

1950

The Sexual Psychopath Laws

Edwin H. Sutherland

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Edwin H. Sutherland, The Sexual Psychopath Laws, 40 J. Crim. L. & Criminology 543 (1949-1950)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized administrator of Northwestern University School of Law Scholarly Commons.

THE SEXUAL PSYCHOPATH LAWS

Edwin H. Sutherland

The author of this article has been head of the Department of Sociology in Indiana University since 1935. Formerly he was Professor of Sociology in the University of Chicago, and still earlier in the University of Minnesota. In 1939 he was President of the American Sociological Society, and of the Sociological Research Association during 1940 to 1941.

Professor Sutherland is well known as the author of "Principles of Criminology," "Twenty Thousand Homeless Men," "White Collar Crime," and of chapters in "Recent Social Trends" and of numerous other important studies. He is a member of the Advisory Editorial Council of this JOURNAL.—EDITOR.

In recent years several states have made an effort to protect the public from "sexual psychopaths" ("persons with criminal propensities to the commission of sex offenses") by authorizing their commitment to mental institutions.¹ Implicit in these laws is an ideology which has been made explicit in an extensive popular literature.² This ideology contains the following propositions:

1. Women and children are in great danger in American society because serious sex crimes are very prevalent and are increasing more rapidly than any other type of crime. J. Edgar Hoover wrote, "The most rapidly increasing type of crime is that perpetrated by degenerate sex offenders. . . . (It) is taking its toll at the rate of a criminal assault every 43 minutes, day and night, in the United States."

2. Practically all of these serious sex crimes are committed by "degenerates," "sex fiends," or "sexual psychopaths." Wittels wrote, "Most of the so-called sex killers are psychopathic personalities. . . . No one knows or can even closely estimate how many such creatures there are, but at least tens of thousands of them are loose in the country today."

* Acknowledgment is made to the following persons for information as to the origin and operation of sexual psychopath laws: Richard L. Jenkins, Donald B. Taft, Paul W. Tappan, Walter J. Urben, and George B. Vold.

¹ Among these states are the following: California (Welfare and Inst. Code, §§5500-5516, 1939); Illinois (Rev. Stats. ch. 38, §§820-825, 1938); Massachusetts (Laws ann., ch. 123A, §§1-6, 1947); Michigan (Stats. ann., ch. 25, §28.967, 1939); Minnesota (Stats., §§52609-52611, 1945).

In 1948 the Federal Congress passed a sexual psychopath statute for the District of Columbia. Act of June 9, 1948, H.R. 6071, 1 U.S. Code. Cong. Serv. (80th cong., 2nd sess.) 361.

² J. Edgar Hoover, "How Safe Is Your Daughter?" *Amer. Mag.*, 144: 32-33, July, 1947. David G. Wittels, "What Can We Do About Sex Crimes?" *Sat. Eve. Post*, 221:30 ff., December 11, 1948. C. J. Dutton, "Can We End Sex Crimes?" *Christ. Cent.*, 54: 1594-1595, December 22, 1937. F. C. Waldrup, "Murder as a Sex Practice," *Amer. Mercury*, 66: 144-158, February, 1948. Charles Harris, "A New Report on Sex Crimes," *Coronet*, 22:3-9, October, 1947.

3. These sexual psychopaths continue to commit serious sex crimes throughout life because they have no control over their sexual impulses; they have a mental malady and are not responsible for their behavior.

4. A sexual psychopath can be identified with a high degree of precision even before he has committed any sex crimes.

5. A society which punishes sex criminals, even with severe penalties, and then releases them to prey again upon women and children is failing in its duty.

6. Laws should be enacted to segregate such persons, preferably before but at least after their sex crimes, and to keep them confined as irresponsible patients until their malady has been completely and permanently cured.

7. Since sexual psychopathy is a mental malady, the professional advice as to the diagnosis, the treatment, and the release of patients as cured should come exclusively from psychiatrists.

