

CHAPTER II

INCIDENCE OF SEX CRIMES

A. TWO TYPES AND SOURCES OF STATISTICS

There are two types of statistics as to the incidence of sex offenses. The first type is the total number of sex offenses which are committed, whether prosecuted or not. The second type is the total number of sex offenses which are known to the police.

There is information available concerning the second type of statistics but there is very limited information as to the first type. There are a number of reasons for the lack of knowledge.

Authorities agree that there is a wide disparity between the two types of statistics. For instance, Dr. Crahan testified that not more than 20 percent of certain offenses, such as rape and child molestation, are reported to the police. The reason for the disparity probably lies in the nature of the crimes. There does not seem to be such a disparity in crimes against property, such as burglary and robbery. But many sex crimes are committed with the consent of all parties concerned. Moreover, there is a great reluctance on the part of many victims to make their experience known because of the embarrassment it will cause.

Statistics of the first type are available only from a few recent studies by such men as Dr. Alfred C. Kinsey. Statistics of the second type are available in police reports and the Uniform Crime Reports of the Federal Bureau of Investigation.

B. INCIDENCE OF CRIMES KNOWN TO POLICE

The subcommittee obtained a sampling of statistics for the incidence of known or reported sex offenses in California. Best available figures indicate that there were 1,378 known cases of rape in 1947 and 1,443 known cases in 1948. There were 759 known cases during the first half of 1949. These cases include both rape without consent and statutory rape. As to the crime of lewd and lascivious conduct with a child under 14, there were 695 known cases in 1947, 713 known cases in 1948 and 430 known cases in the first half of 1949. See tables prepared by Division of Criminal Identification and Investigation in the Appendix.

A sample of statistics of sex offenses on which arrests were made in 1948 was taken from the City of Los Angeles, from the Kern County, and from the County of Los Angeles.

Penal Code Section	Kern County	City of Los Angeles	County of Los Angeles
Rape, 261	32	473	235
Incest, 285	1	7	11
Sodomy, Bestiality, 286	0	85	10
Crimes against Children, 288	15	316	178
Fellatio, Cunnilingus, 288a	6	399	46
Indecent Exposure, 311	20	137	67
Molesting Children, 647a	1	46	0

That these arrest statistics are different from the statistics for offenses known to the police is shown by the following comparison. In Los Angeles in 1948, for the entire year, there were 100

for the 85 arrests for the crimes of fellatio and cunnilingus there were 448 reports for the 399 arrests; and for crimes against children there were 632 reports for the 316 arrests.

C. INCIDENCE OF TOTAL CRIMES COMMITTED AND SUBJECT TO POTENTIAL PROSECUTION

There have been a number of studies of the incidence of certain sex practices which are prescribed as sex crimes. One of the best known studies has been conducted by Dr. Alfred C. Kinsey of Indiana University. He has published his study of the sexual behavior of the American male. Dr. Kinsey appeared before the subcommittee on December 14, 1949, and testified as to his best estimates of actual occurrence of sex crimes. Dr. Kinsey's reports are based on a total of sixteen and one-half thousand case histories. Of these 9,000 are males. The case histories include those of 2,000 persons who have been convicted and sent to prison for sex offenses. (See testimony in Appendix.)

Dr. Kinsey's estimates are of the percentage of the male population who at some time during their lives perform at least one act for which he might, if known and prosecuted, be punished under the sex crime statutes. They are not estimates of the incidence of particular sex crimes in a given area during a given time period. The conclusion he draws however, is that at some time or another, 95 percent of the male population commits a sex offense for which he might be prosecuted. When broken down into types of offenses, the estimates are as follows:

- Statutory rape ----- 50 percent of male population
- "Pre-marital experience." -----
- Fornication ----- 85 percent of male population
- "Extra-marital experience," -----
- Adultery ----- 50 percent of male population
- "Homosexual experience," -----
- Sodomy or Fellatio ----- 35 percent to 40 percent after adolescence; at least 4 percent are completely homosexual during any time period
- Bestiality ----- 15 percent to 60 percent of farm boys
- Peeping Toms and -----
- Exhibitionists ----- Nearly 100 percent
- Child molesting ----- Not over 5 percent to 10 percent

As the result of other studies it has been estimated that there are 6,000,000 homosexual acts (sodomy, fellatio and mutual masturbation) which take place each year for every 20 convictions. It is likewise estimated that there are thirty to forty million extra-marital acts to every 300 convictions. See Report No. 9, p. 2 of the Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry, entitled, "Psychiatrically Deviated Sex Offenders."

Several other studies have been made to check the results of Dr. Kinsey and his figures have been corroborated to a very great extent.

D. RELATIVE INCIDENCE OF SEX OFFENSES AS COMPARED TO ALL CRIMES

The incidence of sex offenses known to the police represents a very small percentage of all criminal behaviors. For example the arrests for sex offenses (including prostitution and rape) in Los Angeles in 1948 were only 4 percent of the grand total of arrests. This may be compared to a finding of the New York City Mayor's Committee for the Study of

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Kinsey
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page 38 of the report they state, "sex crimes represented only 4 percent of all serious crimes against the person and against property which came to the attention of the police in 1939." The statistics of New York are not at all comparable to those cited with regard to Los Angeles, but they do bear out the fact that known sex crimes are a very small percentage of crimes reported to the police.

Figures for commitments of sex offenders to state prisons are interesting in this regard. From January 1, 1945 through November 30, 1949, approximately 9 percent of new prisoners at California prisons were committed for felony sex crimes.

E. WHETHER THERE IS A RISE IN THE INCIDENCE OF SEX CRIMES

Available statistics indicate there is no epidemic of sex crimes sweeping across the country and engulfing the citizens of California. Reliable statistics for a comprehensive study covering a considerable period of time were not disclosed to the subcommittee's investigation. The statistics that are available sometimes suffer from the fact that the basic units used for measuring are not comparable.

There is evidence that there has been an increase in the number of certain types of sex offenses that are made known to the police. For the State of California, from the first half of 1947 to the first of 1949 there was an increase in the cases of rape and lewd and lascivious conduct with a child. For reported rapes the rise was from 645 to 789; for reported lewd and lascivious conduct with children the rise was from 369 to 430.

A study of reported sex crimes in New York City during the 1930 to 1939 period indicated an increase in the number of reported rapes. There was a 46 percent increase between 1934 and 1939.

