

1957

Sexual Psychopathy—A Legal Labyrinth of Medicine, Morals, and Mythology

Domenico Caporale

University of Nebraska College of Law

Deryl F. Hamann

University of Nebraska College of Law

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Domenico Caporale and Deryl F. Hamann, *Sexual Psychopathy—A Legal Labyrinth of Medicine, Morals, and Mythology*, 36 Neb. L. Rev. 320 (1957)

Available at: <https://digitalcommons.unl.edu/nlr/vol36/iss2/5>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Comments

Sexual Psychopathy—A Legal Labyrinth of Medicine, Morals and Mythology

In 1949, the Nebraska Legislature crystallized the public concern over sex offenders by adopting a Sexual Psychopath Statute.¹ In so doing, Nebraska joined a trend which has grown to include about half of the forty-eight states.² The Statute embodies the theory that the sex offender presents a medical, as well as a legal, problem. Such legislation is predicated on the theory that the sex offender can be recognized and treated³ and that therefore he should be in a mental hospital rather than in a prison.⁴ The Nebraska Statute provides that a person found to be a sexual psychopath may be committed to a state hospital for an indefinite period of time. Elaborate procedural safeguards were provided in the face of the extended periods of confinement which may accompany such commitment.⁵ It is the purpose of this article to assess the impact of the

¹ Neb. Rev. Stat. §29-2901 et seq. (Reissue 1956).

² See California Dept. of Mental Hygiene and The Langley Porter Clinic, California Sexual Deviation Research 41-58 (March 1954) for a synopsis of the sexual psychopath laws of twenty-three states and the District of Columbia. (Hereinafter cited as California Sexual Deviation Research.)

³ Reinhardt and Fisher, The Sexual Psychopath and the Law, 39 J. Crim. L., C. & P.S. 734, 741 (1949).

⁴ Report of the Committee on Crime and Delinquency Prevention, 28 Neb. L. Rev. 215, 219 (1949).

⁵ Neb. Rev. Stat. §§ 29-2902-04 (Reissue 1956). The petition charging sexual psychopathy must be verified by a person with knowledge of the facts. The defendant has an absolute right to counsel. The findings of the court-appointed physicians must be served on the defendant's counsel and the physicians are subject to cross-examination. The trial is by jury unless waived. The burden of proof is on the state to show that the individual is a sexual psychopath beyond a reasonable doubt. Except that evidence of prior conduct is admissible, and that the question is whether the defendant is a sexual psychopath, the trial procedure is the same as in criminal cases.

Statute in Nebraska and to determine if it is meeting those problems which it set out to solve.

Current indications point to some dissatisfaction with the Statute. Recent efforts have been made to broaden the definition of a sexual psychopath.⁶ At the 1955 session of the legislature, a measure designed to facilitate commitments was adopted.⁷ Moreover, there is evidence of a feeling within certain segments of the public that still further measures need be taken to "put away" sex offenders.⁸ At the same time, however, the reports of the Nebraska Bar Association indicate a shift of emphasis within the legal profession. The Committee on Crime and Delinquency Prevention in 1948 and 1949 was chiefly concerned about the increase in sex crimes and the need for new laws to protect society from the sex offender.⁹ In 1955, however, this Committee's report indicates that the legal profession thinks some of the clamor over sex offenses may be due to "hysteria."¹⁰ This report places more emphasis on the duty of the legal profession to maintain perspective and balance, not only recognizing the need of punishing or treating sex offenders, but also emphasizing the necessity of protecting individual rights.¹¹

Against such a background, this comment was undertaken to set out concisely the problems arising under the Statute. A great deal of the research material upon which this report is based was gathered from primary sources, such as the hospital files of individuals committed as sexual psychopaths, personal interviews with county attorneys involved in handling commitment procedures, and penitentiary records. The information gained from these and other sources is set out in four sections: (1) Identifying the Sexual

⁶ See L.B. 84 and 85, Neb. Legis. 67th Sess. (1955).

⁷ Neb. Laws c. 107, § 1 (1955); see Statement of Judiciary Committee on L. B. 542, Neb. Legis. 67th Sess. (April 21, 1955).

⁸ The Lincoln Journal, Jan. 14, 1956, p. 2, col. 2; Evening World Herald (Omaha), Feb. 27, 1956, p. 14, col. 1; Sunday World Herald (Omaha), Feb. 26, 1956, p. 12-B, col. 1. It is reported that the city of Omaha has been urged to adopt a city ordinance providing for treatment of sex offenders; The Lincoln Journal, Mar. 19, 1956, p. 14, col. 3.

⁹ Report of the Committee on Crime and Delinquency Prevention, 28 Neb. L. Rev. 215, 219 (1949); Report of the Committee on Crime and Delinquency Prevention, 29 Neb. L. Rev. 192, 193 (1950).

¹⁰ Report of the Committee on Crime and Delinquency Prevention, 35 Neb. L. Rev. 166, 167 (1956).

¹¹ Ibid.

Psychopath; (2) Commitment; (3) Treatment; and (4) Release.¹²

I. IDENTIFYING THE SEXUAL PSYCHOPATH

A sexual psychopath as defined in the Nebraska Statute is "... any person who, by a course of misconduct in sexual matters, has evidenced an utter lack of power to control his sexual impulses and who, as a result, is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his uncontrolled and uncontrollable desires."¹³ It should be pointed out at the outset that "sexual psychopath" has no specific medical meaning. There is serious doubt as to whether the term has any medical meaning at all. Authoritative statements are found to the effect that the term has no meaning; to wit:

The diagnosis of psychopathic personality is a convenience in the institutional practice of psychiatry . . . Psychopathic personality satisfies the necessity which is felt to give each patient a label diagnosis . . . Psychiatrists share with other physicians a reluctance to label a patient "undiagnosed."

Psychopathy does not refer to a specific behavioral entity. It serves as a scrap-basket to which is relegated a group of otherwise unclassified personality disorders and problems.¹⁴

Otherwise stated:

. . . Psychopathic behavior is relative to the culture in which it flourishes and can be measured by no other rule than that of the prevailing ethic and morality. So in a society where total abstinence is mandatory—as among the Brahmins of India—a sign of psycho-

¹² The data concerning the sexual behavior, commitment procedures and the criteria determining release policies were compiled from the records of the state hospitals. The study of persons committed to the Lincoln State Hospital was completed on Nov. 30, 1955. The studies at the Norfolk and Hastings State Hospitals were completed on Jan. 31, 1956, and Feb. 2, 1956, respectively. Any individuals who may have been committed after the above dates are not included in this article. A personal search of the files for these records was made at the Lincoln State Hospital, while records of individuals committed to the Hastings and Norfolk State Hospitals were provided by hospital personnel.

The records of the clerks of the District Courts of Douglas and Lancaster Counties on individuals committed were studied. Twenty-six of the forty-one persons committed under the provisions of the Statute are from Douglas or Lancaster Counties. Because of the limitations of time and funds, no effort was made to make a similar study in the twelve other counties which have committed persons as sexual psychopaths. The article must be read with this limitation in mind.

¹³ Neb. Rev. Stat. § 29-2901 (Reissue 1956).

¹⁴ Guttmacher and Weihofen, *Psychiatry and the Law* 111 (1st ed. 1952); cf. Tappan, *Some Myths about the Sex Offender*, Fed. Prob. 7, 9 (June 1955).

pathy would be inebriation: and, among the prostitute priestesses of Astarte, the persistent continence of a beauteous devotee consecrated to the distribution of erotic favors would indicate a psychopathic trend. In short, psychopathy is a disorder of behavior which effects the relationship of an individual to the social setting.¹⁵

Designated as a "catch-all" diagnosis,¹⁶ a vague term representing a vague concept,¹⁷ it is not surprising to find that there are recommendations against using the term in statutory language.¹⁸ The latest medical nomenclature excludes the term "psychopathic personality" entirely.¹⁹

How, then, is the sexual psychopath defined?

There are essentially two elements to the statutory definition of the sexual psychopath. The first element constitutes a series of facts, i.e., an utter lack of control of sexual impulses. The second broad element is comprised of a prediction that the individual, because of his utter lack of power to control, is likely to attack or otherwise inflict injury, loss, pain or other evil. Questions arise as to what constitutes sexual misconduct, what degree of frequency and persistency constitutes a *course* of conduct, and what is the loss or injury referred to in the Statute. Applying the statutory definition requires a mixture of moral, legal and medical considerations. To meet these questions, the Statute provides that two physicians with special training in mental diseases give advice to the court,²⁰ but the final decision rests with the court or the jury.

A. MISCONDUCT

What type of conduct constitutes "misconduct in sexual matters"? The Statute gives no definition of this phrase. It could obviously encompass a wide range of sexual practices. The language used in the Nebraska Statute comes from an opinion of the Minnesota Supreme Court which originally formulated the definition.²¹

¹⁵ Lindner, *Rebel Without a Cause, The Hypnoanalysis of a Criminal Psychopath* 1 (1944).

¹⁶ Greenacre, *Trauma, Growth, and Personality* 165 (1st ed. 1952).

¹⁷ Guttmacher and Wiehofen, *op. cit. supra* note 14, at 86, 87.

¹⁸ Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry Report No. 9, *Psychiatrically Deviated Sex Offenders* (May 1949, Revised, Feb. 1950).

¹⁹ Fahr, *Iowa's New Sexual Psychopath Law—An Experiment Noble in Purpose?* 41 *Iowa L. Rev.* 523, 534 (1956).

²⁰ Neb. Rev. Stat. § 29-2902 (Reissue 1956).

