

Under the present procedure the court may act on the certificate of the hospital unless the Government objects to a release recommended by the hospital, and in that case there is a hearing at which the hospital doctors who participated in the examination are called as witnesses.

Now, this bill would add to that procedure the appointment of additional outside doctors who would come in and give their testimony after examination and I think it would multiply the cases of divided medical opinion and would multiply the hours spent in court by doctors over the question of release from mental institutions.

One last comment—

The CHAIRMAN. Pardon me. I gather you are opposed to that section, are you not?

Mr. ACHESON. Yes, Mr. Chairman. I am opposed to it. I think it would be inconvenient, to say the least. It would be an additional burden on the staff of St. Elizabeths Hospital because, in almost every case where their view was that the defendant should not be released from the hospital, the defendant will attempt to invoke this procedure and have additional doctors appointed by the court and take the case to court. Not only the new doctors but the original St. Elizabeths doctors would have to come to court and testify.

And they spend so much of their time testifying now that I think they would be spending more time in court than in the hospital, under this provision.

On page 13 of the bill, and I am merely flagging it to the attention of the committee, page 13, line 11, there is a provision that the jury should not be instructed by the court of the consequences of a verdict of guilty, or acquittal by reason of insanity, that is, they should not be told that, if acquitted by reason of insanity, the defendant will go to the hospital instead of going free.

Under our present case law, in the case of *Lyles v. The United States* (103 U.S. App. D.C. 22, 254 F. 2d 725), the District judge must instruct the jury as to the consequences of an acquittal by reason of insanity, unless the defense affirmatively waives that instruction.

The CHAIRMAN. You say you are flagging that to the attention of the committee—

Mr. ACHESON. Well, Mr. Chairman, it does not make much difference to me whether the District judges give that instruction or do not. I think it is probably better that they should give it but I don't feel strongly about it, I just simply wanted the committee to know about this provision.

The CHAIRMAN. Is that an ALI recommendation?

Mr. ACHESON. This is an ALI recommendation also, and it is the only provision of the bill that radically differs from our present practice and, in fact, is opposite to it.

The CHAIRMAN. And your judgment on it is that—

Mr. ACHESON. Well, my judgment is, and I don't think it is a vital thing, but I think it is better that the jury should know the consequences of acquittal and the consequences of conviction. If the jury thinks, for example, that if acquitted by reason of insanity a defendant is on the street, the chances are that they may not acquit, in a case where the defendant really had a serious mental disease and really is not responsible for the crime.