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A Postscript to the Meredith Case

William F. Walsh

Q. May the defendant in a federal criminal case be held indefinitely, after arrest and before trial, without an opportunity to make bond and without a judicial determination that probable cause exists for his arrest?

A. Yes.

This answer to this question may not win any prizes at bar examinations, but it appears to be a technically correct analysis of the procedures available under section 4244 of Title 18, United States Code.¹

This section was enacted in 1949 to provide for the examination of defendants thought to be mentally incompetent.

The salient features of the statute are: (1) a motion may be filed suggesting that the defendant is insane or mentally incompetent; (2) if the motion is in the form suggested by the statute, the judge has no discretion to deny it. He may not weigh evidence, resolve issues of fact, or question the credibility of witnesses.²

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1. 18 U.S.C. § 4244 (1958). "Mental incompetency after arrest and before trial. Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury."²

In the early years of the statute, the United States district judges in the Western District of Missouri were divided as to the meaning and effect of this statute. Since the medical center for federal prisoners is located at Springfield, Missouri, in the western district, these judges were soon exposed to contentions by way of habeas corpus that persons committed to Springfield for examination were held illegally.

District Judge Ridge consistently sustained the constitutionality of this legislation and the validity of commitments made under its provisions. Judge Duncan, on the other hand, believed that the United States courts may not commit persons who have not been convicted of any offense to confinement which might be for their natural lives in many instances, and that the adjudication and confinement of insane persons is a state function and not the function of the United States.

This conflict was ultimately resolved when the Supreme Court held the statute constitutional in Greenwood v. United States. The opinion of the Eighth Circuit Court of Appeals in the Greenwood case contains a detailed history of the statute's legislative background.

Most lawyers who have encountered section 4244 have found it to be benevolently applied, usually in cases involving indigent defendants who cannot afford private psychiatric examinations. Some of the implications inherent in the statute, however, first became apparent to many American lawyers when former General Edwin Walker was arrested in the fall of 1962 during the riots connected with the enrollment of James E. Meredith as a student at the University of Mississippi. In piecing together the following account of the Walker case, this author has been aided immeasurably by Mr. Herbert J. Miller, Jr., the assistant attorney general in charge of the Justice Department's Criminal Division, and by Mr. Clyde J. Watts, of Oklahoma City, Oklahoma, who represented Walker. Both of these lawyers have made their extensive records available to me, but neither, of course, is in any way responsible for the conclusions drawn or statements made in this article.

General Walker was arrested shortly before noon on October 1, 1962, at Oxford, Mississippi. He was charged with assaulting and resisting federal officers, conspiracy to impede federal officers, insurrection, and seditious conspiracy, in violation of sections 111, 372, 2383, and 2384, Title 18, United States Code.

The complaint filed with the United States Commissioner at Oxford did not state any facts. Signed and sworn to by the United States Atto-

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6. 219 F.2d 376, 381 (8th Cir. 1955).
ney, H. M. Ray, the complaint simply tracked the language of the applicable statutes. Under the Supreme Court's decision in *Giordenello v. United States*, such a complaint is insufficient as a matter of law to establish probable cause for an arrest.

In analyzing the over-all conduct of the *Walker* case, however, it is necessary to appreciate the unusual conditions under which federal officials were operating. Mr. Ray discussed this case with me, fully and frankly, for more than an hour. It is impossible to talk with him about the *Walker* case without concluding that he keenly felt a sense of real emergency at the time. As he said,

General Walker had been quoted in the newspapers as calling for twenty thousand citizens from each state to assemble in Oxford in protest. At the time the complaint against Walker was filed, nobody had any idea whether we were going to have that kind of Coxey's Army in Oxford.

When Walker was taken before the United States Commissioner he waived preliminary hearing. There seems to be no doubt that Walker sincerely concluded that he was simply waiving no more than a formal hearing and intended to post bail immediately. As Mr. Miller correctly observes, when Walker waived preliminary examination, he waived, at least for the time being, a right to contend that he was held without probable cause — that the complaint filed by Mr. Ray was legally insufficient.

The United States Commissioner, Omar D. Craig, a lawyer, fixed bond at $100,000 upon Mr. Ray's recommendation, and it is the events which then transpired which made the *Walker* case real food for thought.

When Walker was not immediately able to post $100,000 bail, the Commissioner signed the standard form of final commitment familiar to federal practitioners as form A.O. 92a (revised February 1, 1950). This commitment, directed to the United States Marshal of the Northern District of Mississippi, begins with the following sentence:

> You are hereby commanded to take the custody of the above named defendant and to commit him with a certified copy of this commitment to the custodian of a place of confinement within the Northern District of Mississippi approved by the Attorney General of the United States where the defendant shall be received and safely kept until discharged in due course of law.

In spite of the specific language of this commitment, directing, as it did, that Walker be confined "within the Northern District of Mississippi," Walker was flown in the late afternoon of October 1, to the institution at Springfield, Missouri, in a Border Patrol aircraft. This flight was the result of a telegram from James V. Bennett, Director of the Federal Bureau of Prisons, who wired the United States Marshal:

In view of the fact that there is no available suitable facility for the temporary detention of Edwin A. Walker elsewhere than in the Medical Center for Federal Prisoners at Springfield Missouri you are authorized and directed to promptly commit Walker there pending further action by appropriate court.

The authority for this telegram is said to be section 4042, Title 18, United States Code, which directs the Bureau of Prisons to "provide suitable quarters and to provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States."

In a letter to this author, Mr. Miller says: "The language referred to in Administrative Office Form 92a is merely a part of the printed form and should not be construed as precluding the Director from carrying out his responsibility under the law."

It thus seems that the official position of the government in this matter is that the only judicial or quasi-judicial order pertaining to Walker's custody may be violated on the basis that the order is simply a printed form.

