Let me say that the hospital has been very conservative in recommending release, and the court has been very tough. Indeed some people feel that the court has been too tough with regard to releasing people who have been acquitted by reason of insanity.

Senator BIBLE. Is that factually correct? This is what the U.S. attorney indicated by some statistics he gave us yesterday, I guess. But it just seems to be the common impression that since this *Durham* rule that we are turning all kinds of people loose who should be either tried for the crime or should be committed to a mental institution.

Mr. KRASH. I think that impression is erroneous, Senator.

Senator BIBLE. Don't you think that is the impression?

Mr. KRASH. Yes; I think to some extent some people have that view. There is no doubt that every time, for example, there are occasions when people come out of the hospital, they commit a crime, and promptly you read in the newspaper that a person who is released from the hospital has committed an offense. But bear in mind two-thirds of all the people who come out of prison are recidivist. That is, they repeat crimes, too. I think you would find very few people who come out of the hospital commit further offenses.

I think you would also find—the studies I have seen indicate that the period of hospital confinement is longer, given the same offense, than it would be if a person was sent to prison.

The truth is that the court and the hospital are being very cautious, very conservative, about letting people go after they are found not guilty by reason of insanity and committed to St. Elizabeths.

Let me just give you an example with which I am familiar of how difficult it is to get someone out.

We represented Ezra Pound, the noted poet, who was indicted on charges of treason in 1945. He was found not competent to stand trial. He was held in St. Elizabeths Hospital for 14 years on the grounds that he was incompetent to stand trial. He suffered from paranoia, which was an incurable mental illness. And the hospital certified he would not be dangerous if released. And it was on that basis we went to the district court and asked the court that he be discharged. The hospital agreed that he would not be dangerous. The district court was satisfied he would not, and he was discharged.

Now, there are other cases I think of, of people who have been in the hospital for long periods. So I do not think this is really a serious problem. In other words, I do not think we are confronted here with the problem of turning people loose on the streets.

Now, let me go back, if I may, for a minute and just try to elaborate on how all this came about.

I would say that one could go back to the common law of England, as far back as the 14th or 13th century, and find the idea that there was no criminal responsibility if a man is mentally disordered. One time the test was whether or not a man could count to 20.

Then in 1843, I think you have really the first major development in this field of the law with the *M'Naghten* test. Essentially that test is whether the defendant knew the difference between right and wrong, and whether he knew the nature of what he was doing.

Now, the trouble with the *M'Naghten* test very simply is this. It emphasizes a defect of reason. That is, the intellectual capacities of the defendant. Whereas everything that modern psychiatry teaches,