CHAPTER X

THE CONTROL OF THE VENEREAL DISEASES

INCLUDED among the so-called "venereal" diseases are syphilis, gonorrhea, chancroid or soft chancre, venereal lymphogranuloma (inguinale), and granuloma inguinale. In their acute stages all are dangerous communicable diseases; in either their acute or chronic stages they are hazardous to health.

Theoretically, the venereal diseases should be controlled by health departments in the same manner that other contagious diseases are controlled. Because of their moral implications, however, certain special procedures are usually necessary or desirable.

The word "venereal" implies that the disease is the consequence of illicit sexual relations with an infected person. Many cases may, nevertheless, be acquired innocently. In this category are congenital syphilis; the infection of a wife or husband by a diseased spouse; the infection of a newborn infant by the mother; the infection of a doctor, nurse, midwife, or wet-nurse by a diseased patient; and, finally, the relatively few cases that are acquired from freshly contaminated articles, such as drinking cups, towels, public toilets, and in other ways not involving direct sexual relations.

When the term "venereal disease" is used in a law, ordinance, or regulation, it is generally interpreted to include those diseases that are innocently acquired as well as those that are contracted through immoral sexual acts.[1]

Since all the venereal diseases are unquestionably dangerous to the public health and welfare, reasonable legislative and administrative measures for their prevention and control are recognized as a valid exercise of the police power of the State.[2] In numerous instances the courts have enunciated legal principles regarding proper measures for the regulation of venereal infections.

Syphilis

Syphilis, an acute or chronic disease caused by a spirochetal organism known as the *Treponema pallidum,* is the most important and severe of the venereal diseases. According to reliable authorities, more

1. *Coleman* v. *Nat. Life & Accid. Ins. Co.* (La. 1933), 145 So. 298.

2. B. Johnson, *Digest of Laws and Regulations Relating to the Prevention and Control of Syphilis and Gonorrhea,* New York, American Social Hygiene Association, 1940.

than 500,000 new cases seek medical treatment each year in the United States.[3] Approximately one fifth of the cases occur in persons under twenty years of age, and about six cases occur in males to four in females. The disease is stated to be more prevalent in cities than in rural areas, and is six times as prevalent among Negroes as among white persons.

Syphilis in pregnant women is said to be responsible for 60,000 cases of congenital syphilis in newborn infants every year. The disease causes from 10 to 12 per cent of all deaths from heart disease, the leading cause of death in this country. It is also responsible for paresis and other types of neuro-syphilis, and in its chronic stage may cause numerous physical troubles which resemble the symptoms of many other serious ailments.[4] As Sir William Osler said, "Syphilis is a great imitator."

The disease can be diagnosed, both by means of examination of infected tissue under the microscope and by standard blood tests such as the Wassermann, Kahn, Kline, and other tests. The disease is likewise amenable to early treatment with a combination of such chemicals as arsenic preparations (arsenobenzols, such as salvarsan and neosalvarsan), and mercury and bismuth, and with the antibiotic penicillin. When promptly and efficiently treated, syphilis is usually rendered noninfectious, and the patient may be said to be "chemically quarantined." When not treated, the disease usually attacks the entire body.

Recommendations for the administrative control of syphilis in States and cities were drafted in 1936 by an advisory committee appointed by the United States Public Health Service, as follows:

1. There should be a trained public health staff to deal with syphilis in each state and city.
2. Minimum state laws should require reporting of cases, follow-up of delinquents, and the finding of sources of infection and contacts.
3. Premarital medical certificates, including serodiagnostic tests, should be a legal requirement.
4. Diagnostic services should be freely available to every physician without charge and should meet minimum state standards of performance.
5. Treatment facilities should be of good quality, with convenient

3. T. Parran, Control of syphilis, Reprint No. 70 from *Venereal Disease Information*, U.S. Public Health Service, 1937.

4. W. F. Snow, *Venereal Diseases; Their Medical, Nursing, and Community Aspects*, New York, Funk & Wagnalls, 1937. For legal definitions of "communicability" and "treatment" of venereal disease, see J. H. Lade, The legal basis for venereal disease control, *Am. J. Pub. Health*, 35:1041, October, 1945.

hours and location. Wherever possible the clinic service should be a part of an existing hospital dispensary. Hospital beds should be provided for patients needing bed care.

6. The state should distribute antisyphilitic drugs to physicians for the treatment of all patients.

7. Routine serodiagnostic tests need to be used much more widely. In particular, every pregnancy, every hospital admission, every complete physical examination should include this test.

8. The informative program in modern diagnosis, treatment and control should be prosecuted vigorously, among physicians and health officers, especially through the use of trained consultants.

9. The public educational program must be persistent, intensive, and aimed especially at those individuals in the age groups in which syphilis is most frequently acquired.[5]

Gonorrhea

Gonorrhea is an acute or chronic contagious disease caused by the organism known as the *Neisseria gonorrhea,* sometimes called the gonococcus. According to reliable estimates, there are more than a million new cases of acute gonorrhea each year in the United States.[6] The rate is higher among Negroes than white persons, and is higher in cities of 50,000 to 500,000 population than in larger cities or in rural areas. Only about one fourth of the cases occur in females.

This venereal disease is diagnosed by means of cultures, complement fixation, and microscopic examinations of bodily discharges for the presence of the causative organism. Prompt treatment, particularly with the sulpha drugs, is generally successful, although it is often difficult to determine when the patient has become completely noninfectious. The disease is, as a rule, somewhat more serious in women than in men.