²¹ *Minnesota ex rel. Pearson v. Probate Court*, 205 Minn. 545, 555 (1939); 287 N.W. 297, 302 (1939).

That Court was of the opinion that it would not be reasonable to apply the provisions of the definition to every person whose conduct was contrary to the accepted norms of sexual activity, nor to those having strong sexual propensities.²² The Court indicated a much more restricted application, encompassing only those sexually irresponsible persons who were dangerous to others. This restricted view was approved by the United States Supreme Court which stated that the class of persons designated as sexual psychopaths consisted of those who were a dangerous element in the community.²³

There can be little doubt that individuals who seduce children or who use physical violence in their sexual activities are to be considered dangerous. But there is a question as to whether persons who practice homosexuality with adults of like desires and who do not proselytize among children present a danger to the community.²⁴ Similarly, those who practice exhibitionism create a repulsive situation, but it has been questioned that they are sufficiently dangerous to justify indefinite commitment.²⁵

It is not clear whether, under the Nebraska Statute, such activities as exhibitionism and consensual homosexual relations between adults are to be considered "misconduct in sexual matters." The application of the Nebraska Statute apparently varies from county to county, giving rise to an inference that a difference of opinion exists among county attorneys on this point. To illustrate the application of the Nebraska Statute, the nature of the sexual behavior of the forty-one persons committed under the Statute has been

²² *Ibid.*

²³ *State ex rel. Pearson v. Probate Court*, 309 U.S. 270, 275 (1940).

²⁴ Model Penal Code 276 (Tent. Draft No. 4, 1955). The Reporters and the Advisory Committee of the American Law Institute approved the exclusion of consensual homosexual relations among adults from criminal punishment. The fundamental question concerning the right of a person to be protected from state interference in his personal affairs when he is not hurting others was raised. The Council of the Institute, however, voted in favor of criminal punishment. Two reasons for retaining the criminal sanctions were given by the Council: (1) that although the Reporters' position was the rational one, it would be unacceptable to the American legislatures and would prejudice the acceptance of the Code generally; (2) that homosexuality is a cause or symptom of moral decay in a society and should be repressed by law.

²⁵ Ellis, *Psychology of Sex* 197 (2d ed. 1946); see California Sexual Deviation Research 22.

broken down into six classifications.²⁶ All persons committed, incidentally, have been males. The classifications are as follows:

1. Those persons committed solely for practicing consensual homosexual activities with partners eighteen years of age or over;
2. Those persons committed for acts of exhibitionism;
3. Those persons committed for sexual activities with partners of either sex thirteen to eighteen years of age;²⁷
4. Those persons committed for sexual activities with partners of either sex under thirteen years of age.
5. Those persons committed for sexual activities involving the use of force; and
6. Those persons committed for acts of incest.

Table I

This table shows the sexual behavior of persons committed under the provisions of the Statute and the counties from which they were committed.

County	Consensual Homosexuality	Exhibitionism	With Persons 13-18	With Persons Under 13	With Force	Incest	Total
Douglas	0	6	5	6	1	0	18
Lancaster	1	0	2	4	1	0	8
Lincoln	1	1	0	2	0	0	4
Antelope	0	0	1	0	0	0	1
Buffalo	0	0	0	1	0	0	1
Dawson	0	0	0	0	0	1	1
Dodge	0	0	0	0	1	0	1
Hall	0	0	0	0	1	0	1
Kearney	0	0	0	1	0	0	1
Madison	1	0	0	0	0	0	1
Morrill	0	0	0	1	0	0	1
Saunders	0	1	0	0	0	0	1
Thayer	0	0	0	0	1	0	1
Washington	0	0	1	0	0	0	1
Totals	3	8	9	15	5	1	41

²⁶ The particular classifications were chosen for a variety of reasons. First, the separation of those practicing adult consensual homosexuality were separated due to the difference of opinion within the American Law Institute. See note 24 *supra*. The exhibitionist was separated because of the positions taken by Bowman and Ellis. See note 25 *supra*. The distinction in age classifications was made at age eighteen on the basis of the Nebraska statutory provisions on the age of consent in relation to statutory rape. Neb. Rev. Stat. § 28-408 (Reissue 1956). The further breakdown at age thirteen was an arbitrary distinction to distinguish between those who molested young children from those who molested older children.

²⁷ Some of these persons may also have had sexual contact with persons over age eighteen, but all participated in sexual activity involving persons between age thirteen and eighteen. None in this classification molested children under age thirteen.

It will be noted that of the three commitments based on a history of consensual homosexual activity, none have occurred in Douglas County, the state's most populous county. This may be the result of fortuitous circumstances, but a reasonable inference can be drawn that this activity exists and is not considered there to be "sexual misconduct" within the meaning of the Statute. On the other hand, Douglas County has committed six exhibitionists, while Lancaster County, the state's second most populous county, has committed none. The same inference would apply here in relation to Lancaster County's view towards exhibitionism as being misconduct under the Statute.

More than half the total commitments were for acts of sexual misconduct involving persons under age eighteen. Such sexual misconduct was probably a major reason for the original proposal of the Statute.²⁸ Both Douglas and Lancaster Counties, as well as other less populated counties, have committed persons under the provisions of the Statute for such acts.

Only five of the forty-one persons committed to the state hospitals as sexual psychopaths had demonstrated patterns of sexual conduct involving the use of force. In at least one of these five cases, no force was used in the performance of the act which led to commitment. One author has said that Nebraska's Statute was enacted as the result of a forceful sexual assault which produced public concern.²⁹ It has been said generally that such laws are the result of "panic" over a few serious sexual assaults.³⁰ With only about twelve per cent. of the individuals committed being in this class, it appears that in application the Statute transcends this *raison d'être*.

B. COURSE OF CONDUCT

The element next to be considered is that of the behavior pattern which constitutes the *course* of misconduct under the Nebraska Statute. As with *misconduct*, there is no amplification within the Statute of what is meant by *course*. There is, however, an indication by the legislature that a liberal interpretation should be given to this element, suggesting that the number and frequency of the acts which may constitute a course need not be too great. As originally enacted, the Statute brought within its purview only those indi-

²⁸ 22 Neb. Legis. Council Rep. 38 (1948).

²⁹ Comment, 29 Neb. L. Rev. 506 (1950).

³⁰ Sutherland and Cressey, Criminal Law and Criminology 127 (5th ed. 1955).

viduals who evidenced an *habitual* course of misconduct in sexual matters. The word *habitual* was deleted by the 1955 legislature.³¹ In analogous contexts, habitual has been interpreted to mean a frequent practice of an established pattern of behavior requiring something more than occasional or sporadic acts.³² But a course of misconduct also has been held to require *continuous* practice.³³ Judicial interpretations of the two phrases imply that no substantial change was wrought by the deletion of the word *habitual*. The records of those committed before and after the change further bear this out in that no perceptible change in the application of the Statute has resulted since the change.³⁴

To determine what application is given to *course* in Nebraska, hospital files of those committed under the Statute were reviewed to determine the behavior patterns which lead to commitment. These files included statements by the individual, police and F.B.I. reports, and hospital social service reports. The courts making the commitment may have had more or less information available on the previous conduct of the person alleged to be a sexual psychopath,³⁵ but the hospital files may fairly be expected to be complete as they are drawn up subsequent to the commitment and serve as a basis for admission and treatment of the individual. The following table gives an indication of the number of acts of alleged misconduct which preceded commitment.

³¹ Neb. Laws c. 294, p. 999 (1949); amended to strike the word "habitual" effective September 13, 1955; Neb Laws c. 107, p. 292 (1955).

³² The most analogous is the Texas crime of adultery by habitual carnal intercourse. Habitual is a word of common acceptance, not of technical meaning; *Hilton v. State*, 41 Tex. Crim. 190, 53 S.W. 113 (1899). The cases have made the following decisions on the word. Sporadic or occasional acts, while perhaps offensive to the moral law are not habitual carnal intercourse; *Lara v. State*, 153 Tex. Crim. 84, 217 S.W.2d 853 (1949). Two acts of intercourse on one occasion do not constitute habitual carnal intercourse; *Krolczyk v. State*, 125 Tex. Crim. 434, 69 S.W.2d 83 (1934). Two or three acts do not constitute habitual acts; *Hafley v. State*, 88 Tex. Crim. 51, 224 S.W. 1099 (1920) (dictum). Nine specific acts between Aug. 15 and Dec. 25 is not habitual carnal intercourse; *Cordil v. State*, 83 Tex. Crim. 74, 201 S.W. 181 (1918) (semble). Six acts in seven months do not constitute habitual acts; *Boswell v. State*, 48 Tex. Crim. 47, 85 S.W. 1076 (1905) (semble). Four or five instances in one month do not constitute habitual carnal intercourse; *Collins v. State*, 46 Tex. Crim. 550, 80 S.W. 372 (1904) (dictum).

³³ *Dyer v. Dyer*, 166 Pa. Super. 520, 72 A.2d 605 (1950) (dictum); *Workentin v. Kleinwachter*, 166 Okla. 218, 27 P.2d 160, 165 (1933) (dictum).

³⁴ Thirty-five of the forty-one persons committed under the Statute were committed prior to the time the word *habitual* was deleted.

³⁵ Limitations of time and funds made it impossible to obtain transcripts of the court proceedings.

