The CHAIRMAN. Thank you.

Mr. PYE. I cannot go as far as Mr. Acheson in concluding that the test as it presently exists is the same or substantially the same as that embraced in H.R. 7525. I do not know.

My point is this: We have one opinion from a unanimous court. It seems to me quite likely that a case may develop that will result in the cleavages which existed in the circuit prior to this opinion.

I suggest the following possible case, in which a defense counsel requests an instruction that a jury should find the defendant not guilty by reason of insanity if they find that his act was the product of the disease, and that they should reach this conclusion even though they find that his capacity to refrain from doing the act has not been susbtantially impaired.

That kind of instruction would put it flatly to the court whether substantial impairment is a definition of what is meant by product, or definition of what is meant by disease. I am not at all sure the court will agree.

At the present time, however, the concept of substantial impairment is an important factor in the determination of who is responsible.

Psychiatric treatment is such that I am not sure that it would make any difference to the average psychiatrist whether his testimony is couched in terms of susbtantial impairment or in terms of productivity.

My major point is that this test has shown that through the decision-making processes, evolution can occur, that the circuit court is not unmindful of the problems which exist in the trial court. That it is able to clarify the law when it becomes evident that public welfare demands that it be clarified.

Three years ago, if I were before this committee, I would have to complain, as I complained before Senator Ervin's Subcommittee on Constitutional Rights, that one of the problems of the operation of the *Durham* rule was that cases were being taken away from juries and directed verdicts being granted against the Government simply because a defendant was able to admit some evidence of insanity, and the Government could introduce no evidence of noncausality.

This is no longer the case. *McDonald* has made it clear that when a defendant introduces some evidence, unless this evidence is of such overwhelming qualitative significance that a trial judge should not direct the case against the Government, it should submit it to a jury.

Experience has also shown that the problems of——

The CHAIRMAN. At that point, Dean Pye, the *McDonald* case came down in October of last year. Since that date, down to the present time, have we actual case examples in the District of Columbia where a defendant was freed by a directed verdict after he had produced some evidence of his mental condition?

Mr. PYE. I know of none, sir. Quite clearly, it would occur in a case where three pschiatrists testify that the defendant is psychotic, the Government does nothing about it.

This is the way the Government would handle the case in order to obtain the mandatory commitments features.

If the Government agreed that the defendant was psychotic and not responsible for his acts, it would not dismiss the indictment in order to obtain the advantages of mandatory commitment.