A disease known as vulvovaginitis, an inflammation due to infection with the gonococcus and other organisms, occurs in childhood, particularly among girls in institutions. It is nonvenereal in origin and results from various kinds of direct contact.

Ophthalmia Neonatorum

Gonorrheal infection of the eyes of newborn infants causes a disease known as ophthalmia neonatorum (acute infectious conjunctivitis)

5. T. Parran, Syphilis: a public health problem, *Science,* 87 (n.s.):147, February 18, 1938. R. A. Vonderlehr et al, Recommendations for a venereal disease control program, *J.A.M.A.,* 116:2585, June 7, 1941.

6. R. A. Vonderlehr and L. J. Usilton, The gonorrhea problem in the United States, *J.A.M.A.,* 109:1425, October 30, 1937.

or "babies' sore eyes." Unless adequate measures for the prevention of this disease are taken at birth, blindness may result.

State laws and the regulations of state health departments almost universally require that physicians and midwives in attendance at births shall routinely and promptly treat the eyes of all newborn infants with a suitable prophylactic (usually a solution of silver nitrate) approved by the health authorities, and that these attendants shall report to local and state health officers all cases of ophthalmia neonatorum. In many States a standard prophylactic for this purpose is distributed by the state health department.

In one instance where the law required that the prophylactic be administered by the physician in charge within one hour after birth, a child was born in the absence of a physician, who arrived eight hours later and did not then apply the prophylactic. The Michigan Supreme Court held that he was not criminally liable for subsequent blindness in the infant, although he might be civilly liable for malpractice if good practice required the use of the treatment eight hours after birth.[7]

Where a nurse employed in a hospital selected by the mother was told by the attending physician to put drops in the infant's eyes and by mistake used a 30 per cent solution of silver nitrate instead of the one per cent solution prescribed by the state board of health, it was held in a North Carolina decision that the physician was not absolutely liable in damages for the resulting injury.[8] In this case, the hospital that supplied the nurse might have been liable, but there was no malpractice on the part of the physician.

While these two cases deal with liability, they also inferentially sustain the validity of these state laws for the control of ophthalmia neonatorum.

It has been held in Tennessee that a gonorrheal infection of the eyes of a workman is an accident under the workmen's compensation laws.[9] The loss of a workman's eye from a gonorrheal infection is likewise compensable in Oklahoma,[10] but has been held not to be com-

7. *People* v. *Clobridge* (1930), 249 Mich. 376, 228 N.W. 692.

8. *Covington* v. *Wyatt* (1928), 196 N.C. 367, 145 S.E. 673. *Walden* v. *Janes* (1942), 289 Ky. 395, 158 S.W. (2d) 609. *Dietsch* v. *Mayberry* (1942), 70 Oh. App. 527, 47 N.E. (2d) 404.

9. *McFarland* v. *Mass. Bonding & Insurance Co.* (1930), 160 Tenn. 546, 26 S.W. (2d) 159.

10. *Bishop* v. *Wilson* (1931), 147 Okla. 224, 296 P. 438. *Turitto* v. *St. Mary's Hospital* (1939), 14 N.Y.S. (2d) 647.

pensable in Ohio.[11] In the latter case the court held that the infection was not caused by a physical injury under the terms of existing state law.

Other Venereal Diseases

Unlike syphilis, which may become a systemic disease, and gonorrhea, which is a disease of the mucous membranes, chancroid is a local ulcer caused by the Ducrey bacillus. It is also called a "soft chancre," to distinguish it from the hard chancre that usually appears in syphilitic infections. Chancroid is generally less severe than the other venereal diseases, but it is a loathsome malady that may cause disability.

Granuloma inguinale, literally "tumor of the groin," and venereal lymphogranuloma (inguinale) are contagious diseases of bacterial or virus origin.[12] They are less prevalent than the other venereal diseases, although they are recognized with increasing frequency, and only in recent years have they aroused medical interest in this country.

The five venereal diseases may occur singly or in combination, so that an infected person may have one of them or several or all at one time. In whatever way or to whatever degree he may be infected, he is obviously a menace to the public health and must be properly supervised in order to prevent the spread of the disease to others.

Reporting of Venereal Diseases

In order that effective control may be instituted, prompt reports to health authorities of all cases of venereal diseases are necessary. Such written reports on prescribed forms are customarily required by law from physicians and other professional attendants. Unlike the reports of other communicable diseases to local health departments, venereal diseases usually may be or are required to be submitted by number or initials only, the name of the patient being kept as a confidential record by the physician. Upon special request by health officials or when the patient becomes delinquent, the name must, as a rule, be revealed to the health authorities for special investigation or for other purposes that are necessary to the protection of the public health.

Legal requirements for the prompt reporting of communicable diseases to health departments have been upheld as valid by the courts on numerous occasions,[13] and these decisions apply with equal force to the venereal diseases.

11. *Indus. Comm. of Ohio* v. *Hosafros* (1934), 47 Oh. St. 261, 191 N.E. 832.
12. W. Frei, Venereal lymphogranuloma. *J.A.M.A.*, 110:1653, May 14, 1938.
13. See Chapter VIII, page 133.