Table 2

This table indicates the number of persons committed and the frequency of their previous alleged sexual misconduct as evidenced by statements in hospital records, arrests and convictions. Thus, the number "6" under the category of "arrests" in the column headed "2 Acts" indicates that six persons committed had a record of two arrests for sexual misconduct.³⁶

	None	1 Act	2 Acts	3 Acts	4 Acts	More Than 4 Acts
Hospital Records	0	1	6	6	1	27
Arrests	3*	16	6	9	5	2**
Conviction	24***	8	6	2	0	1****

* In three cases, the records were not clear as to whether there were any arrests, but appeared to indicate there were none.

** In two instances, the records were not clear, but appeared to indicate numerous arrests.

*** In two instances, the records were not clear, but appeared to indicate no convictions.

**** In one instance, the record was not clear, but appeared to indicate numerous convictions.

Presuming that the committing courts had substantially the same information to consider as is revealed in the hospital files, it appears that a very liberal interpretation is given *course* as used in the Sexual Psychopath Statute. About one-third of those committed had three or less acts of alleged sexual misconduct evidenced in their records. It is rather difficult to comprehend how so few acts can be held to show a *continuous* practice, much less a pattern which exhibits more than occasional or sporadic acts as *habitual* has been interpreted in the Texas statute applying to "habitual carnal intercourse."³⁷ While the various elements of the statutory definition have been fragmentized here for detailed consideration, the context in which these words are found must be considered. This course of conduct is "to evidence an utter lack of power to control sexual impulses," in the words of the Statute. Thus, the context in which the element of *course* is found lends weight to strict interpretation of the word. Moreover, language used by the United States Supreme Court in *Minnesota ex rel. Pearson v. Probate Court* may be read to mean that too loose an interpretation of these elements may push such applications beyond the

³⁶ All figures include the alleged act immediately preceding and leading to commitment.

³⁷ Supra note 32.

bounds of constitutionality by failing to distinguish adequately the class to which such statutes apply.³⁸

The sources of information revealing alleged acts of sexual misconduct are divided in the table above into hospital records, arrests and convictions. The small proportion of persons committed who had records of convictions indicates merely that if the Statute hinged commitment on prior convictions for sexual offenses, its application would be severely restricted.

C. LIKELIHOOD TO ATTACK

The remaining element to be considered under the statutory definition of the sexual psychopath is that of prediction. The Statute encompasses the prediction by stating that one who is a sexual psychopath "has evidenced an utter lack of power to control his sexual impulses and who, as a result, is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his uncontrolled or uncontrollable desires." It is from past behavior that the Statute contemplates such a prediction is to be made.³⁹ It is doubtful that reasonably accurate predictions of a likelihood to attack can be made even where an attack has been made in the past.⁴⁰ It is still more doubtful that a likelihood to commit a serious sex crime can be inferred from previous, less dangerous sexual misconduct. Guttmacher and Weihofen have stated that "... a graduation from minor offenses, such as exhibitionism, to major offenses, such as forced rape, is almost unknown."⁴¹ The histories of those persons committed to Nebraska hospitals as sexual psychopaths are in keeping with the "non-progression" view. There was no history which reflected a progression from minor to serious sex offenses. Some histories revealed an interspersing of acts, some of which were more dangerous than others, but none showed a sequence of progression towards more dangerous sexual activity.⁴²

The Statute describes the result of the sexual psychopath's

³⁸ 309 U.S. 270, 274 (1940).

³⁹ Neb. Rev. Stat. § 29-2901 (Reissue 1956).

⁴⁰ Guttmacher and Weihofen, *Psychiatry and the Law* 132 (1952).

⁴¹ Guttmacher and Weihofen, *op. cit. supra* note 40, at 111; cf. Tappan, *Some Myths about the Sex Offender*, *Fed. Prob.* 7, 9 (June 1955).

⁴² For example, eight individuals were committed for nothing more than exhibitionism. Only four of the other thirty-three persons committed have a history of sexual conduct which includes acts of exhibitionism. None of these four histories indicated a progression from exhibitionism to more serious sexual misconduct.

attack in terms of "injury, loss, pain, or other evil." This language again raises the question as to whether such acts as exhibitionism and adult consensual homosexuality were intended to be within resulting acts described in the Statute. The words "other evil" could reasonably be construed to encompass such acts which are repulsive, but not physically dangerous to others. While "other evil" may be so broad as to be almost meaningless, there is other language which is probably so strict as to be nugatory. The Statute requires that a person alleged to be a sexual psychopath must exhibit an "*utter* lack of power to control his sexual impulses."⁴³ It has been stated that no psychiatrist would testify that an individual was *utterly* lacking in power to control his impulses.⁴⁴ But in at least one instance in Nebraska, a court-appointed physician stated that the alleged sexual psychopath had an *utter* lack of power to control his impulses. While the ability to control impulses may vary tremendously, it is virtually impossible to state that someone's power is *utterly* lacking.⁴⁵ Something less than an *utter* lack of power has been accepted in the Nebraska application of the Statute, but it is impossible to assess with accuracy the degree to which self-control must be impeded to support commitment.

D. SEXUAL PSYCHOPATHS AND SEX CRIMINALS

All but one of the forty-one persons committed as sexual psychopaths⁴⁶ were committed following an alleged breach of the criminal law.⁴⁷ The Statute does not require that a criminal sex offense precede commitment for sexual psychopaths. As a matter of practice, however, persons committed as sexual psychopaths usually came to the attention of the county attorney on criminal matters and were committed to state hospitals as an alternative method of dealing with sex offenders. The Statute leaves to the discretion of

⁴³ Neb. Rev. Stat. § 29-2901 (Reissue 1956).

⁴⁴ California Sexual Deviation Research 19.

⁴⁵ *Ibid.*

⁴⁶ In this case, the behavior leading to commitment appeared to consist of a single instance of seating a twelve-year-old girl on the offender's lap, and stroking her head and shoulders. The offender was sixty-nine years old.

⁴⁷ The violations of the criminal law would consist of the following: sodomy—13 persons; fondling or debauching a minor—9 persons; statutory rape—2 persons; felonious assault—5 persons (1 attempted sodomy, 4 attempted rape—2 forcible, 2 statutory); indecent exposure—9 persons; incest—1 person; possession of obscene literature with intent to exhibit to minors—1 person. Many of those allegedly committing sodomy could also have been prosecuted for fondling or debauching a minor.

the county attorney the question of whether a petition alleging sexual psychopathy shall be filed.⁴⁸ Most of the individuals committed as sexual psychopaths come from either Lancaster or Douglas Counties. The county attorneys from these counties were interviewed in an attempt to learn what factors influenced their decisions to proceed under the criminal law or the Sexual Psychopath Statute.⁴⁹ The test apparently in effect in Douglas County is that a first offender is not considered for commitment as a sexual psychopath; beyond this no test was elicited other than the statement that each case is decided on its own merits. In Lancaster County it was indicated that because of the severity of an indefinite commitment, the Sexual Psychopath Statute was used only when the county attorney was certain in his own mind that the individual was dangerous.

The records of the Nebraska Penitentiary were studied to discover if there is a discernible difference between the sexual behavior of persons committed as sexual psychopaths and the sexual behavior of those sentenced as "sex criminals."⁵⁰ During the period covered by this survey, seventy-three persons were sentenced to the State Penitentiary for sex crimes.⁵¹ The application of the Sexual Psychopath Statute in Nebraska indicates that a history of three acts of sexual misconduct may be adequate to support a commitment under that act. A review of the records of the persons sent to the Penitentiary during this period shows that at least twenty-six of these prisoners had histories of sexual misconduct which possibly could have led to commitment as sexual psychopaths.

There was only one sexual psychopath commitment for incest; there were six criminal convictions for incest. Two of these six individuals in prison were given a diagnosis of "sexual psychopath" by the Penitentiary Medical Board. The Board did not consider

⁴⁸ Neb. Rev. Stat. § 29-2902 (Reissue 1956).

⁴⁹ Interview with Lancaster County Attorney, Elmer Scheele, Feb. 21, 1956. Interview with Douglas County Attorney, James Fitzgerald, and Deputy County Attorney, Norman Denenberg, Dec. 20, 1955.

⁵⁰ To make a complete comparison, the records of those persons confined in the State Reformatory and the various city and county jails throughout the state would need to be studied. This task was beyond the scope of the present article. It was thought that a comparison of those persons in the Penitentiary to those in the state mental hospitals would give a partial answer to the question.

⁵¹ Those sentenced were listed by the Penitentiary in the following categories: assault with intent to commit rape—3 persons; assault with intent to commit sodomy—1 person; debauching a minor—4 persons; incest—7 persons; indecent acts (not further defined)—2 persons; rape—23 persons; sodomy—21 persons; statutory rape—12 persons.

these persons fit subjects for transfer to mental hospitals, apparently deciding there is no medical basis for committing sexual psychopaths.⁵² There are some indications that this thought is shared by some mental hospital directors.⁵³ Two persons were sentenced to the Penitentiary and three committed as sexual psychopaths for homosexual acts involving other adults who had consented to the activity. One of the individuals in the Penitentiary was diagnosed a sexual psychopath while in prison and transferred to the Hastings State Hospital. The correspondence in the prisoner's file indicated that the hospital returned him to the Penitentiary on the ground that it had neither the personnel nor facilities to handle this type of patient.⁵⁴ Three individuals were sentenced to the Penitentiary for sexual misconduct involving children under thirteen years of age and ten for acts involving children thirteen to eighteen years of age. Fifteen of the former and nine of the latter type of offenders were committed as sexual psychopaths during the same period. Five individuals who used force in their sexual behavior were sentenced to the Penitentiary. One of the five was examined by the

⁵² Report of the Penitentiary Medical Board to the Governor of Nebraska: "We, the Prison Sanity Commission [sic], have today examined inmate . . . , of the State Penitentiary, and found him to be a sexual psychopath, but not psychotic. *Therefore, he is not properly a patient for a mental hospital unless committed by a District Court under the Sexual Psychopath Law.*" (emphasis added) (Under the provisions of Neb. Rev. Stat. 83-358 (Reissue 1950), the Penitentiary Medical Board consists of the superintendent of the Lincoln State Hospital—where a number of "sexual psychopaths" are housed, the Penitentiary physician, and the director of the Department of Health.)

