

We took the case to the court of appeals, following Judge Keech's adverse ruling. We had a hearing there that same late afternoon.

The court considered it but agreed with Judge Keech.

The point I am seeking to make is this, that this individual went out and when he sought to utilize the open area of a gasoline station as a men's room, the attendants objected, and he [Williams] pulled out his gun and shot two persons.

He is now behind the bars, and I hope he will stay there for a while. The community would be safer if he did.

But there are other sociopathic personalities——

The CHAIRMAN. He is behind what kind of bars?

Is he behind the penitentiary bars or is he committed to an asylum?

Mr. GASCH. No, sir; he is in prison.

The jury, in its wisdom, decided to reject his evidence of sociopathy and juries, as Judge Holtzoff said, often show very good judgment.

I think their inclinations ought to be respected.

And at that point let me say this: I remember studying this with some interest.

I do not have the transcript any longer because in private practice you do not keep all of those things, but the British Royal Commission, took the testimony of Mr. Justice Frankfurter as to the best insanity formula. I was impressed by what Justice Frankfurter said which is as follows:

If you leave it up to the jury they will get the point, and I do not think it makes a great deal of difference what the formula is so long as you leave it up to the jury.

I think that would be in line with my experience, but I do feel that some other trend in our cases, for instance, the *Douglas* case and the *Wright* case, where the jury saw fit to reject this expert testimony, as juries have a right to reject expert testimony in any case, the trend was that the court held, in those cases, that they could not reject the testimony; that they were bound by it.

I do not believe that the *McDonald* case corrects that, though I think that there should be a basis wherein the jury is the judge and not the psychiatrists.

That is one of the objections I have always had to the *Durham* formula. I think the *McDonald* case tends to alleviate that difficulty, but I recall the correspondence that was printed in the appendix to the American Law Institute volume on this subject, by Doctor Guttmacher, who was one of your witnesses.

The CHAIRMAN. He testified yesterday.

Mr. GASCH. And Professor Wechsler, in which Dr. Guttmacher said:

I can understand why you lawyers do not like the *Durham* formula.

It tends to make the psychiatrist the arbiter.

That is precisely what has been done in many of these cases.

Now, *McDonald* does indicate a tendency to get away from that ruling, and *McDonald* does indicate the importance of the formula, capacity to control one's unlawful inclinations, and I think that is very important.

Now, one of the best tests, and this is in the third circuit, in my judgment, is embraced in the *Currens* decision. Chief Judge Biggs wrote that opinion.