Where a statute provides that a physician or any other person who knows that a prostitute is afflicted with "any infectious or contagious venereal disease" must immediately notify the police authorities of the town, and for failure to do so is guilty of a misdemeanor, it has been held by the Supreme Court of Nevada that the State Board of Medical Examiners acted properly in revoking the license to practice of a physician who had neglected to make such a report.[14]

What happens, however, when a physician reports a case of venereal disease to a person to whom such reports are not required by law? The imputation that a person is suffering from a venereal disease is libelous and is *prima facie* actionable.[15] But where a ship's doctor told a woman in the presence of other persons that she could not embark because she had a contagious venereal disease, it has been held by the United States Circuit Court of Appeals that this remark was not slanderous because the physician was carrying out his duties and was acting without malice.[16]

A similar case occurred where a physician acting as a hotel doctor discovered that one of the guests had syphilis and notified the hotel owner that the guest was suffering from "a contagious disease," with the result that the guest was forced to leave. An action for damages against the physician for alleged breach of duty arising from the confidential relationship between doctor and patient was dismissed by the Supreme Court of Nebraska.[17] So, too, where a school physician informed the parents of a pupil that she was afflicted with a venereal disease, he was held not to be liable in damages for libel.[18]

A physician is not required to testify on the witness stand as to the presence of venereal disease in a person whom he has treated in a professional capacity, since such information is privileged, although the privilege may be waived by the patient.[19] A health officer cannot be required to testify in a civil action regarding the presence or absence of venereal disease in an individual, as shown by a report made officially to him or by a laboratory examination made by or reported to the health department. Such questions often arise in divorce proceedings, actions on insurance, and other civil litigation, but the of-

14. *In re Reno* (1937), 57 Nev. 314, 64 P. (2d) 1036.

15. *Cooley on Torts.* See pages 294, 310-314 *infra. Kirby* v. *Smith* (1929), 54 S.D. 608, 224 N.W. 230.

16. *New York & Porto Rico S.S. Co.* v. *Garcia* (1926), 16 F. (2d) 734.

17. *Simonsen* v. *Swenson* (1920), 104 Neb. 224, 177 N.W. 831, 9 A.L.R. 1250.

18. *Kenney* v. *Gurley* (1923), 208 Ala. 623, 95 So. 34, 26 A.L.R. 813.

19. *Howe* v. *State* (1926), 34 Okl. Cr. 33, 244 P. 826.

ficial record in such cases is a confidential one for the purposes of public health administration, and is not a public record in the sense that reports of births and deaths are public records.[20]

Examination of the Venereally Infected

Health officials are frequently authorized or directed by state laws, municipal ordinances, and board of health regulations to examine or cause to be examined any person who has or is reasonably suspected of having a contagious venereal disease. The exercise of this authority has given rise to a number of important court decisions.

The right to examine any person is not an absolute right. An examination for venereal disease can be conducted without the consent of an individual or against his will only when a health officer is possessed of definite facts that give him reasonable grounds to suspect the existence of the disease,[21] and only when in his judgment such an examination is actually necessary to the protection of the public health. Mere caprice or curiosity is not a sufficient ground for the action, and a mere assumption of the presence of the disease is not sufficient cause for examination.[22]

There is reasonable suspicion of the existence of venereal disease in the cases of all persons who are known to be or are proven to be prostitutes, and statutes frequently authorize the routine examination of such persons as coming within the classification of suspects. Where, however, the health authorities did not prove in court that a woman arrested and held for examination was a habitual prostitute, she was released from custody on a writ of habeas corpus.[23] On the other hand, the action of a magistrate in ordering the detention of a person arrested for vagrancy until a blood test could be taken has been upheld on appeal.[24]

In dismissing a writ of habeas corpus in this case, the New York Supreme Court pointed out that the sections of the state law authoriz-

20. *In re Marks* (1936), 121 Pa. Super. 181, 183 A. 432. *Thomas* v. *Morris* (1941), 286 N.Y. 266, 36 N.E. (2d) 141, 136 A.L.R. 854.

21. *Rock* v. *Carney* (1921), 216 Mich. 280, 185 N.W. 798, 22 A.L.R. 1178.

22. *Ex parte Shephard* (1921), 51 Cal. App. 49, 195 P. 1077. *City of Jackson* v. *Mitchell* (1924), 135 Miss. 767, 100 So. 513.

23. *Ex parte Arata* (1921), 52 Cal. App. 380, 198 P. 814. *Ex parte Dillon* (1919), 44 Cal. App. 239, 186 P. 170. *Huffman* v. *District of Columbia* (1944), 39 A. (2d) 558.

24. *People ex rel. Krohn* v. *Thomas* (1928), 231 N.Y.S. 271, 133 Misc. 145. *People* v. *Fox* (1911), 144 App. Div. 611, 129 N.Y.S. 646. *Hayt* v. *Brewster* (1921), 199 App. Div. 68, 191 N.Y.S. 176.

ing the examination were enacted for "the benign purpose of protecting the public against the ravages of venereal diseases," and that the statutes should receive a liberal interpretation.

