Now, this chart is for the period January 1, 1945, through October 31, 1949. There are many other charts there, but I don't want to take the whole Committee's time; you can look those over at random. It's the latest report—I might add this, that—

MR. BECK: May I ask when the Indeterminate Sentence Law went into effect?

MR. FINSLEY: Back in 1917. The Bureau of Paroles, as such, does not keep statistics; we derive our statistics from the Department of Justice, which keeps statistics also for the CII and the Board of Corrections, of which we are a part. We don't have independently reported statistics and additional breakdowns are now being prepared for the current annual year, which we don't have yet from the statistical department. But they're always attainable from the Department of Justice or the Department of Corrections, either one.

MR. BECK: What control is exercised over these people while they are on parole?

MR. FINSLEY: We're pretty careful, or try to be, about this matter of sex crimes. As you know, they've always had a display in the press, and the Adult Authority has always been a little touchy on this matter, so when one is released we are only in touch with these men about 60 days before they're actually released. I mean these men, anyone from the penitentiary, including sex offenders. At that time we get a notification that the man is going out and is then in his preparole preparation period, and we try and locate a job for him. We have between 200 and 250 jobs a month to get for all classes of offenders and we're particularly careful with all the sex crimes in looking at the home and the whole situation, much more so than any other type of offense. For instance, if we have someone that's had a pattern of sex offenses and he has been determined releasable on parole and is coming out, we won't, knowingly, place him in a hotel with a room to himself where he might get others up there. We try to have him placed with relatives or in a home with someone that can be with him on supervision basis almost 24 hours a day, rather than the once or twice a month that our agent contacts him. Now, that isn't true of the general class of parolees, but we do try and be very particular and we turn down many types of offers of help to these men that do not meet our requirements and take them back to the Adult Authority. Sometimes the man has had his parole canceled where we could not work out a program that we felt was reasonably safe. Now, I might add, I'm not a member of the Adult Authority, but I work closely with them and under them, that at the time sex cases are heard, and they're all heard in San Quentin, the chief psychiatrist sits with the board at the sex hearing. There isn't sufficient psychiatric staff to sit with them at all their other meetings, but they do have a psychiatrist present and do have psychiatric reports, I believe, on all or certainly almost all of anyone who would have a sexual pattern in the background as given by the screening agency, up there.

MR. BECK: What percentage comes back to the institution during their parole period for a same or similar offense?

MR. FINSLEY: Well, I don't have the latest figures on the current year, 1949, on just sex offenders, that hasn't been released yet. But the sex offender generally has a much better record, as far as risks go, than

## EXCERPT FROM TESTIMONY OF MR. ED NICHOLS

BROWN: Gentlemen, this is Mr. Ed Nichols, the Administrative Advisor to the Department of Mental Hygiene.

NICHOLS: I have furnished you with material that gives you an explanation, in the first place, of these two measures that Dr. Tallman has spoken of and there is no need of repeating them. Then I have also furnished you with a reprint of the Sexual Psychopath Law as it exactly reads now with the 1949 amendments that you can have to study. Then, in the last or another piece of material you have is the explanation of what the 1949 amendments did to this Sexual Psychopath Law which many of you know but just by way of reference you can have it for convenience purposes. We also mention in this explanation the Voluntary Commitment Law that was passed at the same session of mentally abnormal sex offenders where they could voluntarily submit themselves for treatment in a state hospital.