All of these propositions, which are implicit in the laws and explicit in the popular literature, are either false or questionable. Some of the errors in these propositions will be indicated.

How Great Is the Danger?

Sex crimes are generally divided for statistical purposes into three categories, namely, prostitution, rape, and other sex offenses. In the discussions of the present problem, prostitution is disregarded and only rape and other sex crimes are considered. Other sex crimes include indecencies with children (generally not involving intercourse), sodomy and other perversions, indecent exposure or exhibitionism, and incest.³ The cases of rape, which are estimated to number about 18,000 a year in the United States, are customarily used as an indication of the extent of the danger to women and children. This idea needs to be examined.

Rapes are divided into two categories, namely, forcible and statutory. The latter is sexual intercourse regardless of force with a female below the age of consent; the age of consent is now generally sixteen or eighteen. It is impossible to determine at present what proportion of all rapes are forcible. The Federal Bureau of Investigation reports that approximately 50 per

³ Certain psychiatrists regard almost all crimes as sex crimes; even theft, through its connection with the Oedipus Complex, is regarded as symbolic incest. Others regard crimes which have any unusually horrible features as sex crimes, as illustrated by the English murderer who drank the blood of his victims. None of the sexual psychopath laws makes explicit reference to this broad conception of sex crime.

cent of all rapes known to the police of the United States are forcible rapes. But only 18 per cent of the convictions of rape in New York City in the decade 1930-1939 were forcible rape. Because of these and other variations, the statistics of rape are very unreliable. The Committee which prepared the plans for the uniform crime reports which are now collected by the Federal Bureau of Investigation hesitated for some time before including rape as one of the crimes to be reported. The hesitation was due to the conviction that the statistics of rape would be less reliable than any other criminal statistics. On the one hand, females frequently conceal the fact of forcible rape rather than undergo the shame of publicity. On the other hand, charges of forcible rape are often made without justification by some females for purposes of blackmail and by others, who have engaged voluntarily in intercourse but have been discovered, in order to protect their reputations. Physicians have testified again and again that forcible rape is practically impossible unless the female has been rendered practically unconscious by drugs or injury; many cases reported as forcible rape have certainly involved nothing more than passive resistance. Finally, statutory rape is frequently a legal technicality, with the female in fact a prostitute and taking the initiative in the intercourse; the higher the age of consent the greater is the probability that statutory rape is a legal technicality. In any case it is absurd to include all cases of statutory rape as cases of criminal assaults by degenerates, for the preliminary reports of the Kinsey investigation of the sex behavior of the female indicate that millions of cases of statutory rape occur annually in the average state.

Since the statistics of rape are useless as an indication of the extent of the danger of serious sex crimes, another method has been used. A tabulation has been made of all cases of murders of females reported in the *New York Times* for the years 1930, 1935, and 1940, and of the proportions of these murders which were reported as involving rape. In those three years 324 females were reported to have been murdered, of which 110 were in New York City, 32 elsewhere in New York State, 56 in New Jersey, and 126 in other parts of the United States. Only 17 of the 324 murders of females were reported as involving rape or suspicion of rape. This is an average of 5.7 cases of rape-murder per year in the United States as reported in this newspaper. Of these 17 cases of rape-murder, two were reported in 1930, eleven in 1935, and four in 1940. Only 39 of the total were murders of children, and of these

twelve were reported as rape-murders—two in 1930, six in 1935, and four in 1940.

Of the 324 murders of females, 102 were reported to have been committed by husbands of the victims, 37 by fathers or other close relatives, and 49 by lovers or suitors. Thus nearly 60 per cent of the murders of females were committed by relatives or other intimate associates. Only 10 per cent were committed in connection with other crimes and all the rape-murders reported were in that group. The danger of murder by a relative or other intimate associate is very much greater than the danger of murder by an unknown sex fiend. In fact, in one of the three years as many females were reported to have been murdered by policemen—two cases, both involving drunkenness of the policemen—as by the so-called sex fiends. Also, 25 per cent of the persons who murdered females committed suicide.

