A good many years ago, Dr. William White, who was a great Superintendent at St. Elizabeths, made a careful statistical study of the time of capital offenders, that is, first degree murderers given life sentences, sentences in the penitentiary as compared to the time that these people spent in psychiatric hospitals. And as I remember it, quite definitely the average stay in the psychiatric hospital was longer than the stay in the penitentiary. Now, I do not mean to say that that is necessarily any longer the case. I think things have changed, and the figures may not be the same, but there are many people who stay in psychiatric hospitals for life who have been found not guilty by reason of insanity.

And I think it is only fair and wise that the jury have at its disposal all of the practical material which it really needs in reaching decisions. And I am sure that you gentlemen who have dealt with juries know better than I that often minor points of this kind, as much as we do not like to feel that these enter into the final decision, are things which really do make the decision.

Now, the definition, which is the important thing—I am not enthusiastic about this definition. I know that it is basically the American Law Institute definition, and Dr. Overholser has talked to the point, where he and Dr. Freedman and I were not favorable to this definition.

I feel that Durham, particularly with McDonald, is a very workable system. I think McDonald has been a very important decision, because the definition that it gives of mental disease is a functional one, it is not a technical one, it is not phrased in ethical terms. And furthermore, I think that it stresses the question of degree. And it has been brought out before, psychiatry is far from an exact science, and we cannot make an exact cutoff point of black and white. There is a continuum between health and disease. And I think the fact that the McDonald decision talks about the substantial—using this word twice—"substantial," I think is important.

Furthermore, I think that it does put the burden, it stresses the fact that this is a jury decision.

I have a reprint of an article I published this year, which I would like if possible to give to the committee, entitled "What Can a Psychiatrist Contribute to the Issue of Criminal Responsibility?" And in there, I point out that there is no such medical entity as responsibility. We have no X-ray of electroencephalograph or anything else that is going to determine this. This is a social concept that society places on an individual.

I think that psychiatry should not be made the 13th juror. I would far rather see the actual question not put to the psychiatrist, no matter how it is termed. I would rather see the psychiatrist merely state his analysis of the individual, whether he is suffering from mental disease, what the chief characteristics of this mental disease are, in what way the mental disease has affected the intellectual processes of the patient, and his social control. This is as far as I think psychiatry should go. I don't like to be cast in the role of the important individual in the whole process. I do not think this is a psychiatric decision. It is a decision that should be made by one's peers, by the community.

The CHAIRMAN. Don't you think the jury, though, leans very heavily on the expert advice of men in your field to make this all-important de-