⁵³ The following is from a "progress note" from the files of the Lincoln State Hospital regarding a patient released on probation: "As far as his treatment was concerned during his stay at the hospital there was not very much to do for him as *there is not much treatment for a psychopathic sexual pervert*, but we did what we could in the way of hospitalization." (emphasis added) See also letter from superintendent of Hastings State Hospital set out in text page 342, *infra*.

⁵⁴ Letter of the former superintendent of the Hastings State Hospital to the chairman of the Board of Control concerning a Penitentiary inmate diagnosed a sexual psychopath, and transferred to the Hospital. "It is quite true we do not have sufficient doctors to give the extensive therapy he needs. We are, however, doing our best. We have six doctors and 1,700 patients. Treatment of a case like . . . requires extensive therapy over a long period of time"

"Our question now is, what do we do? You have his request to be transferred back to the penitentiary. We do not have sufficient medical staff to give him the treatment he should have and, frankly we do not know where to move from here." (This person was returned to the Penitentiary and discharged two months later.)

Penitentiary Medical Board and diagnosed a psychopathic personality. Another of the five had been previously diagnosed a psychopathic personality at the Douglas County Hospital. Five individuals who used force were committed as sexual psychopaths. Persons in both the Penitentiary and the mental hospitals had apparently committed the offense of forcible or attempted rape.

There appears to be little distinction between the histories of twenty-six of the individuals sentenced to the Penitentiary and those committed to state hospitals as sexual psychopaths. For example, one "semi-professional" baseball player allegedly used eight or ten of his young fans in homosexual relations regularly. He was sentenced to the Penitentiary for sodomy after taking four boys out in the country and making one boy twelve years of age perform homosexual acts with him and with another of the boys. A teacher, committed as a sexual psychopath, allegedly had homosexual relations with two or three of his pupils. The baseball player was given a ten-year maximum sentence; he served four years, was paroled, and subsequently given a final discharge. The teacher faces the potentiality of a lifetime of incarceration. There are a considerable number of such parallel histories involving homosexual conduct.

The case of the one person committed as a sexual psychopath because of incestuous acts has an almost exact duplicate in the Penitentiary. Both cases involved long histories of incest, each involving two daughters. These similarities and the fact that four prisoners have been diagnosed as psychopathic personalities while in the Penitentiary indicate that there is little to distinguish the "sexual psychopath" from the "sexual criminal." However, the difference in potential length of incarceration can be substantial.

E. SEXUAL PSYCHOPATHY AND OTHER MENTAL ILLS

Another parallel question which arises here is whether a sexual psychopath may be committed under statutes which provide for the commitment of the mentally ill. There are indications that persons were committed to the mental hospitals of this state prior to the enactment of the Sexual Psychopath Statute on the basis of sexual misconduct.⁵⁵ A spot check of files of other mental patients committed subsequent to the passage of the Statute leaves the impression that such commitments still occur. The views here expressed must be read with the realization that an accurate determination of these issues would require research far beyond the

⁵⁵ Comment, 29 Neb. L. Rev. 506, 509, n. 35 (1950).

scope of this article plus an ability to interpret medical data, an ability beyond the training of these writers.

II. COMMITMENT

The preceding portion of this article dealt with the problem of defining the sexual psychopath. This problem is obviously an integral part of the commitment procedure. However, there are a number of other questions which arise in addition to that of identifying the sexual psychopath. Three such questions are here discussed. These problems relate to: (1) the defendant's privilege to refuse to reveal incriminating facts during court directed medical examinations; (2) the adequacy of medical reports relating to examination and diagnosis; and (3) the competency of an individual to plead guilty to being a sexual psychopath.

A. SELF INCRIMINATION

Commitment procedures provide that court-appointed physicians examine the defendant at least ten days prior to the court hearing.⁵⁶ If the physicians find the person is not a sexual psychopath, the proceedings must be halted.⁵⁷ The Statute is silent as to what follows if the physicians can make no diagnosis. It would seem that if an affirmative report of sexual psychopathy cannot be made, the proceedings must come to an end. Thus, if the defendant can frustrate the attempts of the physicians to make a diagnosis by refusing to discuss his past sexual misconduct, he may be able to thwart the entire proceeding. The Statute indicates that a personal examination of the defendant is to be the source of information upon which the diagnosis is to be made. No statutory provisions are made for the physicians to obtain their information elsewhere. Furthermore, reputable authority points out that no diagnosis can be made unless the defendant does discuss his past sexual behavior.⁵⁸ It becomes important then to determine whether the defendant may properly refuse to discuss his past sexual conduct with the physicians appointed to examine him.

There are two possible legal bases upon which the defendant might refuse to discuss his past conduct. First, the Sexual Psychopath Statute incorporates that section of the criminal procedure sta-

⁵⁶ Neb. Rev. Stat. § 29-2902 (Reissue 1956).

⁵⁷ *Ibid.*

⁵⁸ Sutherland, *The Sexual Psychopath Laws*, J. Crim. L., C. & P.S. 543, 553 (1950).

⁵⁹ Neb. Rev. Stat. § 29-2904 § 29-2011 (Reissue 1956).

utes of Nebraska which makes a defendant a competent witness only upon his own request.⁵⁹ The self-incrimination provision is incorporated only as to the matter of *court* proceedings. It would seem that to give proper effect to this provision, the defendant should be allowed to raise this defense in the pre-trial examination by physicians. To hold otherwise would be to circumvent the substance of the Statute through form.

But if the self-incrimination provision as incorporated from the criminal procedure statutes were to be held not applicable to the pre-trial medical examination, there is still another basis upon which the alleged sexual psychopath could refuse to give information. This second basis is the general constitutional privilege against self-incrimination.

The sexual psychopath proceedings are civil in nature, and thus do not come within the bare words of the Nebraska Constitution which says:

No person shall be compelled in a criminal case to give evidence against himself.⁶⁰

However, both federal⁶¹ and state⁶² courts have construed such constitutional provisions to mean that a defendant need not answer questions in civil proceedings if such answers might expose the defendant to potential criminal prosecutions. And the prohibition against self-incrimination is not strictly limited to the giving of evidence upon the trial of a case or when under oath. It also applies whenever one is being held by authorities investigating

⁶⁰ Neb. Const. art. 1, § 12.

⁶¹ *McCarthy v. Arndstein*, 266 U.S. 34, 40 (1924); see *U.S. v. The Saline Bank*, 26 U.S. (1 Pet.) 100 (1828) (the Constitution was not discussed).

⁶² *State ex rel. Neilson v. District Court of Eighth Judicial District*, 277 P.2d 536 (Mont. 1954) (Mont. Const. art. III, § 18 provides: "No person shall be compelled to testify against himself in a criminal proceeding . . ."); *State ex rel. Reading v. Western Union Tel. Co.*, 336 Mich. 84, 57 N.W.2d 537 (1953) (Mich. Const. art. II, § 16 provides: "No person shall be compelled in any criminal case to give evidence against himself . . ."); *Kindt v. Murphy*, 312 Ky. 395, 227 S.W.2d 895 (1950) (Ky. Bill of Rights § 11 provides: "In all criminal prosecutions the accused cannot be compelled to give evidence against himself."); *People ex rel. Moll v. Danziger*, 238 Mich. 39, 213 N.W. 448, 52 A.L.R. 136 (1927) (see for a review of ancient authorities); *Karel v. Conlan*, 155 Wis. 221, 144 N.W. 266 (1913) (Wis. Const. art. I § 10 provides: "No person shall be compelled in any criminal case to be a witness against himself . . . 55) [overruled on another point, *Milwaukee Corrugating Co. v. Flagg*, 170 Wis. 492, 175 N.W. 777 (1920)]; *Robson v. Doyle*, 191 Ill. 566, 61 N.E. 435 (1901) (Ill. Const. art. II, § 10, "No person shall be compelled in any criminal case to give evidence against himself . . .").

a charge against the person held.⁶³ It would seem that questions relating to past sexual misconduct would come squarely within the prohibition against using "compulsion to extort communications" as defined by Justice Holmes.⁶⁴

It appears that all but one of the persons committed under the Nebraska Statute could have been prosecuted under some criminal proceeding for the act which lead to their commitment. Communication by the alleged sexual psychopath to the examining physician could provide a basis for a subsequent criminal prosecution.⁶⁵ On this basis, it appears that the defendant could refuse to discuss his previous misconduct.

