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of the well-established doctrine that seamen are the wards of admiralty,¹⁷ this court's holding that a negligent tort-feasor owes no duty to seamen employed under the lay plan upon the seas appears to be a harsh and unjustifiably severe rule.

BAIL—GRANT TO SEXUAL PSYCHOPATH

Petitioner's appeal from municipal court conviction of a misdemeanor involving sexual offenses was suspended¹ and petitioner held pending hearing in the superior court to determine whether he was a sexual psychopath. The court denied his application for bail. *Held*, reversed. An alleged sexual psychopath is entitled to bail as a matter of right pending such hearings. *Application of Keddy*, 233 P.2d 159 (Cal. 1951).²

Historically, the granting of bail in both civil and criminal actions was within the discretion of the judge.³ The present "right" to bail is dependent upon statute.⁴ Constitutional provisions generally apply only to criminal cases,⁵ but the right to bail in all civil actions became fixed by early statutory enactment and is now generally assumed.⁶ The Eighth Amendment to the United States Constitution has also been deemed specifically applicable only to criminal cases, but there have been instances when courts have referred to the spirit of the amendment to include civil actions;⁷ this right being unimpaired by the absence of specific legislative authority.⁸

By great weight of authority, psychopathic hearings are independent⁹

17. 4 BENEDICT, ADMIRALTY 282 (6th ed., Knauth, 1940); see discussion by Frank, J. of the doctrine that seamen are the wards of admiralty, in *Hume v. More-McCormack Lines, Inc.*, 121 F.2d 336 (2d Cir. 1941).

1. Upon proper affidavit, criminal proceedings may be suspended and the alleged sexual psychopath brought before the superior court for examination and hearing. CAL. WELFARE AND INSTITUTIONS CODE § 5501 (1949) (as amended).

2. This principle has been twice affirmed: *Ex parte Morehead*, 237 P.2d 335 (Cal. 1951); *Ex parte Rice*, 234 P.2d 180 (Cal. 1951).

3. *Manning v. Williams*, 190 Okla. 65, 120 P.2d 980 (1942).

4. For instance, the CAL. CODE CIV. PROC. ANN. § 486 provides for bail in civil actions as a matter of right. The court in the instant case might have relied upon this Civil Code instead of the California constitutional guarantees.

5. *Espinosa v. Price*, 144 Tex. 121, 188 S.W.2d 576 (1945); *State v. Hutchinson*, 246 Ala. 48, 18 So.2d 723 (1944); *Varholy v. Sweat*, 153 Fla. 571, 15 So.2d 267 (1943).

6. But see *Varholy v. Sweat*, *supra* note 5 (quarantine order is not a criminal proceeding and is not bailable); *Espinosa v. Price*, *supra* note 5 (proceedings under Juvenile Delinquency Act are governed by rules of civil procedure; not constitutional and statutory provisions for bail in criminal cases); *State v. Hutchinson*, *supra* note 5 (constitutional provisions for bail apply only to criminal cases and have no application to one detained on suspicion of being affected with disease).

7. *Mozorosky v. Hulbert*, 106 Ore. 274, 211 Pac. 893 (1923); *State v. Foster*, 84 Wash. 58, 146 Pac. 170 (1915).

8. See *Wright v. Henkle*, 190 U.S. 63 (1902).

9. Trial court loses jurisdiction when proceedings are suspended, to be regained only upon negative determination of psychosis by superior court. *Ex parte Morehead*, *supra* note 2.

civil actions¹⁰ despite the criminal charges or convictions which supply the impetus for them in nine states.¹¹ Several states make mental examination mandatory for enumerated offenses.¹² Generally, commitment is under civil codes providing for later return to criminal courts.¹³ However, one statute is included within the criminal code and permits an indeterminate sentence of one day to life.¹⁴

Most jurisdictions are ill-equipped for the proper treatment of sexual psychopaths. Consequently they are committed to jail¹⁵ where the psychosis and propensity for commission of sex offenses is aggravated.¹⁶ The statutes have thus proven ineffectual and with the exception of the California law, have rarely been employed.¹⁷

In releasing petitioner on bail, the majority of the court in the instant case has relied upon the constitutional guarantee that all persons shall be bailable except for capital offenses.¹⁸ The court seems amply justified in holding that the rights of alleged sexual psychopaths should not be more restricted than those of persons accused of grave crime.¹⁹ However, Justice Wilson based his dissent upon ethical and moral principles, embodying society's abhorrence for sexual crime. He draws analogy between the sexual psychopath and the violently insane.²⁰ The avowed purpose for the

10. *Davey v. Owen*, 133 Ohio St. 96, 12 N.E.2d 144 (1948) (civil and *ex parte*); *People v. Chapman*, 301 Mich. 584, 4 N.W.2d 18 (1942); *Ex parte Trante*, 238 Mo. App. 105, 175 S.W.2d 161 (1943) (civil proceeding in *personam* by state); *In re Ryan*, 291 Mich. 673, 289 N.W. 291 (1940) (not adversary—in interest of public); *But cf. In re Cook*, 218 N.C. 384, 11 S.E.2d 142 (1940) (insanity proceedings neither civil action nor special proceeding).

11. Cal., Ill., Ind., Mich., Mo., N.Y., Ohio, Wash., Vt. See Comment, *Validity of Sex Offender Acts*, 37 MICH. L. REV. 613 (1939); Comment, *Nature of Commitment Proceedings*, 24 TEX. L. REV. 307 (1946).