The Uniform Crime Reports of the FBI indicate a nation-wide increase in reported rape cases. The conclusion drawn there is that the yearly average for the country from 1936 to 1940 was 35.9 percent above that of the yearly average of 1931 to 1935. J. Edgar Hoover in the February, 1950, FBI Information Bulletin made the statement that there had been an increase of 50 percent in "vicious attacks on women and children," in the past 10 years.

The New York study indicated a rise in arrests for "sodomy," (which there includes bestiality, fellatio, cunnilingus) and contributing to delinquency (there called impairing the morals of a minor) and indecent exposure. Comparing the 1930 to 1934 period, the average number of yearly arrests rose in sodomy, bestiality, fellatio and cunnilingus from 115 to 164. For contributing to delinquency of a minor the rise was from 258 to 344; and for indecent exposure, the rise was from 280 to 404.

These statistics should be considered in the light of the following factors. There has been an increase in population, especially in California. The statistics as to reports or arrests are subject to wide variations depending upon the cooperation of the public and the activities of the police.

F. THE WHERE: GEOGRAPHICAL DISTRIBUTIONS AND LOCATIONS

The geographical distribution of sex crimes follows population concentrations. For example a total of 1,448 cases of rape were reported in 1948 by California law enforcement agencies. Of this total, 939 cases

were reported from Los Angeles County. The corresponding figures for cases of lewd and lascivious conduct against children are a total of 713 in California and 477 in Los Angeles County. The statistics for other counties are available in tables in the Appendix.

A conclusion of study of sex crimes convictions, 1930-1939, in the five counties of New York City was, "The distribution of sex crimes by county tends to follow the population distribution more closely than the commission of other types of crime," p. 38, Report of New York City Mayor's Committee for the Study of Sex Offenses, 1940. Available statistics do not completely support this proposition in California. The statistics are a different type from the New York statistics because they cover the group of felony sex offenders who are committed to prison. These California statistics reveal that there was a smaller proportion of the total sex felony commitments than the respective proportion of total criminal commitments from such areas as Los Angeles County, Alameda County and seven San Joaquin Counties. Further statistics are available in the Appendix but there is inadequate information to draw accurate conclusions as to any details concerning the distribution of sex crimes.

The subcommittee has no reliable California statistics available to show the scene of sex offenses (whether in cars, houses, streets, parks, public buildings, etc.).

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645 - 789
 369 - 430 NY
 4690 +
 35.990 +
 50%

258 - 344
 280 - 404

CHAPTER III

WHO ARE SEX OFFENDERS

A. MEANING OF TERM "SEX OFFENDER"

Sex offenders are all people who have participated in conduct which was subject to potential prosecution under the criminal law as a sex crime. There is evidence that people who are sex offenders in this sense are a very large segment of the United States population. If Dr. Kinsey is correct, 95 percent of the male population are sex offenders of one type or another at some time during their lives.

"Sex offender" is a past-tense word; it really means *past sex offenders*. The sex offender is someone who has in the past indulged in sexual conduct for which he was subject to potential prosecution.

Only a portion of the past sex offenders are *reported sex offenders*. These sex offenders are those persons whose sex offenses are reported to the police, or become known to the police through their own investigations.

Only a portion of the reported sex offenders are *arrested sex offenders*. For a variety of reasons discussed under Chapter V, no arrest is made in a number of reported sex offense cases.

A still smaller portion of the past sex offender group is made up of *convicted sex offenders*. Chapter V indicates some of the conviction ratios demonstrating the relative size of this group.

The smallest segment of past sex offenders is constituted by those *sex offenders sentenced to prison*. This group may be only 1 to 5 percent of the reported sex offenders.

B. PRESENT KNOWLEDGE OF PAST SEX OFFENDERS

1. In General

Information concerning past sex offenders is limited. This is especially true of sex offenders who have not been convicted of a felony. Relatively few studies have been made as to the nature of sex offenders. One of the most complete statistical studies made to date was of convicted sex offenders in New York City during the period 1930-1939.

The conclusion of the Report of the New York City Mayor's Committee for the Study of Sex Offenses, page 73, was, "In a nutshell, then, the sex offender differs little from other kinds of offenders. Often his was a socio-economic as well as a personality problem. Any attempt to study him, therefore, must embrace the whole person, not merely the sexual side of his make-up."

2. Sociological Data on Past Sex Offenders

In California there has been a study of male sex offenders convicted of felonies and committed to prison, from 1945 to 1949. The offenses for which conviction was made included forcible rape, assault to rape, incest, lewd and lascivious conduct with children, sodomy, fellatio and cunnilingus, bestiality, and annoying children. The study was prepared by Mr. Ronald H. Beattie.

The New York City study has been mentioned above. Statistics were obtained from probation records for convicted sex offenders. The offenses included forcible rape, statutory rape, carnal abuse of a child, contributing to the delinquency of a minor, indecent exposure, incest, sodomy (including bestiality, fellatio, cunnilingus, and necrophilia), abduction, and seduction.

Sex: Studies of sex offenders have usually been limited to males. In the New York City study, out of a total of 5,660 convicted offenders, there were only 51 females. Almost invariably in these cases there was a male accomplice. Data on female sex offenders must therefore await further studies.

Age: The California study of sex offenders committed to prison indicated their median age at time of admission was much older as opposed to a median age for all offenders committed. The figures were 46.7 years compared with 29.3 years. Within the group of committed sex offenders, the median age of those committed for rape was much younger than those committed for other sex offenses. Figures were 27.3 years for the rapists as compared with approximately 41 years for those committed for lewd and lascivious conduct with children or the other sex offenses as a group.

These figures are borne out by the conclusions of the New York City report. On page 75, it says, "The more natural and violent crimes are usually typical of younger offenders. Unnatural crimes such as carnal abuse, incest and sodomy are more typical of the older offenders. Four of the seven indictable crimes considered, namely abduction and seduction, forcible and statutory rape, principally involved men under 31. Men over that age were chiefly responsible for the other three crimes, carnal abuse, incest, and sodomy, as well as the two misdemeanors of impairing morals and indecent exposure."

Race: The California study of sex offenders committed to prison indicated that the crime of lewd and lascivious conduct with children is predominantly a white man's crime. The same high trend of white men was evident in other sex offenses except in commitments for rape, where the proportion was relatively low. The Mexican group had a high proportion committed for rape—12.7 percent of all commitments are white but 26.9 percent of all rape commitments were Mexican. The Mexican group had a low proportion in all other sex offenses covered in the study. The Negro group had a low proportion in all types of sex offenses.

