

there is some suggestion in practice—that is going to cure a much higher percentage than the ordinary penal institution will cure.

So that if there is a special provision made for this group of people, I think that this is a workable scheme.

Senator DOMINICK. Well, suppose, Doctor, that you included them within the people who can plead not guilty by reason of insanity, and they proved to be psychopaths, and therefore they are put into a rehabilitation institution of some sort with all the others. Are they going to get the necessary treatment in there to do them any good, or are they simply going to be committed to an institution where they may do harm to some of the other inmates?

Dr. GUTTMACHER. Well, I think there are certain institutions which in our more enlightened States are now being geared to special treatment provisions for this group of individuals. I think ideally that if one is going to talk theory, that these people are really not responsible in the ordinary sense, because in extreme instances they do not have this free will which is the basis for our decision. Ideally we are talking about a philosophical principle involved—they should not be held responsible. If that is done, then I think that then there should also be special divisions or perhaps special institutions—but special divisions of institutions where they are dealt with.

I think that more of them are modified favorably in the ordinary psychiatric hospital than the ordinary prison. I think that this is considerably lower than it would be if we had special facilities for their treatment.

Senator DOMINICK. Thank you.

The CHAIRMAN. Thank you, Doctor.

Did you have anything additional?

I do want to at least adopt by reference the Biggs decision. I think we have that before us. It does not need to be incorporated in the record.

I very much appreciate your testimony.

The *Currens* case to which you refer is 290 Federal Second, page 751, Third Circuit decision, May 1, 1961. We can refer to the case by going to the casebook.

Now, as I understand it—and I want you to make it clear—if I understand your testimony, going to the heart of the House bill, the definition of mental responsibility and the question of insanity, is it your opinion that the test now laid down in the *Durham* case as amplified or supplemented by the *McDonald* case is a sufficient and adequate test in this area?

Dr. GUTTMACHER. I think it is the best we have, and I am sure I could not do as well. I mean I am sure I could not devise a better one. I think it is the best we have.

The CHAIRMAN. In your judgment, is the test fair to society, in dealing with people who enter pleas of guilty by reason of insanity? I mean, are we correctly probing this very difficult area, and would a jury be properly guided with regard to an insanity defense when instructed in terms of *Durham* and the *McDonald* case?

Dr. GUTTMACHER. I feel they are; yes, sir.

Senator DOMINICK. One question.

The CHAIRMAN. Senator Dominick.