If a person is proven to be an inmate of a house of ill fame, the courts have ruled that she can be held for an examination.[25] When a person is taken into custody without a warrant, voluntarily submits to the examination, and is found to have gonorrhea, she may be quarantined.[26] So, too, where a magistrate told a woman to have the examination and that she would be released if free from disease, but it was revealed on examination that she had a venereal disease, her release was refused on a writ of habeas corpus.[27]

While these decisions uphold the right of examination for venereal disease on reasonable suspicion, none of the cases was decided by a court of final appeal. The highest court in Iowa considered this matter in the case of a man and woman who were arrested in Des Moines for lewd cohabitation. The woman was examined and found to have gonorrhea, and the man was detained for examination before trial but sued out a writ of habeas corpus for his release. In granting the writ, the Supreme Court of Iowa pointed out that, while the rules of the board of health provided for examinations of prostitutes and derelicts, there was no express or implied authority in any law or regulation for the examination and taking of a blood test of the man in this case.[28]

"This petitioner may be a bad man," said the court, "but we have no right to assume such a fact for the purpose of minimizing his claim to protection of the ordinary rights of person which law and the usage of civilized life regard as sacred until lost or forfeited by due conviction of crime." While this decision denies the right of examination in the absence of statutory authority, and properly upholds the personal privileges of the individual, the State may lawfully provide for proper technical examinations, including blood tests, where reasonable interference with private rights is necessary for the protection of the public health. This particular case was discussed but not followed in

25. *Ex parte Dayton* (1921), 52 Cal. App. 635, 199 P. 548. *Ex parte Clemente* (1923), 61 Cal. App. 666, 215 P. 698.

26. *Ex parte Johnson* (1919), 40 Cal. App. 242, 180 P. 644.

27. *Ex parte Travers* (1920), 48 Cal. App. 764, 192 P. 454.

28. *Wragg* v. *Griffin* (1919), 175 Ia. 243, 170 N.W. 400, 2 A.L.R. 1327. In *State* v. *Height* (1902), 117 Ia. 650, 91 N.W. 935, 94 A.S.R. 323, 59 L.R.A. 437, it was held that a compulsory examination of a person accused of rape, to ascertain the existence of venereal disease, is a denial of due process of law. See also *Mann* v. *Bulgin* (1921), 34 Id. 714, 203 P. 463.

a decision of the Nebraska Supreme Court upholding the quarantine of a person for venereal disease after an examination as provided by law.[29]

In 1944, however, the Supreme Court of Illinois upheld as valid under the police power the compulsory detention and examination of persons reasonably suspected of being afflicted with communicable venereal disease.[30] In this case two women had been arrested under the terms of a state law for soliciting prostitution and had been ordered by a justice of the peace to submit to the examination authorized by law. They refused, and petitioned for writs of habeas corpus, which were denied in the lower courts.

The Supreme Court of Illinois, in sustaining this action, pointed out that prostitutes are natural subjects of and carriers of venereal diseases, and that for the protection of the public health their detention and examination is proper and reasonable. A city ordinance to the same effect was upheld by the Supreme Court of Arkansas in 1942,[31] although this case was more concerned with the detention and quarantine of the diseased person, whose venereal disease had been revealed by a physical examination ordered by the lower court in accordance with the terms of the ordinance.

A regulation of the Commissioners of the District of Columbia requiring examinations for venereal disease was upheld in 1944 by the Municipal Court of Appeals of the District of Columbia, but the manner of its execution by the public health authorities in a particular case was held to be invalid.[32] A health department physician in this case had received a report that a soldier had contracted venereal disease from a certain woman, and had gone to her residence to interview her. There the physician was unable to gain admission, but conducted a conversation through a locked door with an unknown person while a dog was barking loudly. The woman was, nevertheless, haled to court, although her attorney offered to show by independent medical examination that his client was free from venereal disease. The

29. *Brown* v. *Manning* (1919), 103 Neb. 540, 172 N.W. 522.

30. *People ex rel. Baker* v. *Strautz* (1944) 386 Ill. 360, 54 N.E. (2d) 441.

31. *City of Little Rock* v. *Smith* (1942), 204 Ark. 692, 163 S.W. (2d) 705. In *Ex parte Kilbane* (1946), — Oh. —, 67 N.E. (2d) 22, a lower court upheld a regulation of a city health department for examination and quarantine of the venereally infected. In *State* v. *Jones* (1946), 132 Conn. 682, 47 A. (2d) 185, a law providing for examination for venereal disease of persons charged with an offense against chastity was construed.

32. *Huffman* v. *District of Columbia* (1944), 39 A. (2d) 558.

trial court refused to entertain this evidence and convicted the woman, who appealed to the higher court.

The Municipal Court of Appeals sustained the regulation, but held that no reasonable grounds for suspicion had been proven in the case. The burden, said the court, is not upon the person suspected unless she be a known prostitute, but upon the health officer.

In an order restraining a superior court from granting a writ of habeas corpus to a person who had been examined and detained by a city health officer, the Supreme Court of Washington pointed out that under the constitution and laws of that State the determination and rulings of the health officials were final and could not be upset by habeas corpus proceedings.[33] Habeas corpus was also denied by the Supreme Court of Missouri in the case of a prostitute who had been examined and quarantined as provided in a city ordinance.[34]

In a dictum in a case upholding the isolation of a person infected with a venereal disease, the Supreme Court of Kansas stated that the reasonableness of examination of suspects "affects the public health so intimately and so insidiously, that considerations of delicacy and privacy may not be permitted to thwart measures necessary to avert the public peril. Only those invasions of personal privacy are unlawful that are unreasonable, and reasonableness is always relative to gravity of the occasion."[35]

Quarantine of the Venereally Infected

The power of legislative bodies to authorize the quarantine or isolation of venereally infected persons and the right of health officials to establish such quarantine are universally recognized in American jurisprudence. "The right of the Legislature under the police power to establish quarantine, to prevent the spread of contagion and infection, is too well established by adjudication and grounded in common sense to be questioned or doubted," said the Alabama Court of Appeals in upholding the quarantine of a person arrested for vagrancy, although the court stated that the detention should be in a hospital rather than in a jail.[36]

33. *State* v. *King County Superior Court* (1918), 103 Wash. 409, 174 P. 973. *Dowling* v. *Harden* (1921), 18 Ala. App. 63, 88 So. 217.