The constitutional limitation could be avoided by affording an immunity from prosecution for matters discussed with the court-appointed physicians, thus allowing the court to compel answers under threat of contempt.⁶⁶ But jailing the alleged sexual psychopath for refusal to cooperate puts him in jail, instead of a mental hospital, thus defeating one of the aims of such statutes. Moreover, if the defendant is compelled to talk, the information gained is of little value. From a medical point of view, any psychiatric evaluation made under threat of contempt charges is invalid.⁶⁷

B. MEDICAL REPORTS

Even where there is cooperation on the part of the person alleged to be a sexual psychopath, there appears to be a lack of a

⁶³ *State v. Taylor*, 213 S. C. 330, 49 S.E.2d 289 (1948); *State v. Smith*, 247 Ala. 354, 24 So.2d 546 (1946); *Beacham v. State*, 144 Tex. Crim. 272, 162 S.W.2d 706 (1942); *Apodaca v. State*, 140 Tex. Crim. 593, 146 S.W.2d 381 (1941); *Blackwell v. State*, 67 Ga. 76, 44 Am. Rep. 717 (1881). *Contra*, *State v. Cox*, 87 Ohio St. 313, 101 N.E. 135 (1913).

⁶⁴ *Holt v. United States*, 218 U.S. 245, 253 (1910). The Federal Constitution is not binding upon the states however; *Adamson v. California*, 332 U.S. 46 (1947); *Twining v. New Jersey*, 211 U.S. 78 (1908).

⁶⁵ Note, however, that an act for which defendant has been indicted and acquitted may not serve as a basis for commitment. Neb. Rev. Stat. § 29-2902 (Reissue 1956).

⁶⁶ The District of Columbia grants statutory immunity from prosecution upon facts disclosed to the examining physicians. Under this statute refusal to discuss one's past sexual conduct with the examining physicians constitutes contempt. D.C. Code § 22-3506 (1951). But see *State ex rel. Sweezer v. Green*, 360 Mo. 1249, 232 S.W.2d 897 (1950) where it was held that the constitutional provision against self-incrimination did not apply as a sexual psychopath proceeding is civil in nature and not criminal. No immunity is provided in the Missouri statute. The court did not discuss possible subsequent criminal prosecution.

⁶⁷ *Supra* note 58.

medical diagnosis in some Nebraska cases which resulted in commitment. It was pointed out earlier that the term "sexual psychopath" has no specific meaning in the medical field. It is not surprising then to find the court-appointed physicians looking to the statutory definition for guidance. And from this position it is an easy step for the physicians to confuse issues and render legal determinations rather than medical diagnoses. The language of the diagnoses in two cases reveals that no medical opinion was rendered at all. In one instance, a physician appointed under the provisions of the Statute made his diagnosis as follows:

... If ... is guilty of incestuous relations with his daughters, he would fill the requirements of the sexual psychopath law.

It is apparent here that the physician did not rely upon medical knowledge; he made a judgment that if the facts alleged were true, the statutory definition of sexual psychopathy was met. In another instance a court-appointed physician stated:⁶⁸

... [F]alls within the category of sexual psychopaths as interpreted in section 3 of the Revised Statutes of Nebraska Supplement 1947 under 83-322 [sic] and is therefore eligible for commitment to a state hospital for treatment.

Here again it is apparent that the physician made an attempted legal, rather than a medical, judgment. In another instance, the *entire* physicians' report consisted of the following:

Gentlemen:

We examined Mr. ... in the county jail on ... pursuant to your order. He says that he has had sex play with young girls over a period of about thirty years. He also says that he is unable to control his sexual attraction to young girls and wishes that there were some cure for this tendency. We feel that ... is a Sexual Psychopath and that he is a menace to society.

Very truly yours,

...

Only in rare instances do the physicians' reports set out specifically the facts upon which the determination is based. In some instances, the report consists only of a recitation of the examining physicians' qualifications and their opinion that the individual examined is a sexual psychopath. Thus it appears that in some cases there is no medical opinion given as to the person examined. This situation could well result from the fact that it is doubtful that the medical profession is in a position to render the type of opinion contemplated by the Statute.⁶⁹

⁶⁸ These two statements are not complete reports.

⁶⁹ *Supra* note 18, at 1.

C. PLEA OF GUILTY

In many instances individuals committed under the provisions of the Sexual Psychopath Statute have been instrumental in effecting their own commitment. Of the eighteen persons committed by Douglas County, at least ten pleaded "guilty."⁷⁰ This practice raises a question as to the competency of an alleged sexual psychopath to conclude that he meets the medical and legal definitions of sexual psychopathy. While an individual may be competent to admit certain past acts of sexual misconduct,⁷¹ it is submitted that he is not competent to determine whether he meets the statutory requirements of sexual psychopathy. The determination of whether an individual has evidenced an utter lack of control over his sexual impulses, or of whether he is likely to attack and inflict injury, loss, pain, or other evil are determinations which are capable of being made, if at all, only upon the basis of expert testimony. Legislative recognition of this is apparent from the statutory requirement that two physicians with special training in mental diseases be called upon to assist the court in determining whether an individual is a sexual psychopath.⁷² It is submitted therefore that a court is not justified in finding an individual to be a sexual psychopath solely upon a plea of guilty.⁷³

Furthermore, the Statute provides that the physicians "... shall personally appear and testify at such hearing, at which time counsel for the alleged sexual psychopathic person may cross-examine..."⁷⁴

⁷⁰ In Lancaster County, each of the eight persons committed as sexual psychopaths joined in the petition filed by the county attorney. In joining the petition, these individuals stated that the facts alleged were true but at the same time prayed that the State be required to prove them beyond a reasonable doubt. This cannot be said to be a plea of guilty; at most it is a verification of the petition. This practice is apparently followed to meet the statutory requirement that the petition be verified by one who has knowledge of the facts. Neb. Rev. Stat. § 29-2902 (Reissue 1956).

⁷¹ In habitual criminal cases the defendant is competent to admit his previous convictions. *Glover v. Simpson*, 144 Kan. 153, 58 P.2d 73 (1936) app. denied, 299 U.S. 506 (1936); see *State v. Savage*, 86 W. Va. 655, 104 S.E. 153 (1920).

⁷² Neb. Rev. Stat. § 29-2902 (Reissue 1956).

⁷³ The court files do not contain a transcript of the trial or hearing; therefore, it is not possible to present a detailed discussion of the procedure actually employed. However, in each of the ten cases where the defendant pleaded guilty, the personal testimony of the physicians was waived and in at least one of these cases the filing of a written physicians' report was also waived. It further appears that no other witnesses were before the court; thus at least one individual has been committed solely on the basis of a plea of guilty.

⁷⁴ Neb. Rev. Stat. § 29-2902 (Reissue 1956).

The records reveal that in at least seventeen of the cases arising under the provisions of the Statute, the right to have the physicians appear at the hearing was waived. It is questionable whether the alleged sexual psychopathic person can waive the physicians' appearance. No objection should exist were the court to question the physician. The statutory language to the effect that physicians are to be appointed "to assist in the examination"⁷⁶ indicates that the expert testimony is intended as an aid to the court as much as a protection for the defendant.

III. TREATMENT

Certainly the most distinguishing feature of the sexual psychopath statutes is found in the substitution of treatment for punishment. Thus, once an individual is committed under terms of such a statute, it is contemplated that he will not merely be confined, but that something will be done to help him overcome his condition. The problems arising in this area are essentially medical; however, some legal issues are raised. In the following section, the requirement of treatment under the Nebraska Statute is considered, the treatment policies of the Nebraska state hospitals are surveyed, and some of the medical authorities are noted to determine what types of treatment are available.

A. THE REQUIREMENT OF TREATMENT

The Statute provides that "... [The] state hospitals for the mentally ill ... shall make adequate provision at such institution to house such persons and for their medical care while at such institution. Provision shall be made for detention, housing, care, and *treatment* of sexual psychopaths under eighteen years separately from those over that age."⁷⁶ (Emphasis added.) This language is ambiguous for it appears the legislature may have intended treatment only for those under age eighteen. However, the title of the act indicates that it was the purpose of the legislature to provide for the treatment of sexual psychopaths in general, and not to limit treatment to those of a particular age group.⁷⁷ The Subcommittee on

⁷⁵ Ibid.

⁷⁶ Neb. Rev. Stat. § 29-2903 (Reissue 1956).

⁷⁷ Neb. Laws c. 294, p. 999 (1949) designates: "An act relating to sexual psychopaths; . . . to provide procedure for commitment of sexual psychopaths to state hospitals; to provide for the payment of the cost of maintenance, care, and *treatment* of such a patient . . ." (Emphasis added) Section 1 of this act also refers to providing treatment for all persons admitted to state hospitals as provided therein. Sections 3 to 9 of this act are the Sexual Psychopath Statute.

Children's Laws considered treatment to be the solution to the problems presented by sexual psychopaths.⁷⁸ The Judiciary Committee, on the other hand, considered the purpose of the Statute to be the reduction of the number of sex crimes by *confining* sexual psychopaths.⁷⁹ The senator sponsoring the Statute indicated that the purpose was to confine if a "cure" could not be effected.⁸⁰ It is submitted that the Statute must require treatment. If confinement to reduce sex crimes were the sole aim of the Statute, it would appear that a mental hospital is not the proper place to confine these individuals. This is especially true in light of the fact that almost fifteen per cent. (six out of forty-one) of those committed to Nebraska hospitals have escaped and are still at large. Moreover, if therapeutic treatment is not an aim of the Statute, there is little advance over what could be accomplished by the criminal law.

Some courts have allowed persons committed as sexual psychopaths under civil procedures to be shifted to prison cells for indefinite periods without even a pretense of further treatment.⁸¹ Confinement of sane persons who are not under sentence for a proven crime is justifiable only if treatment is given.⁸² The Circuit Court of the District of Columbia has indicated that if no treatment is given, an habeas corpus action is appropriate.⁸³ However, the Sixth Circuit has held otherwise.⁸⁴ The District of Columbia Court construed the sexual psychopath statute of the District to require treatment, and indicated that if no treatment had been required, the defendant's constitutional rights would have been abridged.⁸⁵ Since the statute was found to require treatment, the defendant in that case was

⁷⁸ 22 Neb. Legis. Council Rep. 39 (1948).