Now gentlemen, I would like to touch upon several aspects of this which I think Mr. Tomlinson had reference to and which we should consider as far as our sexual psychopath laws are concerned. We do have a hybrid law on our statute books now. We have a law that started in 1939, when it was originally enacted and it was proposed at that time by Dr. Rosanoff who was Director of the Department of Mental Hygiene and as I understand it, Judge Ben Lindsey; it was primarily designed as a medical approach to the elderly offender for offenses against children because the law originally did have that in it as far as the definition of a sexual psychopath. In 1945 the law was amended to strike out the offenses against children to include all sexual psychopaths of whatever category medical science or others would call them. Then we have 1949, this further change which brings in the criminal aspect more forceably than ever before because up until this time we had the situation where the court could suspend the proceedings at any stage of the charge and not proceed to any conviction and proceed to have the person examined under the sexual psychopath without any action upon a criminal charge itself. As a result of the decision of ex-parte Stone in the fall of 1948, where the question came up about the inconvenience of the prosecution in obtaining witnesses for the pressing of the charge at some later time, a few years later, the—it appeared that it would be more practical to have the individual convicted of the charge before he should be examined as to whether he is a sex psychopath and sent to a state hospital. Now, as a result, we do have, as I say, a hodge-podge here of an attempt at a medical approach and then this criminal aspect and in my personal opinion I think it is an unsatisfactory situation. I think that if you are going to have a criminal approach to this problem, then put something into the Penal Code dealing with the sex offenders who are convicted of a sex offense, send them to the Department of Corrections and then give the Department of Corrections the authority to transfer them to a mental hospital or to mental facilities for treatment after they have classified them. Then, if you want to, handle it that way after you have a conviction. I personally think there was a mistake in adopting that amendment in 1949 even though our own department sponsored it through pressure, as a result of this court decision. That is why we were



so much interested in this other measure which was that voluntary commitment procedure. We thought there should be some means for affording medical treatment available to these individuals on the basis of no stigma, no criminal convictions, and on a civil basis completely. That other bill, A. B. No. 2219, was strongly pressed by our department so as to offset the criminal aspects of the situation as compared to the civil and medical approach. That is one point.

Another point that I think is very important is not to overlook the fact that in one of these measures that Dr. Tallman mentioned and which we speak of, of the misdemeanor courts, that there should be an encouragement of the local communities to adopt or establish their own clinics, their own clinics to assist the courts in screening these individuals. I think that is a partial solution to the point made by Mr. Tallman who says that we would be swamped. I think that in the larger communities, San Francisco, Los Angeles, Oakland, they can very well afford to establish these psychiatric clinics either as a part of probation departments of their own courts, to do this very screening, and in this measure that we introduced we indicated that the individual could be sent for that 90-day observation either to a county facility or to a state hospital because we feel that that should be encouraged insofar as the communities are concerned. I am satisfied that an examination and investigation by your committee of the experience of eastern cities, of the clinics that are in existence in larger areas that are working with the courts and that due to screening, you will find ample basis for coming to California with the benefits of that experience whereby and again speaking legally, it seems to me that law should be amended to enable a different kind of a set-up in larger communities in the counties of a population over a certain amount, that they should be authorized to establish some such procedure within their confines and give the court authority to place these individuals in these clinics for that medical screening process. I think that would be a very helpful procedure to solving this problem at the local community level because it is too big a problem for the limited state facilities to undertake. I call your attention, gentlemen, to the very few figures, or I should say the incomplete report that was issued by the State Division of Criminal Identification, taking the year 1948 as a complete year, is concerned where there were in excess of 6,000 arrests during the year of sex offenses and in which there were, I mention this on the second page of my report and I would like to mention one phase of it and tie it in with what Mr. McGee spoke of in his report as to the number of cases that landed in prison. To me it is very significant that taking that one solid year 1948, there was 960 felony convictions of sex offenders and 3,155 misdemeanor convictions, in excess of 4,000, and we have a record, according to Mr. McGee's figures of 204 sex offenders landing in state prisons in 1948 out of 4,000 convictions I am speaking of now, 204 came into the state prisons. What happended to the other 3,300 individuals who had been convicted?

FLEURY: Seventy-five percent were misdemeanors. You can't send them to prison.

NICHOLS: All right. Most of those were misdemeanors, misdemeanants who were convicted however of sex offenses. The point I wish to make is again in the communities nothing was done outside of

six months in jail perhaps to screen those individuals as to what their potentialities were and there is an example of what the load could be that was asked before. Some 4,000 cases in that one year. Now, certainly that would be a great strain upon our department or any state department. It should be made a responsibility of the local communities in their law enforcement activities and particularly in the larger communities. Now, in the smaller communities they certainly should be entitled to use the state facilities that would be available.