34. *Ex parte Lewis* (1931), 328 Mo. 843, 42 S.W. (2d) 21.

35. *Ex parte McGee* (1919), 105 Kan. 574, 185 P. 14, 8 A.L.R. 831.

36. *Dowling* v. *Harden* (1921), 18 Ala. App. 63, 88 So. 217.

In 1922 the Supreme Court of Ohio in a leading decision[37] sustained the detention of two prostitutes who had been found to be suffering from venereal disease. In this instance they had been quarantined under the terms of the Sanitary Code, which had been adopted by the state public health council. Exactly along the same lines is a Florida decision of 1943, in which the Supreme Court of that State upheld the quarantine of a person afflicted with gonorrhea, in accordance with the rules of the state board of health.[38]

Although a person may be quarantined without a judicial hearing under a law, ordinance, or health department regulation requiring the examination and hospital quarantine of persons having venereal disease,[39] the courts have also held that a person so detained is later entitled to a hearing in court on a writ of habeas corpus in order to determine the legality and justification of the detention.[40] There is an exception to this rule in the State of Washington, where under the state constitution, the findings of the state board of health are final when such cases are taken on appeal to this board.[41] In no instance where the writ of habeas corpus has been invoked in such cases has the court failed to sustain the validity of the law or regulation imposing the quarantine or isolation.

Quarantine may, furthermore, be imposed in any suitable place. Thus, in the recent Arkansas decision[42] it was held that detention of a prostitute from Little Rock in that State in a government hospital in Hot Springs was proper. It has likewise been held in a recent Tennessee case that a person who escapes from a quarantine for venereal disease may be fined as well as recommitted, and that such quarantine is a procedure for which bail is not granted.[43]

Determination by a health officer that a person is infected with venereal disease usually is conclusive in the absence of bad faith, and

37. *Ex parte Company* (1922), 106 Oh. St. 50, 139 N.E. 204.

38. *Varholy* v. *Sweat* (1943), 153 Fla. 571, 15 So. (2d) 267.

39. *Ex parte Lewis* (1931), 328 Mo. 843, 42 S.W. (2d) 21. *Ex parte Johnson* (1919), 40 Cal. App. 242, 180 P. 644. *Duncan* v. *Lexington* (1922), 195 Ky. 822, 244 S.W. 60. *Ex parte Caselli* (1922), 62 Mont. 201, 204 P. 364. *Ex parte Company* (1923), 106 Oh. St. 50, 139 N.E. 204.

40. *Re Smith* (1895), 146 N.Y. 68, 40 N.E. 497, 28 L.R.A. 820, 48 A.S.R. 769. *Ex parte Hardcastle* (1919), 84 Tex. Cr. 463, 208 S.W. 531, 2 A.L.R. 1589. *Ex parte Caselli* (1922), 62 Mont. 201, 204 P. 364. *Ex parte Roman* (1921), 19 Okl. Cr. 235, 199 P. 580.

41. *State* v. *King County Superior Court* (1918), 103 Wash. 409, 174 P. 973.

42. *City of Little Rock* v. *Smith* (1942), 204 Ark. 692, 163 S.W. (2d) 705.

43. *State ex rel. Kennedy* v. *Head* (1945), — Tenn. —, 185 S.W. (2d) 530.

is sufficient evidence to justify continued quarantine and the refusal by a court to grant a writ of habeas corpus.[44]

Where, however, a man was arrested for vagrancy and had given bond for bail, it was held by the Supreme Court of Alabama that he must be released by the sheriff on a writ of habeas corpus, despite an order by the local health officer that the alleged vagrant be held in jail for a blood test for venereal disease.[45] The court stated in this case that quarantine laws were acknowledged to be a valid exercise of the police power, and pointed out that the statutes provided for an examination for venereal disease of persons actually committed to jail for vagrancy or prostitution, but held that prior to such final commitment mere vagrancy was not sufficient to raise reasonable suspicion of venereal disease and that a jail was not the proper place for a diseased person, who was not a criminal merely by reason of the infection.

The existence of venereal infection in an individual may be determined by laboratory tests or clinical examination or both. A single positive or negative laboratory test, particularly in the case of syphilis, should be confirmed by a second, because these tests are reliable but not infallible. If two tests give divergent results, a third should be made. In this way adequate evidence will be available for introduction in court in case of necessity. A health officer who orders quarantine of an individual merely on the strength of a single positive test for venereal disease may find that he has been guilty of poor judgment, for which he may not be personally liable, but which may cause him embarrassment.[46]

It is the duty of the sheriff of a county to execute and the duty of the board of commissioners to bear the expense of an order of a local health officer for the isolation of a woman infected with venereal disease.[47] When a person who is quarantined is cured of the disease, as

44. *Ex parte McGee* (1919), 105 Kan. 574, 185 P. 14, 8 A.L.R. 831. *Ex parte Fisher* (1925), 74 Cal. App. 225, 239 P. 1100. *Ex parte King* (1932), 128 Cal. App. 27, 16 P. (2d) 694. *Ex parte Lewis* (1931), 328 Mo. 843, 42 S.W. (2d) 21. *Ex parte Rothrock* (1921), 19 Okl. Cr. 234, 199 P. 581. *Ex parte Brooks* (1919), 85 Tex. Cr. R. 397, 212 S.W. 956. *Ex parte Gilbert*, (1940), 138 Tex. Cr. R. 269. 135 S.W. (2d) 718. *Ex parte James* (1944), — Tex. Cr. R. —, 181 S.W. (2d) 83.