⁷⁹ Statement of Judiciary Committee on L.B. 344, Neb. Legis. 61st Sess. (April 7, 1949).

⁸⁰ Hearing before Judiciary Committee on L.B. 344, Neb. Legis. 61st Sess. (March 16, 1949).

⁸¹ *Kemmerer v. Benson*, 165 F.2d 702 (6th Cir. 1948), cert. denied, 334 U.S. 849 (1948); *State v. Newton*, 17 N.J. 271, 111 A.2d 272 (1955); *In re Kemmerer*, 309 Mich. 313, 15 N.W.2d 652 (1944).

⁸² *Miller v. Overholser*, 206 F.2d 415, 419 (D.C. Cir. 1953); see dissent in *State v. Newton*, 17 N.J. 271, 279, 111 A.2d 272, 277 (1954).

⁸³ *Miller v. Overholser*, 206 F.2d 415, 419 (D.C. Cir. 1953).

⁸⁴ *Kemmerer v. Benson*, 165 F.2d 702 (6th Cir. 1948), cert. denied, 334 U.S. 849 (1948).

⁸⁵ *Miller v. Overholser*, 206 F.2d 415, 419 (D.C. Cir. 1953). The court did not explain what constitutional rights would have been impaired. Constitutional objections could be founded upon due process or prohibitions against involuntary servitude.

ordered placed in a ward where he would receive such treatment.⁸⁶ Logically extended, if the Statute did not require treatment, then an habeas corpus proceeding should result in the freeing of the complainant. The decision implies that without treatment indefinite confinement, not imposed as punishment, is an unjustifiable use of the police power.⁸⁷

B. TREATMENT PRACTICES IN NEBRASKA

The writers of this article are not trained in matters pertaining to the practice of medicine or psychiatry. Accordingly, no effort has been made to determine from the hospital records what treatment persons committed in Nebraska's state hospitals as sexual psychopaths actually receive. The discussion concerning treatment is based upon the treatment which the hospital records indicate was recommended by the hospital staff at the time the patient was examined after admission to the hospital.⁸⁸

Table 3

This table shows the treatments which were recommended by the state hospitals.

Recommended Treatment	Hospital			Total
	Lincoln	Norfolk	Hastings	
Institutionalization	14	5	7	26
Institutionalization and "some newer drug"	1	0	0	1
Insulin shock	2	0	0	2
Electro shock	0	1	0	1
Insulin shock and electro shock	2	0	0	2
Insulin shock, electro shock, thorazine, and "any other therapy"	1	0	0	1
Insulin, electro shock, and thorazine	1	0	0	1
Insulin, electro shock, and "one of the drugs"	0	1	0	1
Tentative frontal lobotomy	1	0	0	1
Individual and group recreational and occupational therapy	0	1	0	1
Thorazine	1	0	0	1
Psychotherapy	1	1	1	3
Totals	24	9	8	41

⁸⁶ Id. at 420.

⁸⁷ See also *Petition of Brooks*, 5 F.2d 238, 239 (D. Mass. 1925), where the court said: "There is no power in this court or in any other tribunal in this country to hold indefinitely a sane person or alien in imprisonment except as punishment for crime."

⁸⁸ In thirty-five cases the treatment was recommended by the hospital staff after a staff meeting. The other six treatments were recommended by individual physicians, the staff not having made a recommendation.

Statements were found which reflect the existence of an opinion among some staff members of at least two Nebraska state hospitals that no effective treatment for sexual psychopathy exists. The physician who wrote a "progress note" after an individual committed under the Statute was released on probation stated: "As far as his treatment was concerned during his stay at the hospital there was not very much to do for him as there is not much treatment for a psychopathic sexual pervert, but we did what we could in the way of hospitalization." In answer to an inquiry from a brother of a person committed as a sexual psychopath, the superintendent of the Hastings Hospital wrote: "The treatment in cases like this consists solely in a long program of re-education. There are no drugs or specific treatment for this type of psychopath. *Actually the hospitalization of such an individual is more a legal matter than a medical one.*" (Emphasis added.) In twenty-six cases institutional care was the only treatment recommended. These indications tend to show that the medical staffs of the state hospitals believe little can be done in the way of effective treatment.⁸⁹

In one case the treatment recommended consisted of "a long period of hospitalization ... and perhaps some of the newer drugs may be of value ..."

In eight cases, shock treatments, employed alone or with other types of treatment, were recommended. Varying degrees of success have been claimed for shock therapies.⁹⁰ Bowman reports that the use of electro shock is being planned for Sing Sing Prison as a means of treatment, but that at present this type of treatment is essentially experimental.⁹¹ Drummond reports that electro shock treatment has been tried in cases of homosexuality, but has not proved effective.⁹² Guttmaucher and Weihoffen state that there is no rationale for the use of electro shock as a treatment for sexual psychopaths.⁹³

A frontal lobotomy was tentatively recommended in one case. It has been reported that material with which to judge the success of frontal lobotomies is so scarce that even a tentative judgment as to its effectiveness is not possible.⁹⁴ Drummond warns of manifold hazards in the use of frontal lobotomy and states that its use is not

⁸⁹ For specific statements made by the hospital staffs in seven of those cases which revealed a general attitude that little can be done for treatment of sexual psychopathy, see Appendix A infra.

⁹⁰ California Sexual Deviation Research 32.

⁹¹ Ibid.

⁹² Drummond, *The Sex Paradox* 140 (1951).

⁹³ Guttmaucher and Weihofen, *Psychiatry and The Law* 142 (1st ed. 1952).

sufficiently widespread to be able to gauge its results.⁹⁵ Weider states that, "Lobotomy has been considered contra-indicated for constitutional psychopathy associated with cruelty, aggression, irresponsibility and anti-social habits."⁹⁶

The recommended treatment in one case consisted of "individual and group recreational and occupational therapy."⁹⁷ Thorazine, reported as being effective in making patients more receptive to other treatment,⁹⁸ was recommended in another case.

In three cases, psychotherapy was recommended. This appears to be the treatment of choice, but it is costly and the number who can be helped is small.⁹⁹ Moreover, there are indications that the facilities of the state hospitals are inadequate to give this or any kind of proper treatment.¹⁰⁰

It further appears there is an almost total lack of agreement among authorities regarding prognosis and treatment of sex offenders.¹⁰¹ One writer states that no definitive psychiatric procedures for the treatment of psychopathy exist with the result that sexual psychopaths have tended to be discharged from institutions as the needs of the institution required, rather than as the condition of the individual dictated.¹⁰² Drummond points out that the Ohio Committee on Psychopathic Personalities found there is at present little hope for therapeutic results, *regardless of the use of any known form of treatment*.¹⁰³ On the other hand, Karpman states that, "Every psychiatrist of experience and competence has in his records cases of homosexuality that have been cured, and cases of paedophilia (sexual attraction toward children), exhibitionism and peeping, transvestism (cross-dressing or male and female impersonation),

⁹⁴ Bromberg, *American Achievements in Criminology*, 44 J. Crim. L., C. & P.S. 166 (1953).

⁹⁵ Drummond, *op. cit. supra* note 92 at 81, 140.

⁹⁶ I Weider, *Contributions Toward Medical Psychology* 422 (1953).

⁹⁷ Some of the cases studied indicate similar treatment was in fact given, although not originally recommended by the staff. Since the article is limited to presenting the recommended treatment only, such cases are not herein described.

⁹⁸ *Drug Changes Mental Hospital Atmosphere*, 68 Science News Letter 312 (Nov. 12, 1955). Thorazine is a trade name for chlorpromazine.)

⁹⁹ Guttmacher and Weihofen, *op. cit. supra* note 93 at 142; California Sexual Deviation Research 33.

¹⁰⁰ Note 54 *supra*.

¹⁰¹ Drummond, *op. cit. supra* note 92 at 331.

¹⁰² Ploscowe, *Sex and The Law* 234 (1951).

¹⁰³ Drummond, *op. cit. supra* note 92 at 56.

etc., that have definitely yielded to treatment."¹⁰⁴ Freyhan is of the opinion that although a patient may not be *cured*, he can be taught to get along in society with the pathologic defect which he possesses and avoid circumstances with which he cannot cope.¹⁰⁵

A review of the Nebraska cases reveals that consistency of recommended treatment exists neither among the several Nebraska hospitals nor within a given hospital. A review of the literature in the field further indicates a lack of agreement among the medical profession as a whole as to what, if anything, constitutes an effective treatment for sexual psychopathy.¹⁰⁶ The courts are not likely to strike down sexual psychopath statutes as unreasonable in spite of this lack of agreement.¹⁰⁷ However, this paucity of scientific knowledge undermines the hypothesis that sex offenders are proper candidates for mental treatment. It has been declared that many authorities in both the legal and medical fields think that special sex legislation based on the premise that psychiatric medicine can solve the problems of sex crimes is premature.¹⁰⁸ Psychiatry has been over-sold in efforts to define legally the sexual psychopath, to predict who are the potentially dangerous sex offenders, and to obtain permanent cures through treatment.¹⁰⁹ The Supreme Court has indicated that psychiatric diagnosis is so uncertain, and professional judgment so tentative, that the only certain thing which can be said about the present state of knowledge and therapy regarding mental disease is that science has not reached finality of judgment.¹¹⁰ In the absence of an effective treatment for sexual psychopathy, a major basis for handling certain sex offenders differently than others vanishes.