Marital status: The California study of sex offenders committed to prison disclosed that among the offenders committed for lewd and lascivious conduct with children there were higher proportions of divorced, separated, or widowed men than in the other sex offenses. In the cases of commitments for rape, there was a higher proportion of single men than in the other sex offenses.

The New York study showed comparable trends with the addition that there were more married men convicted of impairing the morals of a minor than any other crime. They also found a noteworthy incidence of indecent exposure among married men.

Economic status, education, residential status: There is some information on these factors in the New York City report, but the subcommittee discovered no adequate data concerning California sex offenders.

ST/8000

older
vs.
newer

white

Negro
low

Impt

90?

There was much testimony, however, that sex perversion is no respecter of social strata.

3. Psychological Data on Past Sex Offenders

a. *Methods of Diagnosis and Analysis*

Although there are a large number of methods, tests and techniques which have been used to obtain psychological information concerning sex offenders, most authorities agree that more and better tools are needed. Wherever possible, case histories are obtained of the individual studied. Observation of behavior and psychoanalysis are used. Sometimes electroencephalographic studies, discussed in Chapter VII, are made of the brain. There is a battery of psychometric tests now available for uncovering motivation, personality, and the intricacies of character. These include the Rorschach Ink Blot Test, the Thematic Apperception Test, the Szondi Test, the Bender-Gestalt Test, the Word Association Test, and many others. There are a number of intelligence tests which are designed to indicate the intellectual capacity of the person.

One difficulty with results of analysis of many sex offenders is that the study of the person is made under circumstances quite different from the situation existing while he was participating in the proscribed behavior or "on the prowl." Another difficulty arises when the offender is unwilling to cooperate in the examination.

b. *Psychological Classification of Sex Offenders*

In general sex offenders run the gamut of known psychological and psychiatric classifications.

Many sex offenders are mentally ill. These may be diagnosed within existing classifications of mental defect, disease or disorder. Such classifications include the mental defectives, the persons suffering from mental deterioration including the seniles and paretics, the psychotics including the paranoiacs, schizoids, and manic-depressives, the psycho-neurotics, and the so-called psychopaths or those suffering from constitutional inferiority or personality disorders and the epileptics.

There was insufficient information available to correlate specific types of mental illness.

There is little information concerning the intelligence of sex offenders, but the California study of sex offenders committed to prison indicated that their intelligence ratings were comparable to those of all offenders committed. It was noted that within the group of sex offenders, the intelligence rating of those committed for lewd and lascivious conduct with children and the other sex offenses studied was much higher than those committed for rape.

There is very little information available concerning the question of the heredity of a predisposition to commit sex offenses. There is research now being conducted at the State of New York Psychiatric Institute as to the inheritance of homosexuality.

C. THE FUTURE SEX OFFENDER

Potential future sex offender is a future-tense term and means the person who will or probably will commit a sex crime. There are many efforts being directed toward this type of individual. Medical men are seeking means of diagnosis. Citizens are looking for means of preventing

crimes by such future sex offenders. State legislatures in over 25 percent of the states have enacted so-called "sex-psychopathic" acts to attempt to deal with the future sex offender.

Medical science has developed, in certain areas, objective tests for making highly accurate diagnoses. The result in these areas is that predictions may be made which have a high validity. For instance a typhoid carrier can be segregated. A prediction can be made that this individual will spread this dread disease if allowed to go free. The prediction has a high degree of probability. There are numerous other objective tests in medical science by which the presence of disease, the condition of pregnancy, and other facts can be established. On the basis of these tests, accurate predictions may be made.

There are as yet no correspondingly accurate objective tests by which future sex offenders can be diagnosed and segregated. Predictions of future conduct are therefore weakened.

A primary purpose for studying *past sex offenders* is to obtain means and tests for diagnosing *potential future sex offenders*.

CHAPTER IV

VICTIMS OF SEX OFFENDERS

A. WHO ARE VICTIMS OF SEX OFFENSES

There is no adequate statistical material as to who are the victims of sex offenders. The information available to the subcommittee included to a great extent untested generalizations and examples of extreme cases. One reason for lack of knowledge of victims is that a large proportion remain unknown to the police. Secondly, in those cases known to the police, generally information is not collected concerning victims. To a great extent this is due to the fact that victims are generally not subject to the supervision of law enforcement agencies. An exception to this is the case of juveniles who come within the jurisdiction of juvenile authorities.

There are great variations between the victims of sex offenses. As to sex, not all victims are women by any means. The New York City Mayor's Committee for the Study of Sex Offenses (covering period 1930 to 1939) found that 12.4 percent of victims were male. As to age, there is a wide scattering in the ages of the victims, being anywhere from 18 months to 80 years. The New York City report indicated that of 2,346 female victims of felony sex offenses where convictions were obtained, 1,788 or 63 percent were over 14 years of age. The study found a much smaller proportion of male victims; 33 percent were over 14.

Another difference in victims is their degree of physical maturity and social experience. Crimes against children of a certain age may involve girls who in spite of their youth are active participants or seducers as a result of previous experience in sexual matters. There are on the other hand the females of genuine innocence and/or chastity. The criminal law is not defined to take these differences into account.

The subcommittee found little data on facts which would indicate the economic status, family background, housing conditions, education, intelligence, race, residence, location, etc., of the victim. Such information is of value for crime prevention programs.

B. EFFECTS OF SEX CRIMES UPON VICTIMS

The New York City Mayor's Committee concluded on page 70 of its Report that a case study of the victims of sex crimes would be desirable. "We had no facilities for making any case studies of the victims of sex crimes. Yet such a study is desirable. In most sex crimes, the fact that a particular girl is a victim of a sex assault is no accident. Generally there is to be found something in the personality, the environmental background, or the family situation of the victim of the sex crimes, which predisposes her to participation in sex delinquency. In the statutory rape cases for example it is evident from a reading of the probation reports that most of the girls involved come from the same low income groups of the community, the same disorganized neighborhoods, and the same type of disorganized families as the offenders."

Here again, there is incomplete data upon the effects of sex crimes upon victims from which to draw any comprehensive picture. There is some information available from probation reports, but it includes principally objective physical data such as injuries, pregnancies, and venereal disease infections. There are other harmful results such as social disgrace and ruined lives. Perhaps one of the most serious results is mental disturbance either from the shock of the crime or from the later court room experience.