45. *State* v. *Hutchinson* (1944), 246 Ala. 48, 18 So. (2d) 723. *Dowling* v. *Harden* (1921), 18 Ala. App. 63, 88 So. 217.

46. J. A. Tobey, The city's legal rights in the examination and detention of the venerally infected, *American City*, October, 1946, pp. 105-106.

47. *Nyberg* v. *Board of Commissioners* (1923), 113 Kan. 158, 216 P. 282.

shown by suitable evidence, a release from detention will be granted,[48] but the decision as to the appropriateness of such a release from quarantine is in general a matter within the discretion of the health officer.[49]

When a city fails to segregate a person infected with venereal disease so that a fellow prisoner in a city jail contracts the disease as a direct result of this negligence, the city will be liable for damages.[50]

Premarital and Antepartum Examinations

Since 1913 a number of States have had in effect laws requiring that one or both of the applicants for a marriage license shall be free from venereal disease, as shown by an examination by a licensed physician. The first law of this nature was, in fact, adopted in the State of Washington in 1909, but was repealed in the following year. In 1913 such laws, applying only to the male, were passed in North Dakota, Oregon, and Wisconsin, and remained continuously in effect until amended or replaced in recent years. Between 1919 and 1929 five other States required by law that the male applicant for a marriage license be free from venereal disease, although laboratory tests were not made mandatory, and penalties for violations usually were not imposed.

In 1935 the legislature of Connecticut passed an act requiring both applicants for a marriage license to submit to local registrars certificates showing them to be free from syphilis in a communicable form, and providing for punishment of any local registrar who issued a license without first receiving the necessary certificate. Since that time, premarital examination laws have been adopted in about two-thirds of the States, some of them having been based on model legislation suggested by the American Social Hygiene Association.[51]

These laws provide that the license shall be refused if the applicant has syphilis, and sometimes if he has gonorrhea, in the infectious stage of the disease. Some state laws, as in Connecticut, Illinois, Michigan, New Hampshire, New Jersey, New York, Rhode Island, and Wis-

48. *Ex parte Roman* (1921), 19 Okl. Cr. 235, 199 P. 580.

49. *Ex parte Irby* (1923), 113 Kan. 565, 215 P. 449.

50. *Lewis* v. *City of Miami* (1937), 127 Fla. 426, 173 So. 150. See Chapter XVII, on Liability of Municipal Corporations.

51. G. F. Forster and H. J. Shaughnessy, Premarital examination laws in the United States, *J.A.M.A.*, 118:790, March 7, 1942. M. R. Zwalley and J. F. Mahoney, *Requirements of Premarital Legislation*, Bulletin No. 98, United States Public Health Service, 1945.

consin, specifically require blood tests for syphilis on the part of both men and women, while other state laws prohibit the marriage of venereally infected persons but do not define the measures to be used in discovering the disease, although in some instances personal affidavits declaring freedom from infection are required prior to issuance of the license.

The New York law, which was adopted in 1938, provides that no application for a marriage license shall be accepted by a town or city clerk unless accompanied by a confidential statement signed by a licensed physician that the applicant has been given an examination for syphilis, including a standard serological test, not less than twenty days prior to the application, and showing that the person is not infected with syphilis, or if infected is not in a stage of the disease whereby it may become communicable. When granted, the marriage license must be used within sixty days.

Under the terms of this law, the examination may be dispensed with because of emergency on order by a judge of the supreme court, a county court, or a county children's court, if the judge is satisfied that the public health and welfare will not be injuriously affected thereby, but his order must be accompanied by a confidential memorandum reciting the reasons for granting it. The physician's report and the judge's order are confidential and are not open to public inspection, but may be ordered produced in court for proper purposes. A standard serological test is defined in this law as a laboratory test for syphilis approved by the state commissioner of health. Violation of any provision of the law is declared to be a misdemeanor.

A state law of this nature is justified by the fact that health is recognized as an important factor in marriage, with respect to both the partners involved and their future offspring. The State has a legitimate responsibility to ascertain whether applicants for marriage are healthful and to prevent the spread of dangerous diseases through the marital relationship.

The constitutionality of the so-called eugenic marriage law was sustained in 1914 by the Supreme Court of Wisconsin,[52] but in 1946 this decision was the only one in which a state premarital examination law had been passed upon by a court of last resort. This law required examinations only of male applicants, but the court held that this was not an unreasonable classification. The law also required the use

52. *Peterson* v. *Widule* (1914), 157 Wis. 641, 147 N.W. 966. In *Lyannes* v. *Lyannes* (1920), 171 Wis. 381, 177 N.W. 683, it was held that this law does not apply to marriages contracted outside the state.

by examining physicians of "recognized clinical and laboratory tests" for venereal disease, and set $3.00 as the legal fee for such an examination. The court held that the law did not necessarily require the making of a Wassermann test, and stated further that the meagerness of the fee was not sufficient to invalidate the statute.