IV. RELEASE

Commitments under the Sexual Psychopath Statute are for an indefinite period. However, the Statute intimates that release of an individual committed is appropriate in some instances. The fol-

¹⁰⁴ Karpman, *Sex Life in Prison*, 38 J. Crim. L., C. & P.S. 475, 484 (1948).

¹⁰⁵ Freyhan, *Psychopathology of Personality Functions in Psychopathic Personalities*, 25 *Psychiatric Quarterly* 448, 470 (1951).

¹⁰⁶ *Supra* notes 101-105.

¹⁰⁷ See *Greenwood v. United States*, 350 U.S. 366, 376 (1956): "Certainly, denial of constitutional power of commitment . . . ought not rest on dogmatic adherence to one view or another on controversial psychiatric issues."

¹⁰⁸ *California Sexual Deviation Research* 20.

¹⁰⁹ *Ibid.*

¹¹⁰ *Greenwood v. United States*, 350 U.S. 366, 375 (1956).

lowing section on release deals primarily with two problems: (1) the statutory requirements upon which release is predicated; and (2) the release policies of the Nebraska state hospitals.

A. STATUTORY PROVISIONS

Statutory provisions relating to the release of persons committed as sexual psychopaths are not models of clarity. The Statute provides:

. . . [S]uch provisions of Chapter 83, article 3, as are not in conflict with the provisions of this section shall be applicable with respect to the care and custody of sexual psychopaths; *Provided*, that regarding the right of discharge provided by section 83-342, the superintendent of the institution to which commitment is made shall make written recommendation for discharge to the court from which the person was committed. Such court after considering such recommendation may at its discretion free or release on probation the person committed.¹¹¹

The meaning of the reference to section 83-342 is not clear. This section refers to the procedure used to notify the clerk of the district court when a mental patient is discharged.¹¹² Section 83-340 provides that, "Any patient in a state hospital for the mentally ill who is cured shall be immediately discharged by the superintendent."¹¹³ According to this provision, it would appear that if a superintendent deemed a sexual psychopath "cured," he could discharge him immediately without a court procedure. However, if this construction were adopted, section 29-2906 of the Sexual Psychopath Statute would be largely nullified. This section implies that the committing court must decide when and if an individual committed as a sexual psychopath shall be released. Section 83-340 is either in conflict with the Sexual Psychopath Statute or is modified by the reference to 83-342 regarding the "right" of discharge. If the three relevant sections are read in *pari materia*, it appears that the committing court must decide when and upon what conditions one committed under the Statute shall be released. The hospital

¹¹¹ Neb. Rev. Stat. § 29-2906 (Reissue 1956).

¹¹² Neb. Rev. Stat. § 83-342 (Reissue 1950) provides: "When a patient is discharged from the hospital by the authorities thereof, whether with or without application therefor, notice of the order of discharge shall at once be sent by the superintendent of such hospital to the clerk of the district court of the county from which the patient was committed. The county board of mental health shall forthwith cause such patient to be removed and at once provide for the care of such person in the county, as in other cases, unless such patient is discharged as cured. The clerk of the district court shall, upon receipt of the notice of the order of discharge, enter the same upon the records of such office."

¹¹³ Neb. Rev. Stat. (Reissue 1950).

records reveal that some individuals committed as sexual psychopaths have been released without court approval. Generally, however, the approval of the court was received before releases were effected.

Assuming that the Statute requires court approval, what requirements must be met as a condition precedent to release? The Statute provides only that the superintendent make a written recommendation for discharge; the court after considering this recommendation may in its discretion release the committed person. The Statute does not provide the court with any criteria as to when release is appropriate.

One transcript of a release proceeding was available for study. This proceeding was initiated in the form of a petition to modify the commitment order. An earlier proceeding had failed on the ground that the superintendent of the Lincoln State Hospital did not recommend a discharge. At the second proceeding the superintendent appeared as a subpoenaed witness and testified that in his opinion there was "a possibility that this young man may hereafter make a good social adjustment, or at least his capabilities would be increased." He did not assure a complete cure, but signed a statement reciting, "In view of the above evidence which I have heretofore given, I hereby recommend the discharge from the State Hospital of . . . under such terms and conditions as the court may wish to impose upon him if any." The court released the individual on probation.

A letter from a former Hastings State Hospital superintendent to a district court reveals a test in conflict with that of the Lincoln Hospital. The letter stated that the patient in question had made a good adjustment in the hospital and might make a good adjustment in society, but that the superintendent was not able to say the patient was "cured." No recommendation for release was made.

When the reason for commitment to a mental institution no longer exists, the individual should be released.¹¹⁴ Persons committed to mental hospitals in Nebraska have the right of habeas corpus and the right is made applicable to persons committed as sexual psychopaths.¹¹⁵ Since sexual psychopathy as defined by the Statute requires that one must have "evidenced an utter lack of power to control his sexual impulses,"¹¹⁶ it may be argued that whenever an individual no longer manifests such behavior he is no

¹¹⁴ *Durham v. Callahan*, 42 Wash.2d 352, 255 P. 2d 374 (1953).

¹¹⁵ Neb. Rev. Stat. § 29-2906 (Reissue 1956); see Neb. Rev. Stat. § 83-343 (Reissue 1950).

¹¹⁶ Neb. Rev. Stat. § 29-2901 (Reissue 1956).

longer within the purview of the Statute and must therefore be discharged.

B. RELEASE POLICIES

It becomes apparent that there are several criteria upon which release plausibly could be predicated. To determine what test or tests are employed in Nebraska, a search of the hospital files of those individuals released was made. Eleven of the forty-one individuals committed during the period covered by this survey have been released;¹¹⁷ four were discharged, and seven were released on probation. An effort was made to determine what factors in the histories of these individuals were related to their release.

The prognosis, or the forecast of the probable course and termination of the patient's condition, appeared to have no important bearing upon his subsequent release. Four persons were released who were given a prognosis of "guarded," four were released whose prognosis were "poor," and two "hopeless" patients were released. One of those released was never given a prognosis.

Save for the one person committed upon a history of incestuous activity, there have been releases from each of the sexual conduct classifications presented in Table 1, *supra*. Thus it appears that the type of sexual conduct which led to the commitment of the individual was not a determining factor.

As discussed above, the relationship of "cure" to release is difficult, perhaps impossible, to determine. In one instance, the hospital record indicated that the patient had reached maximum improvement. In another instance, the record stated no reason for release, but did indicate that the patient expressed a desire to leave the state. One record gave no indication at all as to the reason for the release.

In six cases, the hospital records showed that efforts were made by outsiders to obtain the release of the individuals concerned. In two such cases, the efforts were expended by lawyers, in two others, by relatives who welcomed the patients into their homes outside Nebraska. In the remaining two cases where outsiders worked for release, efforts were made by a friend in one and by the patient's wife in the other. It appeared in these six cases that the most compelling factor involved in the release was the efforts expended by outsiders.

¹¹⁷ The Lincoln State Hospital has discharged or released on probation four of the twenty-four "sexual psychopaths" committed. The Hastings Hospital has released one of eight such persons. The Norfolk State Hospital has released six of the nine "sexual psychopaths" committed to its custody.

There were two releases in which no active effort was made by outsiders, but families of the patients were receptive. There were no medical reasons assigned for the release in these cases.

The following cases illustrate the above observations:

The hospital record indicates A practiced homosexuality with adults and with boys thirteen years of age and over. He was committed to the Norfolk State Hospital and given a "hopeless" prognosis. The staff's recommendation as to treatment began with the statement, "No treatment will alter this man's attitude . . ." A was released on probation after five months to a sister in New York who had, in letters to the hospital, indicated a willingness and desire to have her brother live in her home. Four months after his probation began, A was discharged.

B was committed to the Norfolk State Hospital. His record reveals he practiced homosexuality with boys over thirteen years of age. In giving B a prognosis, it was stated, ". . . it is doubtful he will be able to overcome his sexual deviation." B was discharged two months later; no specific reason for his release was stated in the hospital record.

After an arrest for statutory rape, C was committed to the Norfolk State Hospital. C's history shows that he practiced fellatio and cunnilingus. His wife stated he used physical force upon her when she refused his requests to practice cunnilingus upon her, or when she refused his requests for normal intercourse. The hospital record indicated C was a "hopeless" patient. One year after commitment C was released on probation to a sister in Colorado who had corresponded with the hospital and indicated a willingness to have her brother live in her home.¹¹⁸

Only six of the thirty persons who are presently confined have had efforts expended on their behalf in attempts to secure release. In one of the six cases, an attorney, after two court hearings, was successful in obtaining a release for his client. However, this patient was returned to the hospital for allegedly attempting to entice small girls into his car. In three cases, attorneys' efforts to secure releases of their clients were interrupted; two by escape, one by death. In addition to these four cases, the friends or family of two patients have shown active interest in securing the patients' releases; in one of these cases the county attorney involved expressed opposition to having the patient released to his county. It would appear that where efforts of outsiders to obtain release

¹¹⁸ See Appendix B, *infra*, for case histories of eight other persons who were released.

have not been successful, some extraneous factor, such as escape or positive objection, has intervened in almost every instance.¹¹⁹

A rational criteria for release, related in some manner to the reason for commitment, requires some type of valid prediction as to the individual's future behavior. But it appears that science is not yet prepared to provide decisive answers to such questions. When the bases for release are so uncertain, legislation which permits individuals to be confined for indeterminate periods is, at best, a dangerous experimentation with individual liberty.

