

everything that we know from observing people in mental institutions, from everyday observation, it is that the emotional component of personality is a determinant of conduct as much as reason.

If you talk to insane people in a mental institution they can verbally give you the right answer to questions you put. The trouble is they do not really feel the answer. They are like children who if you ask them a question, they can give you the right answer, but they really do not know it in the sense of really feeling it.

Put another way, the trouble—

Senator DOMINICK. In the case of small children, if they do not follow what they say, you whop them, or you should.

Mr. KRASH. You should do.

Senator DOMINICK. And the question is what you should do at this point.

Mr. KRASH. I think there is a very important difference between small children and the mentally insane. That is this—sane children will respond to the sanction, whereas frequently those people who are suffering from a severe mental disorder simply are not influenced by the criminal sanction. That's the whole point. We are trying to really reach people who are not deterred by the threat of criminal sanction.

Now, I can simply say that the *McNaghten* rule—the trouble is that it was much too narrow. There are too many people who suffer from severe mental disorders who are guilty under the *McNaghten* rule. And I can say only that such eminent judges as Justice Cardozo denounced it as not being in conformity with psychic reality, and Justice Frankfurter called it a sham. I think it was discredited by nearly every reputable scholar and authority in the field. There are a few who defend it, but not very many.

Senator DOMINICK. I think this is a good point that perhaps has not been brought up. If a person is put into a mental hospital and does not follow the rules of the hospital, he or she is disciplined.

Mr. KRASH. Oh, yes.

Senator DOMINICK. In order to enforce those rules.

Mr. KRASH. Yes.

Senator Dominick, I do not think there is any dispute between us that people ought to be disciplined, or that we ought to have a system of punishment at all. The *Durham* rule does not change that. It is not nearly so radical a rule as some people have suggested.

The question really is whether or not you ought to punish people who are not deterable, who are not influenced by criminal sanction.

Senator DOMINICK. But they do that in a mental hospital.

Mr. KRASH. What they do is they have certain rules that they try to get the people to adjust to. That's right. There is no doubt about that. But that is not really the question that I think reaches the problem we are dealing with here. Put it this way: we are dealing with people who are not influenced by criminal sanctions. Now, you can get certain people in a hospital who are just not influenced unless you have guards with them every moment. And of course in society we just do not have that. I do not think anyone seriously suggests for example if you are dealing with an extreme paranoid person who commits a crime, suffering from delusions and hallucinations, that even though that person may be subject to the discipline of a hospital,