

I think that the psychiatric testimony permitted to prove the presence or absence of a state of mind which is an element of offense is important, particularly in homicide cases.

I think the fifth point, that the bill does incorporate from the American Law Institute Model Code what seems to me an extremely important provision—and that is that the psychiatrist should be allowed to state fully his views and the basis for them. I think one of the most stultifying situations that one can find oneself in is when one gets on a witness stand and takes an oath, not only to tell the truth, but the whole truth, and then one has inept counsel, and inept counsel fails to ask the questions that are really germane to the issue. And I think one often leaves the stand under those conditions feeling that one really has not carried out one's responsibility, one has not been able to give the jury the full information that it requires.

So that I feel that the incorporation of this provision in the bill is extremely wise.

Then I think that—the sixth point—I think that a conditional discharge of the patient by the court is also a very wise provision. I agree with Dr. Overholser—the word “probation” has come to mean a criminal procedure. And I think releasing the patient on conditional release, or convalescent status, or whatever word one wants to use, would be preferable. But the principle is important.

The Sunday before last I went up to the State hospital in Pennsylvania, north of Scranton, to examine a man who had killed his wife and child some 7½ years before. The question came up whether this man is ready for release. I would be quite enthusiastic, quite ready to strongly advocate his release if the court were able to lay down certain conditions as to further treatment, observation, and living under certain conditions.

On the other hand, I have some serious misgivings about not releasing a man without such conditions.

I believe there are only three States where the release is conditional. And I think it is an important point, that this should be made.

The CHAIRMAN. Is it conditional in Maryland, by chance?

Dr. GUTTMACHER. No, we have nothing like that.

The CHAIRMAN. I see.

Dr. GUTTMACHER. Now, the two less important points, I think, are not good—I believe that the incorporation from the American Law Institute, the provision that the report is only to be used in relation to the mental condition of the accused and not used as to his general guilt or innocence, is a wise provision. Now, perhaps the case law in the District of Columbia, with which I am not familiar, makes it impossible to use revelations which might have been given psychiatrists during the course of an examination as evidence in the general question of guilt or innocence. But it seems to me that you are certainly much more likely to get the full cooperation of your patient if there is no probability of the use of this material as evidence in the court.

I also believe that denial of the right to inform jurors of the consequence of a not-guilty-by-reason-of-insanity verdict is not wise. I know that the point has already been raised. I think that I agree with Dr. Overholser that the general public thinks that as soon as a man is found not guilty because of insanity, this means that he just walks out of the courtroom, and he is a free man.