FLEURY: Would that be your estimate, Mr. Nichols, 4,000 approximately a year would have to be screened if these two bills I introduced for you were passed?

NICHOLS: No, because not all of them were second offenders.

FLEURY: What would be your guess as to the number that would be screened in a year?

NICHOLS: I'll just make a guess of about 1,000 of second offenders. Judging from what Mr. McGee said, that so many of these lewd and lascivious convictions that are in the—I mean who were convicted and are in prison, half of them were first offenders. We could then take that same ratio which is 4,000 and reduce that about one-half to 2,000 and then you can say that there would be about one-half of that again.

FLEURY: How many more doctors would you need to take care of 1,000 more—

NICHOLS: Just to qualify that Mr. Fleury, I would say that of that 1,000 again, more than half of those should be screended in their own community judging from the geographical distribution of these offenders as Mr. McGee mentions. They should be screened through the facilities that should be made available in their own communities so that we would cut it down to another 500—cut it down to 500. We would need an additional staff, certainly. We have a ratio of one doctor for 100 admissions as an ideal objective in our hospitals.



## EXCERPT FROM TESTIMONY OF RICHARD A. McGEE

SMITH: Can you give us any comments on homosexuals in this prison. Is there anything there that we should know in looking towards legislation here as to segregating, or what's the problem, is it related to the subject in your opinion?

McGEE: I don't think it is anything but a somewhat remote relationship. This group of persons who molest children is an entirely different group of people. Once in awhile you will find a homosexual who does that sort of thing, particularly if they molest boys. In the material that I gave you on the New York article, there is a distribution there of the victims and quite a number of the victims are boys. Sometimes, not always, but usually where the victim is a boy there is probably a homosexual element in it. But, the effeminate homosexual that we get in prison represents an entirely different problem from this group. They are not dangerous people, they may engage in immoral conduct and all that sort of thing but from the standpoint of being dangerous to life and limb of children or adults, they are not. Our main problem in the prison with them is that they create disciplinary problems and it is essential that they be segregated. They become involved with some of the aggresive males in the institution and develop triangular love affairs and you end up with somebody getting his insides ripped out with a knife. Most of the cuttings and assaults that occur in prison are related to that. Not all but a great many of them.

SMITH: One of the people yesterday made the statement that jail for the homosexual is not a very satisfactory way of handling it because if you send them there it is more like sending them out to pasture. What do you think about how they can be handled or sentenced?

McGEE: Well, as I said a little while ago, most of the homosexuals, I'll have to get a physical breakdown on that. I don't know what the distribution is, but most of them are there for commission of crimes that have nothing to do with homosexual acts.

SMITH: I thought that maybe your New York experience might give you a thought on this subject.

McGEE: I don't think that sending them to prison is a cure for homosexuals whereas dealing with them is any answer to that. I don't think there is any final answer of dealing with the effeminate type of homosexual. Most of them are that way congenitally and the best you can do is teach them how to handle themselves in the community so that they don't become a source of moral corruption for persons who might behave normally. On the other hand, if they commit a crime there is no reason why they should be excused for the crime because of the fact that they are homosexuals anymore than anyone else should. On that basis, we are bound to have a certain percentage of them in prison. The answer to it from our standpoint is complete segregation and that is what we are trying to do with them to the limits of the buildings that we have which are not very satisfactory at this time.

BROWN: Mr. Fleury has a question.

FLEURY: Do you still think that we ought to pass this A. B. 43 which I put in for you last session?

McGEE: I think that, as I indicated in my remarks here, that the soundest and wisest thing that can be done is to develop a good respectable research program. Now, whether that should be——

FLEURY: Do you think that should be handled through your office or Mental Hygiene or where?