"The power of the state to control and regulate by reasonable laws the marriage relation, and to prevent the contracting of marriage by persons afflicted with loathsome or hereditary diseases, which are liable either to be transmitted to the spouse or inherited by the offspring, or both, must on principle be regarded as undeniable," declared the Supreme Court of Wisconsin in this case. Subsequent to the decision, this law was amended in several particulars.

In 1939 the Appellate Court of Illinois had before it the question as to whether a marriage contracted in another state by residents of Illinois was void because of failure to comply with the Illinois law requiring a certificate from the parties showing freedom from venereal disease. The court decided that the marriage was not void, because the statute was directory and not prohibitory.[53] In a case concerned with a common law marriage, however, the Pennsylvania Superior Court decided in 1944 that common law marriages in that State would be void after 1939 unless there was compliance with the law enacted in that year, which required the parties to the proposed marriage to produce certain evidence of freedom from syphilis.[54]

This law, said the court, is clearly a public health measure designed to assist in the eradication of syphilis, and to prevent the communication of syphilis by a diseased spouse to the other, who was free from it, and to prevent the birth of children with syphilitic weaknesses and deformities. Certainly, continued the court, the legislature never intended that such an important hygienic statute could be circumvented by the simple device of the parties entering into an informal marriage contract, or common law marriage, either with or without a license. In New York the law requiring a premarital blood test has been construed in its application to a member of the military forces.[55]

When extreme cruelty is a statutory ground for divorce, communication of a venereal disease by one spouse to the other is generally held to come within the definition of extreme cruelty,[56] but a mere

53. *Boysen* v. *Boysen* (1939), 301 Ill. App. 573, 23 N.E. (2d) 231.

54. *Fisher* v. *Sweet and McClain* (1944), 154 Pa. Super. 216, 35 A. (2d) 756.

55. *In re Lewicki* (1942), 38 N.Y.S. (2d) 944.

56. *Danielly* v. *Danielly* (1922), 93 N.J. Eq. 556, 118 A. 335. *Gartner* v. *Gartner* (1931), 109 N.J. Eq. 112, 156 A. 673. *C*——— *v. C*——— (1914), 158 Wis. 301, 148 N.W. 865, 5 A.L.R. 1013.

request for sexual intercourse by an infected spouse is not cruelty,[57] although concealed existence of syphilis is cause for annulment of marriage.[58]

Serological blood tests for syphilis are required of all pregnant women by laws adopted in 1938 in New York, New Jersey, and Rhode Island, and subsequently in more than half of the States. Blood must be taken by a physician, and the test must be one approved by the state department of health. The fact that it has been performed and the date must be stated by physicians in reporting births and stillbirths, but no report of the result of the test is permitted.

Illegal Exposure to Venereal Disease

A person infected with venereal disease who exposes another person, including his wife, to the disease is guilty of felony, according to the terms of some state laws. The conviction of a man who exposed a female to gonorrhea under such a statute has been affirmed by the Criminal Court of Appeals of Oklahoma,[59] but it has also been held that a physician could not testify as to the condition of the accused when his knowledge was due to a professional relationship and the right of privileged communication had not been waived.[60] Confinement in prison of persons who wilfully infect others with venereal disease, contrary to the terms of a statute making such exposure a criminal offense, has been upheld in two recent cases by the Oklahoma Criminal Court of Appeals.[61]

It has been held by the Supreme Court of North Carolina that a wife can maintain an action for damages under the laws of that state against her husband for coercing her and wilfully and maliciously giving her a venereal disease, in this case gonorrhea.[62] The damages in this case amounted to $10,000 in favor of the wife.

In a prosecution against a house of ill fame, it has been held that the general reputation of the place could be shown, and that it was

57. *Bowman* v. *Bowman* (Del. 1934), 171 A. 444.

58. *Doe* v. *Doe* (Del. 1933), 165 A. 156. *Svenson* v. *Svenson* (1904), 178 N.Y. 54, 70 N.E. 120. *Watson* v. *Watson* (1940), – Mo. App. –, 143 S.W. (2d) 349.

59. *Reynolds* v. *State* (1930), 49 Okl. Cr. 215, 292 P. 1046. *Contra: Austin* v. *State* (1911), 100 Miss. 189, 56 So. 345.

60. *Howe* v. *State* (1926), 34 Okl. Cr. 33, 244 P. 826.

61. *Epps* v. *State* (1942), 69 Okl. Cr. 460, 104 P. (2d) 262. *Ex parte Brown* (1943), 77 Okl. Cr. 96, 139 P. (2d) 196.

62. *Crowell* v. *Crowell* (1920), 180 N.C. 516.

proper to admit evidence by health physicians as to the diseased condition of the inmates.[63] In all states there are laws dealing with prostitution.[64] In 1941 Congress passed a law prohibiting prostitution in the vicinity of military and naval establishments, and in 1946 reenacted it.

Prohibition of Obscene Advertising and Literature

Laws prohibiting the advertising of alleged cures for venereal disease have been sustained by the courts,[65] and the revocation of the license of a physician who violated such a law has likewise been upheld.[66]

A sincere and ethical pamphlet on sex hygiene sent through the mails does not, however, violate the United States Criminal Code (18 U.S.C.A. 334), which prohibits the mailing of obscene, lewd, and lascivious pamphlets.[67] The test, said the court, is whether the literature would tend to deprave the morals of those who received it, but a truthful exposition of the sex side of life, evidently calculated for instruction, would not be likely to do so. Pointing out that the old theory that information about sex matters should be left to chance has greatly changed, the court declared that the direct aim of such pamphlets as the one under consideration was to promote understanding and self control, and not to arouse sex impulses.