V. CONCLUSION

The Sexual Psychopath Statute rests upon a faith in modern psychology and psychiatry. It is founded on two assumptions: (1) that "sexual psychopaths" can be identified, and (2) that they can be treated successfully and returned to society. In theory the Statute would seem well advised. In fact, it is found that medical science is dubious of its own ability to diagnose sexual psychopath. The existence of an effective treatment is equally doubtful.

This lack of scientific knowledge is reflected in the confusion evidenced among the Nebraska hospitals. Various therapeutic treatments of questionable efficacy are recommended. Release policies are inconsistent. While one hospital releases a patient who has a *possibility* of making a successful adjustment, another hospital is unwilling to release one who might make a good social adjustment because he is not "cured." While one hospital may confine for life a person with a "hopeless" prognosis, another hospital may release such a patient within a few months.

The problems raised by the Statute project themselves into the legal profession also. Prosecuting attorneys find it impossible to distinguish rationally between sexual psychopaths and other sexual offenders. Individuals with similar patterns of conduct may thus be prosecuted criminally or be committed to a state hospital. While one faces a fixed maximum term of incarceration, the other faces a possibility of indefinite confinement.

It is submitted that the present status of medical and legal knowledge does not provide an adequate basis for this departure from the traditional criminal methods of dealing with individuals whose sexual conduct does not meet with social approval.

Domenico Caporale, '57

Deryl F. Hamann, '58

¹¹⁹ See Appendix C, *infra*, for case histories of those persons to whom release was refused.

Appendix A

The following are statements which were a part of the recommended treatment for seven persons committed as sexual psychopaths. These statements reveal little enthusiasm as to the possible success in treating such patients. Recommended treatments in some other cases reflected a more hopeful attitude. Of the seven cases dealt with below, four are still confined, two have escaped and remain at large, and one has been discharged. Of the patient discharged, the staff made this statement when it recommended treatment: "No treatment will alter this man's attitude . . ." Just five months later, this man was released.

1: "Since he was committed by the Courts, we have no choice but to keep him here, probably indefinitely the remainder of his natural days. Perhaps after he has been here six months to a year he may be given a ground parole and put to work and be made a useful hospital citizen somewhere."

2: "Keep the patient here for a while as long as we have to. Petition the Court and perhaps under supervision and restriction he may be able to adjust in society and get along and eliminate his past behavioral reactions."

3: "... [W]e do not expect him to learn from hospitalization except for confining him and protecting society from his activities."

4: "Keep in the institution for a while until such time as we can recommended his parole to the judge. . . . [H]e could probably be given a ground parole and put to some useful use around the institution."

5: "Because of his inability to learn, this man will probably have to be maintained in an institution for the remainder of his years. It is felt that if he were allowed to go back into society, and if he had the opportunities, he would do the same things which he did prior to coming to us. However, it is felt that he should be allowed to go to the various institutional programs and activities, providing he does not get too excited and his conduct is such that it does not embarrass anybody."

6: "Keep him in the institution as long as the Court desires. I suppose after a number of months if he continues to adjust as well as he has in the past he can be given more liberty and more freedom around the institution and be made a more useful citizen to the hospital population."

7: "No treatment will alter this man's attitude. All that can be done is to advise him to control his sexual desires but in view of the fact that he is resentful about society's interference, it is unlikely that this advice will be of much use to him."

Appendix B

The following are brief case histories of eight persons who have been released following commitment as sexual psychopaths. The three other persons who were released during the period covered by this article are dealt with in the text, page 348, *supra*.

D was committed to the Norfolk State Hospital. His history shows repeated instances of exhibitionism. Shortly after admission, D was given a guarded prognosis. The hospital record indicated D had made a "good social adjustment" and that he expressed a desire to move to Colorado. Eleven months after commitment he was released on probation to his wife; three months later he was discharged.

Consensual homosexuality led to E's commitment at the Lincoln

State Hospital. A progress note dated some two and one-half years after commitment indicated that everything in the way of hospitalization had been done ("as there is not much treatment for a psychopathic sexual pervert"). E, after one unsuccessful attempt, secured a release through the efforts of his attorney. At the hearing, the hospital superintendent refused to say that E was "cured," but only that there was a possibility that he might make a good social adjustment. This person had been given a poor prognosis.

Homosexual practices with minors thirteen years of age and over led to F's commitment at the Lincoln State Hospital. No prognosis was made. A progress note dated ten months after commitment indicates that he had one homosexual experience while at the Hospital. Thirty-three months after commitment he was released on probation for a period of three weeks. Social Service reports made during this period of time stated there were no instances of sexual misconduct. Four months later, he was released on probation.

Homosexual and heterosexual practices with children under thirteen years of age led to the commitment of G who was given a prognosis of guarded by the Lincoln State Hospital. Two years after his commitment, a staff statement was recorded to the effect that it was felt G had probably reached his maximum improvement as far as hospitalization was concerned. One month later, G was released on probation. A year after this release, G was returned to the Hospital by a court order for re-evaluation. This appears to have resulted from complaints that G had been molesting young girls. G was again released on probation five months later.

H was committed to the Norfolk State Hospital because of a history of consensual homosexuality with adults. He was given a prognosis of poor. A report of the hospital psychology department stated that the patient could function on the outside if he were in an environment where no undue stress was placed upon him. Fourteen months after commitment he was released on probation to a friend who had previously made known his willingness to have H live in his home.

Acts of exhibitionism led to the commitment of I at the Norfolk State Hospital. The physicians who wrote I's clinical history noted that the patient "shows an entire lack of control over his abnormal sex impulses." He was given a guarded prognosis. Less than a year after commitment I was released on probation.

Exhibitionism likewise led to the commitment of J. The Lincoln State Hospital gave him a prognosis of poor. The hospital record indicates that some five months after commitment, J's wife stated she was contemplating some action to secure J's release. J was released on probation one year after commitment.

Twenty years of fellatio and pederasty and several instances of attempted statutory rape led to the commitment of K. The Hastings State Hospital gave him a prognosis of poor. The Hospital record reveals numerous efforts by both the patient's family and attorney to secure K's release. Thirty-two months after K's commitment he was released on the authority of a staff physician without benefit of court procedures. Less than two months prior to K's release the acting superintendent of the Hospital had specifically refused to recommend a release to the court. It appears the release was effected in ignorance of this refusal, and without the acting superintendent's concurrence or knowledge.

Appendix C

The following reveal the histories of individuals who are still confined in state hospitals. Certain of these cases reveal conduct which could rationally support a recommendation for release in view of the releases allowed. See Appendix B, *supra*. In none of the following illustrations have there been any efforts expended by persons outside the hospital to obtain the release of the individual concerned.

In 1953, L was committed following an act of sodomy with a sixteen-year-old boy. Shortly after commitment, the Lincoln Hospital staff reported his prognosis as guarded. "He will probably never change his fundamental personality or methods of reacting to other people." In December of 1954, however, a note was made to the following effect: "It is felt by the examiner that this patient has shown for the last four months an attitude which is consistent with his successful behavior on the outside, and it is felt advisable that some arrangement be made that he be paroled from this institution." "He has made no homosexual advances towards any of the other patients." There was no further information recorded regarding his behavior. Why L was not released does not appear. L was unmarried, and had not been in the state very long. No efforts to procure his release by any interested party appear from the record. Apparently the hospital staff never acted on the above recommendation.

After four or more instances of indecent exposure, M was committed to the Lincoln State Hospital in 1953. The Hospital prognosis was that: "We can do nothing for his mental condition. Whether we can teach him with Electro Shock treatment or any other treatment to control his impulses to expose himself, we do not know." Staff notes indicated that no anti-social behavior except exposing himself was found. No record of assistance by anyone interested in securing M's release was discovered in the records. It was reported that M had "gotten along well" and had given no trouble in his care. He is still confined.

N was likewise committed to the Lincoln State Hospital after four or more acts of indecent exposure. The staff's comment on this individual was "Keep the patient here for a while, as long as we have to. Petition the Court and perhaps under supervision and restrictions, he may be able to adjust in society and get along and eliminate his past behavioral reactions." A state senator inquired about N, but upon finding he was committed as a sexual psychopath, lost all interest. N is still confined; apparently the Hospital has not kept him yet "as long as [they] have to."

Of O, the Lincoln State Hospital reported: "So far as we are able to learn, *he has never been aggressive sexually*. His only crime is masturbating in public and in the presence of the opposite sex." "We do not know how he will progress, or what will happen to him." (Emphasis added.) No intervention by parties interested in securing a release for O appear in the records apparently it is still not known what will happen to him.

At the age of sixty-nine, P was committed to the Hastings State Hospital. His prognosis was reported as guarded. His offense appears to consist of one instance of picking up a twelve-year-old girl and seating her on his lap. He patted or stroked her head and shoulders. The patient's daughter wanted P to live with her, but P was not released. The former superintendent of the Hospital in a message to the district judge from which P was committed, indicated that while P might make a good adjustment on the outside, that he was not ready to say P was "cured." P died in the Hospital not long afterward.

An act of sodomy involving a boy under age thirteen, coupled with the molesting of two seven or eight-year-old girls led to the commitment of Q. His record also showed one instance of exhibitionism. A meeting of the staff of the Lincoln State Hospital resulted in the statement that "This patient will have to be kept out of society probably for the remainder of his natural days." He was given a prognosis of hopeless. Only recently committed, no intervention to effect his release had yet been forthcoming.