Of course society does not need statistics in this field to be aware of the problems caused by these effects. But study would perhaps reveal the extent to which the ill effects are caused by the offender.

If other contributing causes were found, an approach which would remove or mitigate them might be utilized. The end result would be to lessen the serious effects of some sex crimes.

← cover up of home abuse here - most boy victims - no men! Most of victims are 14 or over 14

she writes & predisposes to participate - and leaves out all harmful data p. 65!

CHAPTER V

ENFORCEMENT OF LAWS AGAINST SEX CRIMES

A. INTRODUCTION

An elaborate system for the enforcement of laws has developed throughout the United States. Techniques which emphasize the report, investigation, prosecution and trial of criminal matters operate ceaselessly to carry out the law.

The several phases of the enforcement system are conducted by specialized agencies, mutually dependent, and each equipped with facilities and authority to promote the common end.

Despite the high degree of organization within the enforcement framework, and the apparent adequacy of legislation, there are many factors which appear to interfere with the successful prosecution of the law.

The following brief outline of the procedure includes information which may demonstrate some of these factors.

B. REPORT-INVESTIGATION-ARREST STAGE

1. The report-investigation-arrest phase is usually handled by police agencies. Information regarding crimes stems for the most part (75 percent) from individuals or civil agencies. Other sources are courts, law enforcement bureaus, parole and probation officers and other units of criminal justice.

The report, if made by an apparently competent person (reasonable age, not patently psychotic, etc.), must satisfy three requirements. These requirements are:

- a. Act described must constitute crime;
- b. Within jurisdiction of police;
- c. Not outlawed by statute of limitations.

2. The investigation which usually follows the report is often handicapped by the following (as well as other) factors.

- a. The victim fails to preserve basis for physical evidence.

The victim removes clothing involved from scene, cleans, launders, or otherwise alters it.

The victim allows a time lapse between event and report and this reduces chance of establishing evidence from semen stain, prints (foot, hand, finger, etc.), evidence of struggle, lipstick on suspect (clothing, other areas), or location of witnesses.

The victim allows a time lag between incident and medical and/or laboratory examination (often requisite to establish case).

- b. The victim is unable to supply information.

Hysteria which sometimes accompanies or follows experience totally distracts victim from making accurate observations and/or report (psycho-traumatic effect).

Due to stealthy nature of some attacks (aided by inadequately lighted areas) the victim simply cannot provide description or other information.

Children may not be able to report situation clearly due to their age or suggestibility. Experience clearly indicates that many youngsters report matters which are either imaginatively inspired or reflect an experience occurring to another. Investigators learn to watch for adult phrasing, language, attitudes, etc. This behavior may be part of the child's fantasy thinking or may be an attention device. It must be considered whenever a child reports a crime.

c. Victim unwilling to supply information.

Women often are reluctant to repeat details of attack.

Victims are embarrassed by probable attendant publicity. They resent new approach which highlights bizarre aspects of victims.

Families (husbands, parents) refuse to sanction interview of victim. They wish to avoid publicity and social opprobrium, the impact of repeating experiences and neighbor reprisals.

Boys often are too embarrassed by event to report it. They shun the attention given victims in news stories, etc.

3. Arrest procedure.

The class of crime rules the procedure involved.

a. Misdemeanor arrests are upon authority of warrant unless all elements committed in presence of arresting officer. They must be immediate (or under fresh pursuit rules). (See California Penal Code, Section 836.)

The time interval between report, complaint, warrant, and arrest often gives the offender opportunity to destroy evidence, dissuade witnesses, appeal to victim for mercy and/or escape. Also it reduces or nullifies opportunities for examination of clothing, search of cars, etc., interrogation, and other investigative processes.

b. Felony arrests are authorized by most jurisdictions when offender is suspected of a felony class offense. (See California Penal Code Section 536.3.)

Under this authority officers may arrest upon notice of a crime. This authority permits the gathering of evidence, interrogation (before suspect has chance to solicit help or advice, gather support from delay, etc.), the contacting of witnesses plus other investigative advantages.

The obvious advantages in this picture invite belief that many police jurisdictions use felony booking although the facts may spell a misdemeanor. This policy, expedient as it may appear to police, partially explains the large number of felony arrests which are reduced to misdemeanor charges at the prosecution level.

C. CHARGE-PROSECUTION STAGE

The prosecution of sex offenders is encumbered by most of the problems associated with the investigation phase. In addition, the prosecuting officer must evaluate the case in light of the rules of law. The competency of witnesses, the weight of testimony, the amount of evidence and other considerations must be judged. The prosecuting office must determine the specific statutory charge which best squares with the facts. They must also determine the advisability of reducing the charges in an effort to increase the probability of conviction. This practice of compromise with defendants by accepting pleas of guilty to a lesser charge is often attacked.

Prosecuting officers coming to a decision to reduce a charge generally reason along the following lines. (1) The case actually equates to a lesser charge for the reasons cited under police arrest practices. (2) The probability of conviction on a more serious charge is reduced because the evidence is weak, the possible penalty is too severe and juries will tend to acquit, the witnesses are reluctant to appear so that the credibility of testimony is reduced, or the character of the defendant who is prominent is difficult to attack. (3) The certainty of a conviction although a lesser offense is a statistical triumph. (Prosecutors are conscious of their conviction ratios.)

The critics of the practice of reducing charges argue four points. (1) The intent of the statute is violated by acceptance of a plea to a different and lesser offense. (2) The lesser offense plea encourages a lighter penalty. For example misdemeanor imprisonment is six months to a year but the maximum average sentence is ninety days, and in a high percentage of cases, a probation is granted or a cash fine is accepted. (3) The lesser offense reduces the deterrent effect of the prohibition. They argue that experience with "easy" prosecution encourages the offender to risk the conduct and that certain offenders may welcome a short sojourn in jail because of its homosexual opportunities. (4) The practice undermines law enforcement morale. They point to the fact that police agencies become disgruntled over "light sentences" or "slap on wrist" dispositions and that the result is police officers put forth less effort.

J. Edgar Hoover stated in the February 1950 issue of the F. B. I. Bulletin. "The officer of the law can investigate and detect the perpetrator of sex crimes, but he cannot remedy the situation which yearly turns scores of degenerates back upon us.

