

Secondly, it is my view that the ultimate determination of responsibility should be made by a jury. I have a strong confidence in the robust commonsense of juries in criminal cases. They represent a cross section of the community. And I believe they are the proper instrument to make that judgment.

Let me say in this connection that we do not ask the jury in these cases to make a medical judgment. The jury is being asked rather to make a moral judgment. And the psychiatric information, the medical data, is simply a part of the information which the jury requires in order to make an informed moral judgment.

As I shall indicate, one of the great virtues of the *Durham* test is that it allows the jury to have the full benefit of all relevant information with respect to the accused.

But I want to underscore my strong conviction in the desirability of allowing the jury to make this decision.

Now, third, in administering a test of responsibility—

Senator DOMINICK. Could I interrupt right there.

Mr. KRASH. Senator, I hope you will interrupt me at any point.

Senator DOMINICK. I would gather from what you said that you would disagree with the witness we had yesterday who indicated that the question of responsibility should be determined by a panel of psychiatrists.

Mr. KRASH. Yes, I would. Let me just comment for one moment, since you have raised the question of Dr. Cameron's point.

I read about it in the press. I just had a few minutes this morning to read his statement, which he was kind enough to send me.

I have a very high regard and admiration for Dr. Cameron. I think the community is fortunate to have a man of his great qualifications as the head of St. Elizabeths Hospital. But I disagree with his proposal. Let me explain why.

As I understand it, his idea is this—that the court would decide—the jury, at a trial, would decide whether or not the accused committed the act. And then there would be a second hearing at which there would be a determination made with respect to the accused responsibility or his mental condition as of the time of the offense and the disposition to be made.

Now, first of all, I think this reflects a psychiatric attitude and underneath it I believe is this point of view.

Many psychiatrists do not like to appear in court. They are cast in an uncomfortable role. They are in an advisory situation. They do not occupy the authoritative position they usually occupy.

Now, they are caught in a crossfire of cross-examination, and it is an uncomfortable position to be in.

So this idea, basically, I think springs from a desire to get psychiatrists out of this advisory arena.

But I think the problem is this: If there was a subsequent hearing, the defendant and the Government would clearly be entitled to cross-examine a psychiatrist. I cannot imagine any system of law in which a finding which is so critical to the disposition of the defendant would not be subject to cross-examination. And while I think that psychiatrists have been unjustly maligned frequently, that is the disagreements among them have been greatly exaggerated, nevertheless, the fact is that they may be mistaken, and they may have incorrect and improper diagnoses, and they obviously must be cross-examined.