While these newspaper reports are certainly not a complete record of all rape-murders, they probably include a larger proportion of such crimes than of other murders. The number of rape-murders per year is certainly greater than 5.7, but it is doubtful whether it is greater than 100 and it may be no more than 25. This is certainly a far cry from Wittels' estimate that tens of thousands of sex killers are abroad in the nation.⁴

“Other sex offenses” are generally misdemeanors. Exhibitionism and homosexuality are the most prevalent of these. Hundreds of homosexuals can be found in any large city. Few of them are arrested because their perversions are generally limited to their own kind and constitute little danger to the rest of society. Many of these perverts have good standing in society. Nearly four thousand homosexuals were discharged from the armed forces; they exceeded the average in intelligence and education, and were generally “law-abiding and hard working.”⁵ The Kinsey investigation indicated that more than fifty per cent of the males studied, who had arrived at middle age, had had some homosexual experience in their lifetimes.

Are the Serious Sex Crimes Committed by Degenerates?

The popular literature identifies sex crimes and degeneracy. Wittels writes regarding sexual psychopaths, “Such creatures,

⁴ Harris reported that Los Angeles had 24 “sex murders” in 1946. The Department of Police of Los Angeles reports that 17 of these were lovers' quarrels and only five were rape-murders. Letter from Thad F. Brown, Deputy Chief Commander, Detective Bureau, October 27, 1949.

⁵ “Homosexuals in Uniform,” *Newsweek*, 29:54, June 9, 1947. See, also, George W. Henry, “Psychogenic Factors in Overt Homosexuality,” *Amer. Jour. Psychiat.*, 93: 889-903, January, 1937.

neither sane nor insane, are responsible for most sex crimes." And Hoover uses the word "degenerate" to refer to the persons who commit the 18,000 rapes a year. When it is remembered that at least half of these rapes and perhaps more than three-fourths are statutory rape, and that millions of cases of statutory rape occur which are not reported to the police, the identification of sex crimes with psychopathy or degeneracy is absurd. The reasoning is not based on factual evidence but on the circular and fallacious argument that only degenerates can commit serious sex crimes and therefore persons who commit serious sex crimes are degenerates. Further evidence on this point will appear in subsequent paragraphs.

How Persistent Are Sex Offenders?

The sexual psychopath laws are based on a belief that persons who commit serious sex crimes have no control over their sexual impulses and will repeat their crimes again and again regardless of punishment or other experiences. A few cases of this kind, to be sure, are reported. The question is whether sex offenders differ from other offenders in their rate of recidivism. Three types of evidence indicate that sex offenders have a low rate of recidivism compared with other offenders.

The Federal Bureau of Investigation reports on twenty-five types of crimes as to the proportion of persons arrested in a year who had previous criminal records. The drug addicts have the largest proportion of previous convictions and stand first in recidivism in the list of twenty-five types of crimes; larceny is second, vagrancy third, drunkenness fourth, and burglary fifth. Rape, on the other hand, is nineteenth—almost at the bottom of the list and "other sex offenses" ties for seventeenth rank.⁶ Moreover, the previous criminal records in the rankings above include all types of former crimes. If the previous record is restricted to sex crimes we find, for instance, that of 1447 males arrested in 1937 for rape only 5.3 per cent had previous convictions of rape. This is a much lower rate of recidivism in the same type of crime than the average for all other crimes.

The New York City Committee for the Study of Sex Offenses concluded from its study that sex offenders tend to be first offenders as compared with those who commit other crimes. In a study of all sex offenders in New York City in the decade 1930-1939 this Committee found only six recidivists who had been convicted twice of sex felonies and none more than twice.

⁶ These ranks differ slightly from year to year. The ranks reported above are for the year 1937, which was a typical pre-war year; they refer to the male sex only.

It found that of 555 persons convicted of sex crimes in 1930, only 31 or 5.5 per cent, were convicted of sex crimes, either felonies or misdemeanors, during the next twelve years; two were convicted three times each, four twice, and the others only once.⁷ The sex offenders with the highest rate of recidivism have generally been the exhibitionists and not the persons who commit violent sex crimes.