"What officer has not arrested the sex offender, heard him receive a token penalty, and, a few months later, watched him walk out of confinement to prowl the streets again?"

D. COURT STAGE

Many of the problems met at the arrest and prosecution level are faced again at the time of court proceedings.

1. The Preliminary Hearing

The serious offenses are usually presented to the court through the preliminary hearing. This step, held after complaint-arrest-arraignment, is for two general purposes.

(1) To inquire as to whether a public offense has been committed in fact; and to establish that there is sufficient cause to believe that defendant is guilty. To establish sufficient cause the evidence need not be sufficient to justify a verdict of guilty, "but it is sufficient if it points to defendant, and induces a belief that he may have committed the offense charged." (*Ex parte Winthrop*, 5 Cal. Unrep. 56)

(2) The preliminary hearing permits the taking of depositions of witnesses so that subsequent events will not rob the case of such information through death, accident, insanity, etc.

The proceedings include examination of the witnesses both for prosecution and defense if desired. Exhibits may be introduced, governed by the same rules of admissibility which apply at trial: cross examinations

are permitted; and the procedure is subject to exclusion of other witnesses if the magistrate so determines (motion of either side or magistrate's decision); and further, the public may be excluded if so requested by defendant.

It is at this stage that many prosecutions for sex violations fail. The child witness or embarrassed female may crumble under the experience of having to repeat her statements in a court which is strange and formal, under cross-examination by a vigorous examiner, or where circumstances confuse the witness. Here too the child may fail to qualify as a witness. The questions from the bench, which are in actuality reasonable and simple, tests of orientation and perspective may for any number of reasons confound the youngster. Extreme care must be exercised to prevent a miscarriage of justice and many courts feel that stringent evaluation of the witnesses' capacity to testify is requisite at this time.

The prosecuting attorney also has this opportunity to judge the value of his witnesses and if their manners suggest to him that they will be unsatisfactory he may determine to accept a plea to a lesser charge, if possible, rather than risk a prosecution based on unimpressive testimony.

Research indicates however, that the majority of sex defendants upon whom felony complaints are filed are held to answer at their preliminary hearing. The attitude of the lower court appears to be that crimes of gravity should be handled by the superior trial court unless there are patent defects in the prosecution's charge or evidence. One effect of holding the defendant to answer is the realization on his part that he is involved in a serious legal procedure. He may have regarded the proceedings somewhat lightly prior to the pronouncement that he is held to answer in the superior court, but recognition that a court of law, although sitting in a preliminary stage, has in reality judged that he is involved to a particular degree, is often a sobering one.

2. Pre-Trial Period

The defendant awaiting trial, after preliminary hearing, is usually anxious to "bargain" with the prosecuting agency. Bargaining in regard to the plea is a common occurrence. The Missouri Crime Survey reported that where the state's case was in any wise weak (including lack of preparation) this practice rewarded defendant, who often gained a real advantage by agreeing to plead to a lesser charge. Roscoe Pound has referred to this as follows. "90 percent of these 'convictions' are upon a plea of guilty made on 'bargain day' in the assured expectation of nominal punishment, as the cheapest way out."

Authorities such as Moley, Barnes, Teeter, Tannenbaum, and many others are very critical of this trend. They urge that it is inimical to social ends, particularly because it places the "individualizing of treatment" within the hands of an authority not competent to so function. They point out that the office of prosecuting attorney is usually a political job, carrying with it the many obligations necessarily imposed upon it. They add that despite the fact that majority of prosecuting officials are incorruptible there is much evidence to effect that they represent no higher level of competency than that of an average attorney. (*Criminal Law in Action*, Harcourt Brace.) The quarrel is not with individualizing treatment of the offender but with the practice of permitting

the prosecution to do so. It is believed that this function belongs with the court.

The prevalency of the bargaining practice, however, is well illustrated by statistics reported in the Journal of Criminal Law, January-February, 1942, which point out that in New York City in a single year, of the 5,761 convictions, 5,067 resulted from such pleading; in Chicago 2,582 convictions included 2,086 guilty pleas; and in Milwaukee 1,169 total convictions included 705 resulting from pleas.

A recent California case illustrating this "bargaining" occurred February 23, 1950, where a defendant charged with two counts of Penal Code Section 288 (felony involving lewd and lascivious conduct with children) was permitted to plead guilty to one count of Section 702 W. I. C. (misdemeanor of contributing to delinquency of a minor). Plea to second count was held in abeyance, pending decision on probation application. Probation (3 years) was granted on first plea, whereupon the representative of the district attorney present moved to dismiss the second count "in the interest of justice." Motion was granted and the defendant who had faced two felony counts involving children was granted probation following pleading guilty to one misdemeanor count of contributing to delinquency of a minor.

Mention of the "bargaining" practice cannot close with the role of the prosecutor. It is in many instances necessary for the success of this effort that the defense attorney be a particularly able defense counselor or that he have powers persuasive to the prosecutor.

There are many able and honest criminal lawyers. These men defend many persons who are undoubtedly guilty, and they defend them with ability as well as integrity. They do this by seeing that their clients legal rights are not encroached upon and by obtaining every consideration due their client under the constitutional provisions and the Bill of Rights. Professor John Barker Waite has said, "The attorney who can save only the innocent from punishment will have few clients."

The reputation and effect of a highly regarded member of the legal profession as a defense counsel in a particular case is of course, a factor for the prosecutors office to consider. There are many occasions when a prosecuting agency doesn't have any man capable of crossing legal swords with the defense attorney. The fact that such legal talent is expensive is not important to the guilty defendant facing trial on a serious sex charge. The stronger the case for the State the greater is his need to be well defended. If it is at all possible he will raise the necessary money to obtain such counsel. This is another blow at the State's case. Although there have been recent attempts to change the criminal court trial from a battle of wits to a trial of facts, there is still great need for improvement in this regard.

Another group of defense attorneys must be described as "sharp." There is no question but that many questionable practices such as endless continuances, contacting of witnesses, and other techniques warn the prosecutor of difficulties ahead in the prosecution of his case. That these "sharp practices" are going on is evident and the willingness of the prosecuting attorney to compromise or bargain rather than fight such tactics is understandable.

As a result of all of the factors so far described the number of men who finally go to trial before a superior court for the offense originally charged and filed is relatively few.

