

and move in the civil courts to have him committed civilly to a mental institution. We do it under other statutory provisions.

This subsection (4), therefore, while it would be a new statutory provision, unlike anything we now have, would call for a practice which we now follow and I think would add very little to our jurisprudence.

The CHAIRMAN. Well, what do you actually gain by dismissing the criminal charges, if he is going to be committed, what difference does it make whether he is committed civilly or under a charge of murder?

Mr. ACHESON. We are talking here about defendants who have never been tried. They are in the hospital awaiting trial, pending a restoration of mental competency. Under our law as it now stands, we cannot move in the civil courts for a civil commitment if there is a criminal charge pending against a defendant and, therefore, we must dismiss the criminal charges before we move for civil commitment and, of course, that is what this subsection provides. But I think it would add very little to the practice that we now follow, or our authority to follow it.

Now, at the bottom of page 8, in subsection (g) of the bill, there is a provision that the court may order a judgment of acquittal by reason of insanity solely on the basis of a medical report. I think there are risks in such a provision, particularly in a case where a medical report finding a defendant insane might be the result of a divided panel of doctors.

In cases where panels of examining doctors are divided, we usually take the case to a jury trial. It seems to me that a jury question is presented where doctors are divided and I would not like to see authority in the judge to override that division of medical view, and order an acquittal on the strength of his own selection of one medical view as against another.

I would just like to call the attention of the committee to this provision on page 9 of the bill, line 9 where it provides for the testimony of psychiatrists in trials. Under our present case law, notably *Jenkins v. United States*, 113 U.S. app. D.C. 300, 307 F.2d 637 (1962), a medical witness may be, not a psychiatrist, but a clinically trained psychologist. Under that decision, a psychologist who does not have medical training, but who is familiar with insanity cases and hospital work, familiar with the records, familiar with the psychological testing procedures, is allowed to come in to court in a criminal prosecution and express a view on mental disease or express an opinion or view as to whether the criminal act was the product of a mental disease. This statute would eliminate that, and limit expert testimony to psychiatrists.

I do not have any particular comments on the balance of this bill, Mr. Chairman, except to say that, on page 11, there is a provision beginning at line 7 for a hearing in court on the question of the release of the patient from a mental institution, and that in the procedure provided for here in the bill the court may appoint at least two qualified psychiatrists to examine the person.

Our procedure under our present law is very different from this. This would substantially change the procedure and I think would substantially involve us in more litigation over releases from hospitals, more than we now have, under our present procedure.