

This may be because it constitutes no substantial problem within the Federal system, although it might be a problem in the District of Columbia.

However, I think it is the kind of matter which deserves consideration, not in isolation of the insanity defense, but in connection with all other provisions relating to criminal discovery, including the defendant's right to learn from the Government what its case is going to be.

The CHAIRMAN. The U.S. attorney on that point said that he favored this section. He did not think it was absolutely required, because he very rarely ran into this type of a problem as a matter of practice.

But he said notice in order to prevent surprise is a good thing.

I understand your point to be that you agree that notice is a good thing, because it does prevent surprise, but it should be taken care of under the rulemaking authority of the courts rather than under the statutory making authority of the Congress.

Mr. PYE. That is correct, because there is an intimate connection between how much the defendant should have a right to know about the Government's case, when we are giving advance notice of the defendant's case to the Government.

I think this is best handled in the general context of criminal rules in general.

I agree with Mr. Acheson that it would be meaningless in this jurisdiction, in 95 percent of the cases, for the simple reason we are dealing with a predominantly indigent population, and even those that are not indigent can rarely afford the psychiatric advice of private practitioners.

As a result, to my experience at least, 90 percent of the cases which are tried, in which the defense is asserted, are cases where evidence of psychiatric disorder is learned through pretrial mental commitment.

The Government receives notice of this, the Government receives a copy of the report. They have advance notice, in all except the most unusual case where you are representing a wealthy individual who is able to hire a psychiatrist on the sly and be examined without the Government finding out about it.

Now, this is a disadvantage. But we are bound to have some disadvantages in any system.

The Government under the case of *Hughes v. The United States*, 306 Fed. 2d, has a right to obtain an advantage over the defendant in a few cases by sending in a Government psychiatrist to examine a defendant immediately after he is arrested, and not provide a report of this examination to the defendant.

Now, neither of these would be good in a perfect system. I question whether it is desirable to pass a statute to take care of such unusual possibilities.

I might add with reference to this statute, the statute presumably wishes to give legislative endorsement to the result of the *Hughes* case.

There is a provision in the statute which would permit the Government not to utilize the usual procedure of impartial examination, but would permit the Government to send its own psychiatrist in immediately after arrest and examine the defendant.

This could be very important, because of the delay factor.