The third type of evidence as to the rate of recidivism of sex offenders is provided in a special study of juvenile delinquents before the juvenile court of New York City. Of 108 boys accused of sex offenses only, three had subsequent appearances for delinquencies and none of these delinquencies was a sex offense; of 148 boys with miscellaneous offenses (including sex offenses combined with other offenses) 109 had subsequent criminal records.⁸

These three types of evidence demonstrate that if specialized procedures based on recidivism are to be provided, the sex offenders should be almost the last group for consideration. The rebuttal may be made to the preceding argument that even if the number of serious sex crimes is small and is not increasing and even if those who commit serious sex crimes are seldom recidivists, yet some sex offenders do persist in sex crimes and these, who are called sexual psychopaths, constitute a serious danger to women and children. This raises the fundamental question of the definition and identification of the sexual psychopath.

Who Is a Sexual Psychopath?

The laws which have been enacted regarding sexual psychopaths generally contain two elements in their definitions of sexual psychopaths. The first of these is an overt act⁹ and the second is a particular state of mind. The mental state is variously defined. The law of the District of Columbia defines it as "lack of power to control his sexual impulses." The laws of Minnesota and Wisconsin define it as "emotional instability or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of such conditions."

The relation of the overt act to the mental state is defined in the several laws in two different ways. In the first definition the mental state is to be determined from the overt sex crimes.

⁷ New York, Report of Mayor's Committee for the Study of Sex Offenses, pp. 92-95.

⁸ L. J. Doshay, *The Boy Sex Offender*, New York, 1943, Chs. 9-12.

⁹ In some laws "propensity to sex crimes" is substituted for the overt act.

The law of Massachusetts defines sexual psychopaths as "those persons who by an habitual course of misconduct in sexual matters have evidenced an utter lack of power to control their sexual impulses." And the law of the District of Columbia states "The term 'sexual psychopath' means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons." Such definitions state explicitly that anyone who commits several serious sex crimes is a sexual psychopath; a finger-print record is the only evidence needed for diagnosing an offender as a psychopath and the services of psychiatrists are not needed.

This identification of an habitual sex offender as a sexual psychopath has no more justification than the identification of any other habitual offender as a psychopath, such as one who repeatedly steals, violates the antitrust law, or lies about his golf score. The psychiatrists would almost unanimously object to this definition. They do, however, often accept an equally mechanical definition which is not stated in the laws. This is the proposition that the human being has a normal course of development in sexual behavior, with the following stages appearing successively from infancy onward: polymorphous perverse, narcissistic, homosexual, and heterosexual. According to this proposition a person's sexual behavior, without reference to anything else, will reveal his general stage of development of personality, and his personality can be diagnosed from his sexual behavior. Homosexuality, for instance, is regarded as evidence of the arrest of personal development in the pre-adolescent period and exhibitionism as regression to infancy and both are regarded as pathologies of personality.¹⁰ The absurdity of this theory should be evident to anyone who has an acquaintance with the variations in sexual behavior and sexual codes throughout the history of mankind; practically all of the present sex crimes have been approved behavior for adults in some society or other. Similarly within our society deviant cultures with reference to sex behavior prevail in sub-groups. The manner in which juveniles are inducted into the cultures of these sub-groups in the toilets of schools, playgrounds, and dormitories, as well as in other places, has been shown in many research reports on juvenile sex behavior.¹¹

¹⁰ This idea is stated with few qualification by Beatrice Pollens, *The Sexual Criminal*, New York, 1938, Ch. 3.

¹¹ Esther Richards, "Dispensary Contacts with Delinquent Trends in Children: Twenty-nine Cases of Abnormal Sex Trends in Children," *Mental Hygiene*, 9: 314-339, April, 1925. Raymond W. Waggoner and D. A. Boyd, "Juvenile Aberrant Behavior," *Amer. Jour. Orthopsych.*, 11: 275-291, April, 1941.

