

I have talked with Chief Justice Brune, of our court of appeals in Maryland, a very respected jurist, who feels that it is a legislative matter.

I am not in a position to say, except that I have appeared before committees of the Maryland Legislature on various matters. As a matter of fact, I have appeared before them in regard to changing the *McNaghten* rule. And I must say that it has always impressed me that the caliber of mind which composes the appellate court judges is better equipped to deal with so complex a problem than the State legislators.

Now, that does not, of course, apply to the problem that you have, because you have an entirely different group of men who will be dealing with this problem.

But for my own State, I would far rather see the court of appeals deal with this very complex problem, than to see it left entirely to the State legislature.

Senator DOMINICK. If I may say so, Mr. Chairman, that was extremely gracefully put.

The CHAIRMAN. It certainly was.

Dr. GUTTMACHER. Now, if you permit me——

The CHAIRMAN. I see why you have been there since 1930.

You may proceed.

Dr. GUTTMACHER. If you will permit me, I listed what I thought were the good points in this bill, and then I have listed a few that I thought were not good points.

I think the first thing, that the appointment of a neurological expert whenever mental disease or defect appears likely to be an element in the case, is important. And I do not know—as a layman, it seems to me that this bill has particular importance, because I believe that the laymen in the United States look to the District of Columbia to have what seems to be model legislation. And I feel that it is very important that this bill be a model bill. And I think the fact that the appointment of a neutral expert, whenever the case—whenever the mental condition becomes a definite issue, is a real step forward.

I think secondly, that the report should be made available to all parties seems to be a very wise provision. I think there is too much tendency to play the game as if it were some sort of an athletic encounter rather than a seeking of justice. And it seems to me that this is best obtained when there is a frankness and an honesty about such involved and complex matters, and such serious matters as insanity in criminal cases.

I think that the third point, that no psychiatrist is permitted to testify who has not examined the accused, is a good point. I think Dr. Overholser had some reservations about that, I think, in regard to the use of the hypothetical question. I am, of course, not legally trained. My own experience with hypothetical questions has not been a happy one. I feel that in most instances the hypothetical question confuses rather than clarifies issues. And I think for a psychiatrist to come into a court and testify on a matter of this kind when he has never had the responsibility or opportunity of examining the man about whom he is testifying is not wise.