

Senator DOMINICK. If I might, Mr. Chairman, I would like to go into this a little more.

Doctor, I have great respect for your competence and ability. And I do not intend to be cross-examining you on any of these. But I want to see in what context we are talking.

Your general thesis, then, as I understand from your answer to the chairman's question, is that the court should determine what are the tests as to whether a defendant is sane or insane. Is that accurate?

Dr. OVERHOLSER. Yes, sir.

Senator DOMINICK. And in each court, of course, you have a different judge, and you have a different person. So therefore, the rules in each specific case might well be different, might they not?

Dr. OVERHOLSER. I should say in any one jurisdiction they ought to be uniform, just as there is here now by the decisions of the court of appeals—and the one case that has gone up to the Supreme Court of the United States.

Senator DOMINICK. But this takes quite a long time, to arrive at a uniform status for determining whether a person is sane or insane, does it not?

Dr. OVERHOLSER. The courts have been doing business for a long, long time. Some of them have not made much progress as far as keeping up with the findings of science, and particularly of psychiatry. I mean the *McVaghten* rule is still the predominant rule in the United States. There are many jurisdictions having also the so-called irresistible impulse rule. And then there is New Hampshire and the District, and so far those are the only two, which have adopted the so-called productivity test. And I think that at least one State, and maybe one or two more—Dr. Guttmacher may know—have adopted in essence the ALI formulation.

Senator DOMINICK. Now, Doctor, to lay the groundwork for this, I would say that the law is at best an inexact science. I do not know whether you would agree with this or not; but as a lawyer, and as a practicing one before I entered Congress, I would say that. Would you say that psychiatry is an inexact science?

Dr. OVERHOLSER. Yes, sir. I would agree with both of these statements.

Senator DOMINICK. If you then agree with both of those statements, and you add into it the element of different judges and different branches of the court, don't you get two elements of inexactness in trying to determine whether a person is sane or insane, within the terms of responsible conduct?

Dr. OVERHOLSER. I suppose that has been the case ever since the concept of criminal responsibility was developed.

Senator DOMINICK. What I am trying to bring out is that wouldn't we pyramid the doubts and confusion by simply leaving this up to the courts to determine, whether or not a person is responsible or not responsible for a felonious act?

Dr. OVERHOLSER. I think you would embalm them just the way a butterfly could be embalmed in plastic. There would be no chance of further change—for practical purposes, whereas the courts can change their minds, and sometimes do.

Senator DOMINICK. And then what happens if the courts do change their minds on people who have been acquitted or convicted on the basis of rules which have been reversed by the court?