The second definition of the relation of the overt act to the mental state makes these two elements coordinate. According to this conception the sexual psychopath is a person whose misconduct consists wholly or partially of violations of the sex code but whose personality can be diagnosed as psychopathic independently of his sexual behavior. However, the Minnesota statute, which makes these two elements coordinate, has been upheld in the Supreme Court on the argument that the psychopathic state is to be revealed by the overt sexual behavior.¹² This interpretation of the law makes the second definition identical with the first and the law becomes merely an habitual sex offenders act.

Wittels makes the unqualified statement, "Psychopathic personality can easily be detected early in life by any psychiatrist."¹³ Any person at all familiar with psychiatric literature knows that scores of psychiatrists have deplored the use of this concept because of its lack of definite criteria. The vagueness of the term is indicated by the fact that under the administration of one psychiatrist 98 per cent of the inmates admitted to the state prison of Illinois were diagnosed as psychopathic personalities, while in similar institutions with other psychiatrists not more than five per cent were so diagnosed. Of the sex offenders diagnosed by the Psychiatric Clinic of the Court of General Sessions in New York City, 15.8 per cent were reported to be psychopathic, while of sex offenders diagnosed by psychiatrists in Bellevue Hospital in New York City 52.9 per cent were diagnosed as psychopathic.¹⁴

The most careful investigations of the concept of the psychopath have been made by Cason. He found 202 terms which have been used as more or less synonymous with the term "psychopath."¹⁵ He condensed these into 54 traits which are generally held to characterize the psychopath. From 101 psychopathic inmates of the Psychopathic Unit in the Federal Medical Unit at Springfield, Missouri, he selected two groups—the 23 least psychopathic and the 29 most psychopathic—on the basis of the number of their behaviors which are characterized as psychopathic. He found that 46 of the 54 traits had no

¹² *State ex rel Pearson v. Probate Court of Ramsay County et al.*, 205 Minn. 545, 287 N.W. 297 (1939), 309 US 270 (1940).

¹³ The terms "psychopath," "psychopathic personality," and "constitutional psychopathic inferior" are used somewhat interchangeably, although the last mentioned is being abandoned because of its connotation regarding the constitution.

¹⁴ Jack Frosch and Walter Bromberg, "The Sex Offender—A Psychiatric Study," *Amer. Jour. Orthopsych.*, 9: 761-776, October, 1939. B. Apfelberg, C. Sugar, and A. Z. Pfeffer, "A Psychiatric Study of 250 Sex Offenders," *Amer. Jour. Psychiat.*, 100: 762-770, May, 1944.

¹⁵ Hulsey Cason, "The Psychopath and the Psychopathic," *Jour. Crim. Psychopath.*, 4: 522-527, January, 1943.

statistical significance in differentiating the most psychopathic from the least psychopathic, and of the eight remaining traits six were just barely significant. With the exception of the two traits—intolerance and making threats—the traits which are generally regarded as characterizing the psychopaths were not as useful in differentiating the most psychopathic from the least psychopathic as were the facts that a person was born in the Eastern states, had engaged in farming, or had violated the Dyer Act against automobile theft. In general, he concluded that the saint is at one extreme and the psychopath at the other, and that a person can be diagnosed as a psychopath “if he has a reasonable number of these symptoms in a fairly pronounced form.”¹⁶ This appears to equate the psychopath and the sinner.