Prophylactic Devices

Laws and ordinances which provide for the control and use of devices for the prevention of venereal diseases, devices which may also prevent conception, are in effect in many states. An ordinance prohibiting the sale of such devices except by licensed physicians, licensed

63. *Anzine* v. *U.S.* (1919), 260 F. 827.

64. See 161 *American Law Reports* 356. B. Johnson and G. Gould, *Digest of State and Federal Laws Dealing with Prostitution and Other Sex Offenses,* New York, American Social Hygiene Association, 1942. Techniques of Law Enforcement Against Prostitution, Div. of Social Protection, Federal Security Agency, 1943.

65. *People* v. *Kennedy* (1913), 176 Mich. 384, 142 N.W. 771. *State* v. *Hollinshead* (1915), 77 Ore. 473, 151 P. 710. *Hughes* v. *State Medical Examiners* (1926), 162 Ga. 246, 134 S.E. 32. *Davis* v. *State* (1944), – Md. –, 37 A. (2d) 880.

66. *Kennedy* v. *State Bd. of Registration* (1906), 145 Mich. 241, 108 N.W. 730, 9 Ann. Cas. 125.

67. *U.S.* v. *Dennett* (1930), 39 F. (2d) 564. *U.S.* v. *Nicholas* (1938), 97 F. (2d) 510.

drugstores, and others specially licensed has been upheld as valid.[68] Where, however, a statute prescribed a standard for condoms, or prophylactic rubbers, and provided that sales should be made only from prescription counters of licensed retail drugstores, these portions of the law were upheld, but a requirement that only wholesale druggists should be issued licenses to sell these devices at wholesale was ruled void as a purely arbitrary classification.[69]

State laws forbidding the use by any person of any drug, medicinal article, or instrument for the prevention of conception, and making no exceptions in favor of physicians, have been sustained as constitutional,[70] as have also laws permitting physicians to employ such devices under certain circumstances.[71]

Social Hygiene

Although the control and reduction of the venereal disease is a most important aspect of social hygiene, this term, as used in the United States, means the practical promotion of a better understanding and wiser use of human sex endowments. The social hygiene movement involves sex education, the repression of prostitution, the employment of protective social measures, and provision for wholesome recreation, as well as the prevention and regulation of the venereal diseases. A national program of social hygiene is sponsored by the American Social Hygiene Association, a voluntary agency, which has headquarters in New York City. Advice as to many of the legal features of social hygiene and venereal disease control is available from this organization.[72]

Official activities against the venereal diseases are undertaken by state and local health authorities, with the advice and cooperation of the Division of Venereal Diseases of the United States Public Health Service. By an act of Congress approved May 24, 1938 (Public—No. 540—75th Congress) there was authorized to be appropriated for the fiscal year ending June 30, 1939, the sum of $3,000,000 for the purpose

68. *McConnell* v. *Knoxville* (1937), 172 Tenn. 190, 110 S.W. (2d) 1178, 113 A.L.R. 966.

69. *Markendorf* v. *Friedman* (1939), 280 Ky. 484, 133 S.W. (2d) 516, 127 A.L.R. 416.

70. *Commonwealth* v. *Gardner* (1938), 300 Mass. 372, 15 N.E. (2d) 222. *State* v. *Nelson* (1940), 126 Conn. 412, 11 A. (2d) 856. *Lanteen Laboratories* v. *Clark* (1938), 294 Ill. App. 81, 13 N.E. (2d) 678.

71. *People* v. *Sanger* (1918), 222 N.Y. 192, 118 N.E. 637.

72. *Forms and Principles of State Social Hygiene Laws,* New York, American Social Hygiene Association, 1944.

of assisting States, counties, health districts, and other political divisions of the States in establishing and maintaining adequate measures for the prevention, treatment, and control of the venereal diseases; for investigations and the training of personnel; and for the administration of the act. The appropriation authorized for the same purpose for the following fiscal year was $5,000,000; for the fiscal year ending June 30, 1941, $7,000,000; and for subsequent years such sums as are deemed necessary.

This act is administered by the Surgeon General of the United States Public Health Service, who allots sums to the various States upon the basis of population, the extent of the venereal disease problem, and the financial needs of the respective States. The Surgeon General also approves plans of state health authorities, and is empowered to prescribe rules and regulations to carry out this act, which have been issued.

A State, to be eligible to receive a grant-in-aid for venereal disease work must submit to the Surgeon General a comprehensive statement of its existing venereal disease control organization, program, and budget; a proposed plan for improving the service, including a merit system for personnel; specific plans for the control of gonorrhea; a proposed plan for extending and improving district, county, and city venereal control services; and a statement indicating ways in which the proposed expenditure of federal funds may be expected to stimulate permanent progress in the prevention and control of venereal diseases in both urban and rural areas.

Any laboratory, state or otherwise, receiving federal funds must demonstrate by a suitable method that the serologic tests performed have a satisfactory sensitivity and specificity rating, and must provide laboratory services for venereal diseases on the same basis as other communicable diseases. Free diagnostic and treatment facilities for both syphilis and gonorrhea must be provided by all health departments or clinics receiving federal funds. Antisyphilitic drugs must be distributed free on the request of any physician duly authorized by law to administer such drugs.