3. Trial Phase

The relatively few who go to trial are still some distance from conviction even though they may have committed a sex offense.

a. The first difficulty facing the success of prosecution is the interminable periods of time which are involved in the various stages. Each delay is considered by most students of the effect as an advantage to the defendant. Gillin states that "the delays due to clumsy criminal procedure are almost wholly in favor of the accused and against the interest of the State." Many times the respect for technicalities which is involved in court procedure promotes these delays. The Pope case in Alabama exemplifies this in startling fashion: Pope was convicted five separate times by juries and in four of the instances after long appeals to the Supreme Court of Alabama the decisions were reversed on technical grounds.

Other delays are in the form of long argument over jury selections, presentation of endless character witnesses, arguments over points of law, the main purpose of which is to lay foundation for appeal in case of conviction, and the traditional courtesy extended attorneys requesting continuances and others. One case involving a defendant in a prosecution under Penal Code Section 288 (lewd and lascivious conduct with a child under 14) was continued on seven occasions at the request of the defendant. Finally the particular judge to whom an appeal for an eighth delay was addressed, refused, and ordered trial.

b. The problem of selecting juries is followed by the fact that juries in many instances are not capable of determining the issues involved. The selection of juries involves the effort of the opposing sides to panel persons who appear as sympathetic to their view as possible. This is understandable but hardly consistent with the theory of the system. For a report on the jury problem read Jerome Frank's Courts on Trial.

c. In this connection, however, one particular problem has received much attention from the lawyer-jurist group. There are many members of that group who feel that the cautionary instruction required in many criminal cases, imposes a hardship upon the prosecution. It has arisen most frequently in the prosecution of sexual crimes. This is particularly true in offenses of contributing, sodomy, fellatio, cunnilingus, lewd and lascivious behavior with children.

The cautionary instruction, wherein the court instructs the jury that certain testimony should be cautiously viewed are held under recent case to be instructions in law (People v. Dail, 22 Cal. 2d 642.)

The instruction is considered by many lawyers, prosecutors, and jurists to be especially damaging to prosecution when directed to jury re testimony of a child. The objection is that the jury is already prepared to view a child with caution and to have the judge admonishing them to be cautious is, in the opinion of the rule's critics, to sow the seeds for overly cautious evaluation.

The other side of the issue urges, however, that where there is corroborative evidence to the testimony of the witness, the judge may refuse

to instruct without prejudicial error. and further, that the instruction is essential to fairness in trial. (People v. Neal, 65 Cal., A. C. A. 285.)

d. Another problem facing the prosecution is the requirement of establishing necessary evidence in the face of the many rules surrounding such presentation. This is illustrated by the effect of the so-called "accomplice rule."

The rule is that which states that a conviction cannot be had upon the testimony of an accomplice unless it shall be corroborated by such other evidence as shall connect the defendant with the commission of the crime; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. (See California Penal Code Section 1111.) This rule demands that many cases of sodomy, for instance, where a boy-adult relationship is involved, be prosecuted as contributing to the delinquency of a minor (misdemeanor) due to the fact that if the boy participant is 14 years of age or over he is an accomplice under the law and the accomplice rule of evidence will be invoked.

This situation is almost impossible to overcome under present rules because the crime situation usually precludes the corroboration necessary to admit the boy's testimony.

e. Finally the prosecution must hurdle the evidence "exclusion rules," as exemplified by difficulty of introducing the fact of prior conviction for similar sex offenses.

This rule prevents admission of evidence of previous conviction for similar sex offenses. The critics argue that many juries cannot believe well-mannered or presentable individual capable of such conduct and therefore will not convict. These critics suggest that admission of evidence of convictions for previous offense of a similar nature would overcome this defect.

The rule is defended, however, by an equally large number of thoughtful persons involved in criminal justice who contend that admission of such evidence would tend to prejudice the jury and violate the constitutional rights of the defendant.

Others such as Hon. Charles W. Fricke, Judge, of the Superior Court of Los Angeles, assert that such evidence is admissible in those cases where it is relevant. He points out that whenever the question of "intent" is involved in criminal offense, and evidence is equivocal, evidence of other crimes is admissible for the purpose of showing it. Evidence of other crime convictions is also admissible, he added, for the purpose of identifying the perpetrator by showing the modus operandi was of a particular character and that on former occasions, this same defendant, by a similar modus operandi, had done the same thing.

As is easily recognized many problems have impeded the accomplishment of prosecution. Assuming, however, that the case is submitted to the court or jury for decision what are the probabilities of a conviction?

If it is a jury case one must remember the decision of guilt has to be unanimous. A single dissent results in "hung jury" which is in many instances equivalent to acquittal. (State often abandons prosecution.) Additionally there is the real consideration of the effect of "severe penalties" upon a jury. There is no question but that juries many times are influenced by the severity of the penalty attaching to a guilty verdict.

Various other influences work against conviction but despite these factors, juries return verdicts of "guilty" in a substantial percentage of cases tried before them. They appear to be particularly prone to convict in the sex offense cases. (34th Annual Report Municipal Court of Philadelphia.) This tendency may account for trend toward selection by defendant of "court trials" (no jury). Studies in New York, Ohio, Missouri, and Massachusetts verify belief that sex defendants select juries less frequently today than in the past.

If the trial is by court (without jury) the defendant may reasonably assume the decision will square with the facts admitted into trial. The courts appear to be doing an honest and capable job. The fact that they convict felony sex defendants less frequently than do juries is attributable for the most part to insufficiency of evidence presented.

4. Post-Conviction Stage

a. Sentencing Phase—While it might appear that the bulk of the administration of criminal justice has been accomplished through the decision of guilt or innocence that is not the case.

The final act of the court after a conviction is the passing of sentence. This may be the most socially significant step in the entire procedure.

At the present time few California courts have pre-sentence clinics to assist them in determining proper disposition of convicted defendants. This fact is deplored by many jurists, particularly those who face the problem of the sex offender. This problem of suitable penalties involves both the misdemeanor court as well as felony tribunal. (Most sex convictions disposed of in misdemeanor court—95 percent in Los Angeles according to Judge Harold W. Schweitzer.)

A few California courts have the services of regular court psychiatrists but most courts must depend upon the probation report for guidance in determining sentence (exception is San Francisco which has the Langley Porter Clinic—see report of Judge Sapiro in Appendix). Thus the courts face the responsibility of determining sentences with very little assistance from capable sources.

An examination of the sentences following conviction is published in the Los Angeles Police Report (1948 Annual Report). (The report covers all sex offenses under California statutes except rape and prostitution.)

