

So I do not think this proposal would really solve what I think may be in the back of Dr. Cameron's mind.

In the second place, I think this would raise the most serious constitutional question with respect to the right of trial by jury. A defendant is entitled to have the determination made by a jury.

Now, finally, I may say that I think in addition, this would only double or increase the time of trial.

But more basically, this really would result in a revolutionary change of our whole conception of what a criminal trial is about.

The notion of guilty and not guilty I think is deeply imbedded. And in addition I think we must recognize this fact.

A trial is a symbolic way of getting expression in a peaceful way to the community sense of wrong and injustice. And there has to be some way in which that can be expressed. And if you take away the notion of guilt or innocence, then you are going to, it seems to me, create many more problems than you will solve. There must be a forum where that determination can be made.

A trial is a kind of symbolic little play, as it were. And you cannot remove the notion, it seems to me, at least at the present state of our society, of this notion of guilt or innocence.

Now, I do agree with Dr. Cameron to this extent: I think that psychiatrists could be used more liberally than they are now with respect to the question of posttrial disposition of the defendant. That is, with respect to the question of sentencing. And I think in this jurisdiction a greater effort is being made to do that than is true in some places. So to that extent I would agree.

But I would doubt very much the wisdom of a two-step procedure at this particular point, and I think it would raise an enormous amount of difficult constitutional issues.

Senator DOMINICK. Thank you, Mr. Krash.

Mr. KRASH. Now, I want to say with respect to the test of responsibility, however, it seems to me that it is absolutely clear we must have the help of psychiatrists. Indeed, one of the principal objectives we advocated in the *Durham* brief in which I think the court of appeals has tried to articulate in subsequent cases is that the test of responsibility must be one which enables psychiatrists to state their findings in their own terms to the court and jury. Psychiatrists should be allowed to act as psychiatrists and not forced to answer ethical questions or questions for which they are not qualified. And the great virtue of the *Durham* rule is that it allows them to do that. I am very much in favor of that.

Finally, Senator Dominick—

Senator DOMINICK. I might say right there this bill does the same thing; does it not?

Mr. KRASH. Yes; it does. I do think the test makes it somewhat more difficult for psychiatrists. The test of responsibility is a more difficult one for psychiatrists to work with.

Finally—the choice here is not between a liberal or enlightened test of responsibility and turning defendants loose. In the District of Columbia every accused person who is found not guilty by reason of insanity is automatically and mandatorily committed to a mental institution, and he must remain there at the present time until the court is convinced by a preponderance of the evidence that he will not be dangerous to himself or to others if he is released.