Also, Cason and Pescor analyzed the records of 500 prisoners in the Medical Center who had been diagnosed as psychopathic and compared them with the records of all federal prisoners. They found that the psychopathic prisoners were very much concentrated in the age group 20-29 in comparison with federal prisoners and with the civilian population. This is extremely significant, for it indicates either that people cease to be psychopathic after they pass the age of thirty or else that psychopathic persons cease to commit federal crimes. Moreover, 63 per cent of those prisoners who had been discharged an average of 19.2 months had no subsequent criminal record with the Federal Bureau of Investigation; of those who had some supervision after release 71 per cent had no subsequent criminal records. Also, 39 per cent of the psychopaths were reported as obedient and well-behaved as children, and an additional 22 per cent as obedient but inclined to get into mischief or trouble.¹⁷

The conclusion from this analysis of the concept of the sexual psychopath is that it is too vague for judicial or administrative use either as to commitment to institutions or as to release as “completely and permanently cured.” According to the laws of most of the states the court must rely on two psychiatrists for decisions as to sexual psychopathy. The psychiatrists have no diagnostic instruments or criteria by which to arrive at demonstrable conclusions on this question; they are expected to make expert judgments on questions on which neither they

¹⁶ Hulse Cason, “The Symptoms of the Psychopath,” *Public Health Reports*, 61: 1833-1853, December 20, 1946. See also, “The Characteristics of the Psychopath,” *Amer. Jour. Psychiat.*, 100: 762-770, May, 1944.

¹⁷ Hulse Cason and M. J. Pescor, “A Statistical Study of 500 Psychopathic Prisoners,” *Public Health Reports*, 61: 557-574, April 19, 1946. See, also, by the same authors, “A Comparative Study of Recidivists and Non-Recidivists among Psychopathic Federal Offenders,” *Jour. Crim. Law and Criminol.*, 37: 236-238, September, 1946.

nor others are qualified to speak as experts. The criterion of "irresistible impulse" which is implicit in the laws cannot be applied in practice.¹⁸

The inadequacy of the concept of sexual psychopath has been recognized by leading psychiatrists and others. Dr. Winfred Overholser, superintendent of St. Elizabeth's Hospital, stated, "Before the law can be expected to recognize this group (sexual psychopaths) as calling for specialized treatment, it will be necessary for psychiatrists to come to a better agreement on the delimitations of the group."¹⁹ Similarly, Dr. A. Warren Stearns, a psychiatrist who was at one time director of the Massachusetts Department of Correction, stated regarding sexual crimes, "The definition of these crimes and the classification of the persons who commit them present very serious administrative problems. For the present it is perhaps wiser to administer existing laws carefully."²⁰ The British Joint Commission on Sex Offenses stated "Owing to the difficulties of legal and medical definition, it is not practicable to press effectively at this stage for special provisions for the detention and treatment, as such, of convicted persons suspected of abnormal mentality who are not certifiable either as insane or as mentally defective."²¹

The lack of precision in the concept of the sexual psychopath is especially dangerous in view of the emotions which are aroused by sexual crimes. In the hysteria which results many crimes are committed in the name of justice. The hysteria is illustrated by the fact that during a so-called wave of sex murders in California nearly a dozen men confessed to one sex murder which had been committed by one and only one man. The crimes committed in the name of justice are illustrated by the case of James Montgomery. He was convicted of rape in 1924 and held in the state prison of Illinois until 1949, when the decision against him was reversed on the ground that the evidence in the medical report that no rape had been committed was suppressed in the original trial.²² The dangers of this law, moreover, threaten every person. It is not necessary in many states that a person be convicted of a sexual crime; it is sufficient to diagnose his personality. Also, in many states the states attorney or any other person may

¹⁸ Jess Spierer, "The Psychology of Irresistible Impulse," *Jour. Crim. Law and Criminol.*, 33: 457-462, March, 1943.

¹⁹ "Legal and Administrative Aspects," *Mental Hygiene*, 22: 20-24, January, 1938.

²⁰ "Sexual Crime," *Jour. Maine Med. Assoc.*, 37: 249 ff., October, 1946.

²¹ Quoted by I. S. Wile, "Society and the Sex Offender," *Survey Graphic*, 26: 569-572, November, 1937.