McGEE: I have no final opinion about that. I would say that it doesn't make any difference where it is done, or who does it, as long as it is done and done competently. The reason it was suggested that it be put in that way was because the Board of Corrections, which has the Youth Authority and the Adult Authority and myself and the Women's Board on it, is also a Crime Commission under Section 6027 of the Penal Code and has a responsibility of studying the causes, the cures and methods of dealing with crime. The matter was discussed with Dr. Tallman and with Karl Holton and we all agreed that if the funds were provided that we would work the thing out on a cooperative basis and get it done, the best advise we could get indicated it should be done. It was just a question there of setting the thing up in a place, some legal authority for it, and some place to administer the funds because if you are going to appropriate funds you are going to have to appropriate them to some executive agency. It could be handled in many ways. The thing that I have done here, for your information, in the respect to this matter, the suggestion was made when this bill came up on the Senate side, where Senator Keating introduced it, was that it ought to be put in the budget, it shouldn't be brought before them in this special bill. I discussed the matter with some members of this committee, as a matter of fact later on, when I saw that. I hadn't talked to the Governor about this, but I saw in the press, and I have heard him say publicly within the last 24 hours, that he intended to place this matter on the agenda for the Special Concurrent Session in March. Therefore, I merely wrote a memorandum to the Division of Budgets and Accounts in the Department of Finance and told them I thought we had a responsibility to see that this matter got before the Legislature but that I wasn't placing it in the budget. I was leaving it entirely to the legislative committees to say where they thought the thing ought to be and that is still the way I feel about it. I think whatever program is suggested by this committee is going to be all right with me and the other department heads provided we feel that the recommendation is going to result in the program.



## STATEMENTS AND REPORTS

### STATEMENT OF MARCUS CRAMAN, M.D.

Senior Physician, Los Angeles County Jail Division, Sheriff's Department; Superior Court Panel; Mental Hygiene Panel; Faculty University of Southern California; Chairman, Los Angeles City and County Committee on Sex Variance.

There is a common misconception among public officials that all sex violations are perpetrated by homosexuals. There is also a general misconception on the part of the American public that any evil is easily eliminated by the simple procedure of passing a law against it. A third largely erroneous concept demands "treatment" for sex offenders and the persons or groups loudest in their demands for this evanescent process know little of what they speak.

Crimes against sex differ little in their motivation from other crimes against the person, or, for that matter, against property. Certain unacquired bases of the instinctual life, apart from environmental influences, must be in part responsible (depending upon the makeup of the individual), for the fact that similar emotional conflicts will result in either criminality or neurosis, or both.

The emotional conflicts of childhood, the resentments against parents or brothers, the enforced passivity of educational rigidity, all represent powerful allies of later resentment against the social system, and the combined emotional tension thus produced seeks a realistic expression in criminal acts that cannot be relieved by mere phantasy products, as in the neurotic.

In every criminal act, two factors are involved: one constant and one variable. The variable factor is psychological and multitudinous and this motive factor may be as variable as unconscious motives in general. The constant factor is that force which propels the criminal move itself, and relies on the dominance of his passive or aggressive balance. This is the mechanism of criminosis.

Most criminals, oddly enough, become such from a pervading sense of passivity, and their aggressive acts are a revolt against this passive state. Passivity is predominantly feminine, as is aggression masculine. The passive, timid, retiring personality is considered sissified and his humiliation against the repression of his native aggressive instincts creates a restless pressure of energy within him, which finally shatters the hitherto restraining forces to become an exquisite expression of masculine aggression.

This expressive action will be directed against that sense of inadequacy that has most piqued the individual. Thus, the homosexual may commit murder; the sexually immature will perpetrate violent rape; the mild mannered will attempt armed robbery. The senile alcoholic, robbed of his sexual prowess, will force his enfeebled body on equally feeble children, whose ages are always in inverse proportion to his own.

The acts of the sadist are usually primarily psychopathic rather than criminal, per se, as their violence is destructive, whether sexual or otherwise. The masochist, however, is very frequently overlooked in criminal appraisal. In this type of mind, that offers itself on the altar of sacrifice, we find the check-writer, car thieves, many burglars, many juvenile delinquents, and those who publicly molest women on the street.