Convicted -----	1,983	Jail and/or fine -----	817
State prison -----	26	Jail and suspension -----	137
County jail -----	500	Jail, fine and suspension -----	226
Straight fine -----	10	Jail suspended -----	233
	Probation -----		34

Of the 1,983 convicted sex offenders, 26 were remanded to the Adult Authority for term proscribed by law. This means that the remaining group of 1,957 convicted sex defendants will return to the community within periods of from one day to one year.

b. Second Offenders—Recidivism—Contrary to general belief, the sex offender is not inclined to recidivism. This does not mean that the sex violator ceases his deviated pattern after conviction but statistics do persuade the belief that he avoids future conflict with the law.

The proportion of persons committed to prison for sex offenses who were without prior commitment record is over 50 percent, whereas for

95%

all men committed it was 26 percent (sex offenders California prisons—1949). Those offenders who do reappear, however, are conspicuous and offensive to the public. Demands are made that the repeaters be sternly handled.

Studies of the cases of second offenders convicted for sex felony crimes reveal that such persons do receive severe penalties. The problem seems to come from that much larger number of violators who reappear under misdemeanor prosecutions and for whom short sentences (six months to one year maximum) are only penalty available. This situation prompts much of the interest in the sex psychopathic acts (see Appendix and Chapter VI).

The incidence of parole-probation violations by convicted sex offenders is low. As a class they are considered excellent risks. That there may be individuals within their ranks who represent great menace to society cannot be denied. The big problem is to select the potential menace from a relatively innocuous group.

c. Keeping Contact—Registration—Some effort to maintain contact with the offender is made throughout the post conviction stage. This follows him after release from prison, jail, or other terms of his sentence. It is demonstrated by California Penal Code Section 290 (Sex Registration Law) which requires the registration, photograph and fingerprints of specified sex offenders. (See California Penal Code Section 290 as amended 1949 First Extraordinary Session. See also Chapter I of this report.)

CHAPTER VI

SPECIAL LEGISLATION: SEXUAL PSYCHOPATH LAWS

A. OPERATION OF LAWS

1. Laws for Compulsory Commitment

Fifteen American jurisdictions have enacted special laws to deal with the sex offender. These laws as a group are called "sexual psychopath" laws although in several states, such as New Jersey, they do not bear this name.

The theory behind these laws has several elements. The laws are designed to apply to persons who are potential future sex offenders. Such persons who are a menace to society should be identified and isolated. These persons are generally to be segregated from the group of known sex offenders. They are distinguishable by the fact that they have no control over their sexual impulses. This condition is interpreted as being a mental illness; persons suffering from it are not responsible for their conduct. When such a person has been committed, he should be given treatment, if possible, so that he will no longer be a menace to society. If he is cured he will be released. The whole problem is regarded as a medical problem, both as to the identification or diagnosis and the treatment. It is reasoned that these "sexual psychopaths" are not being punished for past acts but are being quarantined to prevent them from perpetrating future crimes.

It should be noted that the acts are designed to apply to persons who are not insane (psychotic) or mentally defective.

This theory or ideology has been given severe criticism; many of its basic elements have been attacked. For summaries of this criticism see the report of the New Jersey Commission on the Habitual Sex Offender, February 1950, and an article by Edwin H. Sutherland, "The Sexual Psychopath Laws," *Journal of Criminal Law and Criminology*, Vol. 41, January-February, 1950.

California's Sexual Psychopathic Act, Section 5500 et seq. of Welfare and Institutions Code, was one of the first such laws in the United States when enacted in 1939. The provisions of California's Sexual Psychopathic Act, as amended in 1949, are explained in a discussion by Attorney General Fred N. Howser in the Appendix.

The systems set up for committing the "sexual psychopath" vary considerably in the different jurisdictions. A chart appears in the Appendix which shows the differences between the statutes.

A considerable amount of study has been made of these statutes by a number of groups. There has been a study by the Criminal Law Committee of the Chicago Bar Association. The Group for the Advancement of Psychiatry has a study which was made by its Committee on Forensic Psychiatry. The results appear in the Group's Report No. 9 entitled "Psychiatrically Deviated Sex Offenders." A very recent and comprehensive study was made by the New Jersey Commission on Sex Offenders. Their report was formulated by Professor Paul W. Tappan of New York University and was published in February, 1950.

After analysis of the "sexual psychopath" statutes, discussion may be directed to the following aspects. (See the "sexual psychopath" chart in the Appendix.)

Designation of Condition

This phrase refers to what term is applied in the statute to the person who is the object of the legislation. For instance in California it is the "sexual psychopath."

Elements of Definition

This phrase refers to the elements of definition of what a "sexual psychopath" is. For instance, in California, he is any person who is affected with one of the following conditions. "mental disease or disorder, psychopathic personality, or marked departures from normal mentality" and is "affected in a form predisposing him to the commission of sexual offenses and in a degree constitutes him a menace to the health and safety of others." The elements of definition are the legal criteria set forth in the statute, not necessarily the medical or clinical elements of diagnosis.

Basis of Jurisdiction

This phrase refers to the facts which must be established before the court has jurisdiction for determining whether a person is a "sexual psychopath." For instance, in California there must be a criminal charge preferred against the person; whereas, in a few states like Wisconsin, no charge is necessary. In some states, there must be a conviction for particular sexual offenses.

Discretion in Initiating Proceedings

This phrase refers to the question of who has the right to file a petition or an affidavit or whatever is necessary to start a court hearing into the question of whether a person is a "sexual psychopath."

Tribunal and Proceedings

This phrase refers to what sort of court or tribunal has jurisdiction of the hearing, and how the proceedings are carried on. Questions such as provisions for private hearings, jury trial, and time within which hearing must be held are discussed under this heading.

Medical Examination, Qualification of Examiners

This phrase refers to the type of medical examination which the statute requires be made of the person alleged to be a "sexual psychopath." The results of the medical examination are referred to the court. The states generally set up some qualifications for the medical examiners such as the California requirement that they be holders of physician's and surgeon's certificates whose practice has been directed primarily to diagnosis and treatment of mental and nervous disorders for at least five years.

Effects of Commitment on Criminal Proceedings

This phrase refers to the question of whether commitment for being a "sexual psychopath" acts as a defense to the criminal charge, or perhaps suspends the proceedings.

