(The exhibits follow:)

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## MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY[1]

### A PSYCHIATRIC VIEW OF THE AMERICAN LAW INSTITUTE: MODEL PENAL CODE PROPOSAL

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It is a truism that in any decisionmaking process the freer the flow of relevant information the greater the chances that the decision will be rational and just. Any impediment to pertinent communication increases the probability that irrational or, in the court of law, unjust decisions will be made. The clinical insights of psychiatry can accurately reflect the state of its knowledge and be efficiently utilized by courts only when the procedures for testifying do not suppress or distort the information. The fewer the restrictions imposed on the psychiatrist testifying in court, the greater the resources upon which the courts can draw.

Decisions concerning the legal criteria for excluding responsibility obviously belong to other members of this Committee. The considerations which we are presenting arise from and are restricted to our area of training, competency, and primary interest—mental disease and mental defect. Only so far as the proposal attempts to incorporate psychiatric disease need the Committee grant our advice any more weight than that of other interested laymen. However, so far as it does, we think it reasonable to hold that the unanimous opinion of the three psychiatric members of the Advisory Committee ought to be weighed as representative of the thinking of many of our colleagues in psychiatry upon whom the success of any formula depends.

There is now a body of experience based on the history of the MacNaughton formula which may guide us to avoid a repetition of difficulties arising from earlier efforts. For example, a serious impediment to meaningful communication between psychiatrists and lawyers in the MacNaughton formula is the psychiatrists' mistaken assumption that MacNaughton makes an attempt to define insanity which they consider in error. Lawyers see it as a statement of the conditions under which an accused person might be exculpated from guilt and from being stigmatized as a criminal.

The traditional reluctance of psychiatrists to testify in courts under the MacNaughton formula arises in large part from the frustration of language which the law requires of them. Many lawyers have failed to realize that freedom of psychiatric testifying is not identical with extension of psychiatric concepts in the procedures and decisions of the courts. Courts can only benefit from having the greatest possible clarity of exposition of psychiatric testimony, no matter what standards it sets for responsibility.

Section Four of the Model Penal Code of the American Law Institute,[3] devoted to Responsibility, has a dual function: It sets up the criteria by which, according to law, mental disease or defect may exclude responsibility. Responsibility is not a qualitative or quantitative intrinsic attribute of a person; it is, in this context, a legal judgment. Since, however, "the deed does not make the criminal unless the mind is criminal," the state of mind must be ascertained and a pathological state of mind is a psychiatric problem. However, the gauge for determining legal exculpation is not suitable for the differential diagnosis of psychiatric disability.

So, Section Four also sets up standards, it guides, and it limits the communications of the psychiatrists concerning mental disease and defect to the judge

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[1] This is the minority report of the psychiatric members of the Advisory Committee to the American Law Institute preparing a Model Penal Code.

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[3] The proposed American Law Institute formula, Section 4:

1. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
2. The terms "mental disease" or "defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.