²² *Time*, August 22, 1949, pp. 14-15.

ask for an investigation as to the sexual psychopathy of any person. According to the laws of at least one of these states the person who has been investigated and found not to be a sexual psychopath may not bring suit for damages against the person who initiated the investigation, regardless of the injury that he has suffered.²³ Furthermore, a person who is found to be a sexual psychopath may be confined, as irresponsible, in a state hospital and may also be punished, as responsible, by confinement in a state prison.

Although these sexual psychopath laws are dangerous in principle, they are of little importance in practice. They are never used in some states and seldom used in the others. Only 16 persons were confined under this law in Illinois during the ten years after its enactment.²⁴ The number of cases under the Minnesota law decreased from about 35 in the first year after its enactment to about 10 per year at the end of the ten-year period; moreover, most of those confined under this law were charged with homosexuality and were released after a few months.²⁵ During the first four years under the Michigan law of 1939, 99 persons were committed as sexual psychopaths; and of these 29 were released on parole or by court order by the end of that period.

Several reasons have been suggested for the failure to use these laws. One is that the laws were passed in a period of panic and were forgotten after the emotion was relieved by this action. A second reason is that the state has no facilities for the care and custody of sexual psychopaths; the state hospitals are already crowded with psychotic patients. A third reason is that the prosecutor and judge, anxious to make records as vigorous and aggressive defenders of the community, favor the most severe penalty available and are unwilling to look upon serious sex criminals as patients. They use the sexual psychopath laws only when their evidence is so weak that conviction under the criminal law is improbable. Finally, it is reported that defense attorneys have learned that they can stop the proceedings under this law by advising their clients to refuse to talk to the psychiatrists. The psychiatrists can make no diagnosis if those who are being investigated refuse to talk. Threats of contempt of court have been made in such cases and the law of the District of Columbia explicitly provides that refusal to talk to the psychiatrist is contempt of court.

²³ Wis. Stats. (1947) ch. 51.37(7).

²⁴ Newton Minow, "The Illinois Proposal to Confine Sexually Dangerous Persons," *Jour. Crim. Law and Criminol.*, 40: 186-187, July, 1949.

²⁵ Minnesota, Annual Reports of Bureau of Criminal Apprehension.

Aside from the fact that a person can well afford to be punished for contempt of court rather than be confined for an indeterminate period as a sexual psychopath, a psychiatric diagnosis made under threat of punishment can have no validity from a medical point of view.

In view of the slight use which has been made of these laws, their effect on sex crimes should not be expected to be appreciable. The reports of the Federal Bureau of Investigation show that in the four states which enacted sexual psychopath laws in 1938-1939—California, Illinois, Michigan, and Minnesota—the trend in rape rates was the same after the enactment of the laws as it was in adjoining states which had not enacted such laws. These statistics have little significance in view of the slight relation between rape and the crimes for which persons may be confined under the sexual psychopath laws, but no other evidence of the effects of these laws is available.

Certain psychiatrists have stated that they are interested in the sexual psychopath laws principally as a precedent; they believe that all or practically all criminals are psychopathic, that all should be treated as patients, and that psychiatrists should have a monopoly on professional advice to the courts. These laws are dangerous precisely from this point of view; they could be passed over in silence otherwise, as a product of hysteria. The question is whether psychiatrists have a monopoly of knowledge of human personality and human behavior which warrants their nomination as "the experts" in the field of diagnosis and treatment of criminals.

Other disciplines, such as psychology, social work, and sociology, have as much training as does psychiatry, and have points of view, hypotheses, and techniques which should be used, together with psychiatry, in the diagnosis and treatment of sex offenders and other offenders. At many points the theories of one of these disciplines are in conflict with the theories of the other disciplines and one has as much scientific validity as the other. Moreover, the question of importance is not whether an offender has a low I. Q. or unstable emotions, but how this trait is related to the violation of the law and to a process of rehabilitation. There is no more reason for turning over to the psychiatrist the complete supervision of a criminal who is found to be psychopathic than for turning over to the dentist the complete supervision of a criminal who is found to have dental cavities. If the official agencies of the state are to use professional advice, the advisors should represent all the branches of knowledge and should be on an equal footing.