Procedure for Release

This phrase is self-explanatory and applies to a release from commitment in a hospital or penal institution.

Nature of Release

This phrase refers to the question of whether the release which is given the "sex psychopath" is complete or is under some sort of supervision as in probation and parole.

2. Laws for Voluntary Commitment

A few states have statutes which provide for voluntary commitment of a "sexual psychopath." In California, the law was enacted in 1949 and is found in Section 5600 et seq. of the Welfare and Institutions Code. The person is called a "Mentally Abnormal Sex Offender." A discussion of this statute made by Attorney General Fred N. Howser is found in the Appendix.

Analysis of this type of act is made under the same headings as are listed above.

B. ADMINISTRATION OF SEXUAL PSYCHOPATHIC LAWS

There have been several recent studies of the administrative experience developed under the "sexual psychopath" acts. Some state laws like California's have been in existence for 10 years. The New Jersey Commission on the Habitual Sex Offender conducted a study for the past year and published its report in February, 1950. Edwin H. Sutherland, professor of sociology at Indiana University, wrote an article concerning his study which appears in the January-February, 1950, issue of the *Journal of Criminal Law and Criminology*. These two studies sum up some of the results of prior studies.

The "sexual psychopath" acts have been put to very little use during their existence. There have been more persons committed as "sex psychopaths" in California than in any other state. The number is 485 in 10 years. Minnesota, during the 10 years existence of its act, has committed between 200 and 300. In Illinois, during a 10-year period, an estimated 18 to 20 have been committed. In New Jersey, 35 cases were committed in the first six months of the law's existence.

Reasons

The subcommittee received several suggestions as to the reasons why such "sexual psychopath" acts have not been used.

(1) It is claimed that prosecuting officers and judges do not favor the act and are unsympathetic with an approach which would view sex offenders as "patients needing treatment." It was indicated that they limit the "sexual psychopath" laws for use when there is insufficient evidence to support a criminal conviction.

(2) It is suggested that sex offenders can avoid the commitment by a simple act of noncooperation. Some defense attorneys advise them to refuse to talk to the examining physicians. Most psychiatrists feel they can make no diagnosis without an opportunity to talk to the person. This halts the proceedings unless the refusal is treated as contempt of court (District of Columbia). And in the latter case, many feel that the diagnosis conducted under threat of punishment has no validity.

(3) It is suggested that enforcement officers are aware of the fact that state institutional facilities are not available for custody and/or treatment of all who could be committed as "sexual psychopaths." Therefore, they do not proceed with steps which would only further crowd the state mental hospitals.

The statutes suffer from the problem of determining who is a "sexual psychopath." There is a great variation in the statutory definitions set up. Furthermore, the mental condition of sexual psychopathy is not a definite entity, even among psychiatrists and so-called experts. The conclusion of some students of the problem is that the concept of the "sexual psychopath" is too vague for judicial administrative use. See Edwin H. Sutherland's article in the *Journal of Criminal Law and Criminology*, Vol. 41, January-February, 1950.

One result of the definition difficulty is that in practical effect a "sexual psychopath" law may become only another habitual sex offender law. Something may be said for setting the limits of the "sexual psychopath" group within the group of sex offenders who have had a prior conviction; it gives an objective criterion which makes administration easier. There is some belief that even if a "sexual psychopath" law is not limited to affect sex offenders convicted twice, it at least should be limited to sex offenders convicted at least once. It was the recommendation of the New Jersey Commission on the Habitual Sex Offender on page 52 of their report that this special "sexual psychopath" type of proceeding should be limited to the situation "where there has been a conviction in a criminal court for a serious sex crime, evidencing the danger of the offender to the security of the community."

If a "sexual psychopath" law is limited in operation to second-conviction offenders, it will miss a large number of sex offenders. See the discussion in Chapter V concerning the low rate of recidivism indicated among sex offenders.

There is a wide variety in the types of persons who are being committed as "sexual psychopaths." They differ very much in the types of mental illness from which they suffer (psychotics, feeble-minded, seniles, schizoids, psychoneurotics, etc.). Also they differ very much in the types of sex behavior which they practice. In fact, the New Jersey Commission on the Habitual Sex Offender drew the conclusion on page 28 of its report that during the first six months of administration of the new law in New Jersey, "it is almost entirely the minor sex cases that are getting attention."

Nowhere is there much treatment available for the persons committed as "sexual psychopaths." See Chapter VII on treatment facilities and methods available.

CHAPTER VII TREATMENT OF SEX OFFENDERS

A. GENERALIZATIONS

Dr. David Abrahamsen has said, "Basically crime indicates that society is sick." The control of symptoms of this sickness has, in the past, been vested in legal prohibitions and punishments. This prohibitory and punitive approach to crime has not been wholly satisfactory because there is much evidence that it has not successfully reduced the problem of crime, particularly of sex crimes.

Society is turning to the medical profession. A scientific approach nonpunitive in philosophy is suggested. Special consideration of the sex deviate is demanded by a public concerned over the threat such conduct represents to individual and group security. There is a growing demand that sex offenders be "treated" and cured.

The demand for treatment of these violators has been relatively sterile because there is no unanimity of thought within the professional groups normally engaged in the treatment of personal and social ills. Within the framework of existing knowledge there are many recommendations but few conclusive or verified assertions. If real help is to be effected experimental research and evaluative studies of present methods must be established. The question as to what basic causes provoke aberrant behavior and what may be done to relieve or modify those drives must be answered.

Furthermore, society must determine the extent to which such abnormal behaviorists are to be "cured." To actually require "cure" of these individuals is to demand that they be placed in a condition medically and mentally superior and more intact than the population which supports their treatment. Realistic definitives of scope and objectives must be established.

B. TREATMENT METHODS

An eclectic review of the treatment involved in the sex patient cases includes:

1. Psychotherapy

Psychotherapy refers to the treatment of mental or other illnesses through mental suggestion or influencing the thinking of the patient.

It is done by counselling, training individual patient into some recognition of the factors responsible for his problem, some insight or understanding of the forces at work.

a. It Is Administered by Four Groups (Primarily):

Psychoanalyst: Usually a physician specializing in psychiatry utilizing techniques of psychoanalysis. The mental processes comprise two groups, one controls conscious and second the subconscious ideas and wishes. Conscious group dominates but when some break occurs in the processes behavior or mental attitudes reflect the problem. Patient is led to relate all ideas, proper and improper, thoughts, etc., up to time of