

And, as Judge Holtzoff read to you, and this is on page 378 of the second *Davis* case, in 165 U.S., the court decides "insanity" in terms that certainly would be quite different from some of the cases in which, like *Tatum*, the court was satisfied that insanity was triggered as a defense and the evidence simply was that he was not like other boys and that he got into disputes with his friends, and so forth.

I think it is important that when we deal with insanity we deal with it legitimately, that we know that there is a defense of insanity, that there be notice of it and when the case is tried there be evidence of it.

If you deal with that type of tangible situation then I think a great deal of the difficulty that we have had over the last 80 cases will be obviated.

The CHAIRMAN. Well, I appreciate your views very, very much, Mr. Gasch.

I would like to take this opportunity, as long as you are here, if I could, to ask you another question.

We have been confining ourselves entirely to title II during our hearing, and title V, which was the mandatory minimum sentence for crimes.

There was an area of difference of opinion as to whether it was helpful in law enforcement to have a mandatory minimum sentence or whether it was not helpful, and there was a divergence of views.

Now, if you would care to comment on it, I would be delighted to have your comment from your former position as a prosecutor.

Would it have helped you in prosecuting crimes to have a statute which set a mandatory minimum sentence of 2 years or 3 years, for example, in a housebreaking case, rather than the no-minimum statute?

I do not know whether this is going to help a prosecutor or not.

Mr. GASCH. Well, sir, I am very happy to testify on that.

I learned most of my criminal law from my predecessor, Judge Leo Rover.

The CHAIRMAN. Well, he was my criminal law professor. He was one of the best.

Mr. GASCH. He certainly was.

One point on which he and I agreed 100 percent, and there were many, was that mandatory minimum sentences are self-defeating. He felt very strongly on this.

He felt that the sentence that an individual is given should be the result of careful consideration of the facts and circumstances of that case by the judge, having received a report from the probation office.

He felt that if you take that power away from a judge and seek to impose mandatory minimum sentences it will basically be self-defeating and deny society the opportunity of rehabilitating many individuals who can be rehabilitated.

In this whole area I have always felt that we worried too much, we think too much about criminal rules, that is to say we wait until the individual has committed a serious crime and then we talk about the niceties of trial and ignore that which is basically more fundamental and more important; namely, the individual when he is in his formative years, when he is a juvenile.