

The CHAIRMAN. We would be very happy to receive them. Will you tell us what they are?

Dr. OVERHOLSER. I have spoken already about the article written by Drs. Guttman, Freedman, and myself.

The CHAIRMAN. As I understand it, that article says that the ALI test has weaknesses; is that correct?

Dr. OVERHOLSER. Yes, sir.

The CHAIRMAN. Is that a correct capsule expression of what this article says?

Dr. OVERHOLSER. Yes.

The CHAIRMAN. In other words, you three men, very eminent psychiatrists, do not agree with the ALI test?

Dr. OVERHOLSER. Yes, sir; that is correct.

The CHAIRMAN. You point out in this article why you do not agree with the ALI test.

Dr. OVERHOLSER. Yes, sir.

The CHAIRMAN. Why don't you agree with the ALI test?

Dr. OVERHOLSER. Well, I think that would trespass on the time of the committee, Mr. Chairman.

The CHAIRMAN. I thought you might capsule it. I am a little inquisitive at the present time, because I understood the U.S. attorney to say that the case law, *Durham*, as clarified or supplemented by the *McDonald* case, was substantially the test that is laid down in the American Law Institute test.

Now, I do not know whether you agree with that or not.

Dr. OVERHOLSER. No, sir; I do not agree entirely with that. I think the basic concept of the ALI rule is a melange of the *M'Naghten* rule and the irresistible impulse rule.

The CHAIRMAN. The *M'Naghten* rule is the "right and wrong" rule?

Dr. OVERHOLSER. Yes, sir; that it doesn't come to grips with the basic problem which was set up in the New Hampshire courts in 1870, and by the *Durham* rule here. And I do not think that basically *McDonald* did very much to change the basic concept about productivity.

It pointed out very clearly and very properly that the jury decides on the basis, hopefully, at least, of the evidence which is before the jury from experts. And it pointed out, too, that the evidence which is needed to shift the burden of proof must be something more than a scintilla. And I think that is proper.

I am not so sure that—just where the borderline comes in between scintilla, some evidence, substantial evidence, and preponderant evidence. Sometimes that is a bit difficult to determine.

Of course, what bothers me, and what bothers Mr. Justice Brennan, in the article which he wrote in the American Bar Association Journal 2 months ago, is that sometimes it will happen that the defendant, being indigent, cannot get the necessary support for his contention, perhaps, that he is mentally ill. And I think that is one of the weaknesses, perhaps, of administration of the criminal law, particularly in this country—that the indigent defendant perhaps does not get quite all his rights, whereas the wealthy one can bring in other evidence.

Senator DOMINICK. Now, Doctor, where do you get that type of information? I have seen these indigents brought in on accused crimes, at least in our State, and in many other areas, and they are supplied