12. Ohio (all persons convicted of felony), N.J. and N.Y. (enumerated offenses, i.e., rape).

13. CAL. WELFARE AND INSTITUTIONS CODE § 5517, for example, provides for return to trial court for further prosecution when recovered or no longer dangerous. If treatment of no further avail, psychopath may be periodically recommitted. For comprehensive statutory comparison, see Comment, *Sex Offenders and the Law*, 11 U. OF PITT. L. REV. 636-54 at 645 (1950).

14. NEW YORK PENAL LAW 2189a, c. 525 § 23 (1950).

15. Note, *Commitment of Sexual Psychopaths in Ohio*, 2 WESTERN RES. L. REV. 69 (1950). See *In re Kemmerer*, 309 Mich. 313, 15 N.W.2d 652 (1944) (judicial sanction of confinement of sexual psychopath in county jail).

16. Karpman, *The Sexual Psychopath*, 42 J. CRIM. L. 184 (1951); Sutherland, *The Sexual Psychopath Laws*, 40 J. CRIM. L. 543 (1950).

17. Sutherland, *supra* note 16.

18. CAL. CONST. Art. 1, § 6.

19. *Ex parte Henley*, 18 Cal. App. 1, 121 Pac. 933 (1912) (inebriate granted bail pending hearing); *contra: People v. Macki*, 100 Cal. App. 292, 729 Pac. 821 (1929) (narcotic denied bail).

20. *Contra: People v. Tipton*, 90 Cal. App.2d 103, 202 P.2d 330 (1949) (sexual psychopath is not thereby adjudged insane); *People v. Haley*, 46 Cal. App.2d 618, 116 P.2d 498 (1941) (sexual psychopath statutes do not have same effect as insanity provisions). See Note, 1 STAN. L. REV. 486-96 (1949) for interpretation of Cal. Code and distinctions between sexual psychopaths and insane persons.

restraint of both is their own and the community's protection.²¹ Thus, the same standard should logically limit their respective freedoms.²²

It is submitted that the argument advanced by Justice Wilson fails in that even those alleged insane cannot be summarily deprived of liberty.²³ In the absence of actual violent insanity,²⁴ the alleged sexual psychopath should be entitled to bail. However, the bond set may be high enough to insure societal welfare and deter the recidivistic tendencies of the sex offender.²⁵

EVIDENCE—GOVERNMENT AGENCIES—RIGHT TO DETERMINE PRIVILEGE OF NON-DISCLOSURE OF RECORDS

Plaintiffs, wives of civilian observers killed in the crash of an Air Force plane, sued for wrongful death under the Federal Tort Claims Act.¹ They sent written interrogatories² requesting copies of the accident report, but the Air Force refused to release them, claiming a privilege of non-disclosure.³ The district judge ruled that the United States should produce the documents for his examination and allow the court to determine whether they are privileged. Upon failure to comply with this ruling the court issued an order⁴ establishing the facts in plaintiffs' favor and enjoined the United States from introducing evidence to controvert them.⁵ *Held*, a claim of privilege involves a justiciable question, to be determined by the court on examination of the documents *in camera*⁶ and *ex parte*. *Brauner et al. v. United States*, 192 F.2d 987 (3d Cir. 1951).

21. *People v. Chapman*, *supra* note 10; *but see People v. Sims*, *supra* note 11.

22. See *Karpman*, *supra* note 16.

23. *In re Cornell*, 111 Vt. 525, 18 A.2d 304 (1941) (temporary restraint justifiable only if being at large would create danger); *Reagan v. Powell*, 125 Ca. Rep. 89, 53 S.E. 580 (1906) (alleged insane person entitled to bail pending appeal from sanity hearing; this right to be denied only if mental condition becomes sufficiently violent to justify summary process); *Weihsfen & Overholser, Commitment of the Mentally Ill*, 24 Tex. L. Rev. 307 (1946) (only five states provide by statute for arrest of alleged mental defective at time of service of notice of hearing. The general criteria is danger to self and others.).

24. In which case petitioner should be committed under the mentally ill section of the statutes. Application of *Keddy*, 233 P.2d at 163, 164 (Cal. 1951); *Ex parte Westcott*, 93 Cal. App. 575, 270 Pac. 247 (1928).

25. *Ex parte Morehead*, *supra* note 2 (pattern of past crimes indicated sufficient recidivistic tendency to warrant setting bail at \$7,500). Thus, circuitously, the courts can prevent the release of those individuals who are dangerous without arbitrarily confining the lesser offenders.

1. 28 U.S.C. §§ 1346, 2671 *et seq.* (1946).

2. FED. R. CIV. P. 33 (allows written interrogatories to be answered by the adverse party); FED. R. CIV. P. 34 (one showing good cause can require production of documents not privileged).

3. 17 STAT. 283 (1872), 5 U.S.C. § 22 (1946) (provides that the heads of departments are to prescribe regulations for use, custody, and preservation of classified records, not inconsistent with law).

4. FED. R. CIV. P. 37(b)(2)(i)(ii) (provides for refusing evidence to contravert facts and establishes the evidence of moving party as true).

5. 10 F.R.D. 468 (E.D. Pa. 1951).

6. A hearing before the judge in his private chambers.