

trict of Columbia, because apparently they did have notice in most all of the cases where insanity was to be raised as an issue. However, he favored the section.

He thought notice as provided by the House bill was a good thing, because it did do just exactly what you say, and that is prevent the prosecution from being taken by surprise.

Dr. OVERHOLSER. Thank you, sir.

On page 5, Mr. Chairman, in the paragraph at the bottom of the page head "D," I think again you are giving a good deal of authority to the psychiatrist on a topic which really is not entirely within his field, the capacity to know or appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of law—and to what extent it was impaired. I think in general the attempt is made when opinions of that sort are given to answer as far as the psychiatrist is competent to answer. But I must say that psychiatrists are not always completely successful mindreaders, and some of this seems to call for knowledge which is over and above that which is really needed by the psychiatrist.

The CHAIRMAN. In other words, you think that that subsection (d) is unnecessary.

Dr. OVERHOLSER. Yes, sir.

The CHAIRMAN. Then I am a little troubled—

Senator DOMINICK. I did not get the witness' answer.

The CHAIRMAN. What was your answer to my question?

My question was, "I take it from what you say that subsection (d), lines 19 through 25, page 4 of the House bill, are unnecessary?"

Dr. OVERHOLSER. I think they are.

The CHAIRMAN. You think they are unnecessary?

Dr. OVERHOLSER. I do; yes, Mr. Chairman.

On page 9 of the bill, I take it that the prohibition against a psychiatrist who has not examined the defendant is intended to rule out any hypothetical question.

Of course, a psychiatrist always would prefer to testify about someone he has examined. These hypothetical questions are very often quite misleading, I think, to the jury. So perhaps if that is the aim, I suppose it is all right, although I can think of situations in which an adequate examination was not permitted by time, for example, to enable the psychiatrist to give an adequate opinion, except on the basis of a hypothesis. Maybe my reading of the—this is lines 14 to 19, on page 9.

The CHAIRMAN. That reads:

Both the prosecution and the defendant may summon any other qualified psychiatrist to testify, but no one who has not examined the defendant shall be competent to testify to his opinion as a psychiatrist with respect to the mental condition or responsibility of the defendant.

Dr. OVERHOLSER. Yes, sir.

The CHAIRMAN. Now, again your objection to that is what, Doctor?

Dr. OVERHOLSER. Well, it would seem that this would prohibit asking any psychiatrist a hypothetical question about the defendant, that he might conceivably not have seen him.

I think perhaps this is a very minor point, to be sure. But I raise that question, sir.

The CHAIRMAN. Thank you.