Whatever the law may be, there were, however, persuasive reasons for moving the accused out of Oxford. Mr. Ray reports that the county jail in Oxford had been torn down at the time of Walker's arrest. There were county jails in neighboring counties — at New Albany, Aberdeen, and Clarksdale, for instance — but the unusual interest generated by James Meredith's admission to the University of Mississippi created concern in the mind of the United States Attorney. Mr. Ray, in his day to day work as a legal representative of the United States, must deal and cooperate with local law enforcement officials. In Mississippi, the most important law enforcement officials are the county sheriffs. Mr. Ray very candidly admits that he did not wish to put the sheriffs in his district "on the spot" by asking them to confine a federal prisoner in a case with enormous emotional overtones, when there was a serious possibility that attempts might be made to rescue the prisoner. Although it certainly does not appear, in retrospect, that Walker led a "Coxey's Army" to Oxford, it is inescapable that the federal officials believed he was doing so at the time. Required, as they were, to "shoot from the hip," it seems only fair to judge the prosecutors' motives on the basis of the evidence available to them at that time.

At any rate, Walker was moved to Missouri. Mr. Ray states that Walker, in Missouri, was confined in the jail portion of the Springfield institution, not the hospital facility.

On the following day, October 2, 1962, section 4244 of Title 18 loomed on the scene. At Oxford, Mr. Ray filed a motion to cause Walk-
er's commitment at Springfield for psychiatric examination. In support of his motion, Mr. Ray filed a telegram from Dr. Charles E. Smith, Chief Psychiatrist of the United States Bureau of Prisons, which deserves to be printed in full somewhere because of the controversy it engendered. It reads:

I, Charles E. Smith, Medical Director and Chief Psychiatrist of the Federal Bureau of Prisons, Department of Justice, having been duly sworn, do hereby certify that I have examined carefully various news reports concerning the actions and behavior of former Major General Edwin Walker, including his appearance before the Committee of the United States Senate on Armed Forces in April of this year and news reports of his appearances on the Campus of the University of Mississippi during the past several days. Some of his reported behavior reflects sensitivity and essentially unpredictable and seemingly bizarre outbursts of the type often observed in individuals suffering with paranoid mental disorder. There are also indications in his medical history of functional and psychosomatic disorders which could be precursors of the more serious disorder which his present behavior suggests. From this and other information available to me I believe his recent behavior has been out of keeping with that of a person of his station, background, and training, and that as such it may be indicative of an underlying mental disturbance.

Much of the controversy over the Smith affidavit centered on its nature as a medical opinion. The Judicial Council of the American Medical Association consulted three psychiatrists, the AMA's Council on Mental Health, and the American Psychiatric Association, as a result of protests arising out of Dr. Smith's statement regarding a patient he had never met. The formal report of the Judicial Council stated that the unanimous opinion of those consulted was that Dr. Smith had acted ethically, and, "it was also agreed by them that Dr. Smith had not made a medical diagnosis."

It seems clear that whether Dr. Smith had intended to make a diagnosis or not, the government treated his "opinion" as a "diagnosis" in the initial legal proceedings involving Walker. When Walker's lawyers moved the district court in Mississippi to strike the government's petition seeking a psychiatric examination of Walker, the government filed a brief which included the following:

In the instant case the Government and the Court relied on the psychiatric diagnosis of an expert psychiatrist who based his conclusions on extensive medical histories of Walker compiled over many years during which Walker was in the United States Army and recorded statements by Walker before the United States Senate Committee on Armed Forces in April of this year, as well as newspaper descriptions of his actions, which constitute valid diagnostic material when viewed in conjunction with the other available sources.

Eventually Walker was released under a stipulation between his lawyers and the government which provided for a private psychiatric exami-
nation. Walker was not found to be mentally deficient and never was indicted for any act arising out of his adventure in Oxford.

Representative Durward G. Hall, whose Seventh Missouri District includes the medical center at Springfield, introduced a bill\(^8\) at the first session of the 88th Congress, seeking to amend section 4244 in several significant respects. The bill would: (1) require that a motion for determination of mental competency "shall be accompanied by a sworn written statement, based on personal observation, by a responsible adult as to the mental condition of the accused;" (2) give the accused a right to a hearing before commitment for examination and require the district court to make a finding of "reasonable cause to doubt the mental competency of the accused" before committing him for examination; and (3) limit a commitment for examination to a maximum of thirty days.

It would seem that Congressman Hall's amendments would place desirable limitations on the use of section 4244. The strange spectacle of a citizen being committed indefinitely to a prison-type institution, unable to make bail, and without right to a hearing, certainly seems foreign to American concepts of justice and unnecessary in the light of experience.

Mr. Miller does not concur that section 4244 permits an "indefinite commitment" for observation and diagnosis. He points out that the section allows commitment only for "such reasonable period as the court may determine," and contends that this, in itself, is a sufficient limitation on extended commitments.

The Bureau of Prisons advises that the average time of commitment under section 4244 has been between sixty and ninety days, but that efforts are being made to complete examinations within thirty days. Over 600 defendants have been confined for examination under this statute.

No doubt a suitable procedure can be developed to provide for cases in which there is a genuine need for prolonged examination based on substantial misgivings about a defendant's sanity. But under the present statute, any allegation which is not frivolous on its face compels the district judge to order an examination, even though he himself may never have seen the defendant.

As a matter of fact, when a hearing was finally held in November of 1962 before Judge Claude F. Clayton in the Northern District of Mississippi, Judge Clayton felt constrained to make the following remark:

> [F]rom the appearance of Edwin A. Walker on the witness stand, his response to the questions put by counsel, from a layman's standpoint as distinguished from the psychiatric standpoint, if I had limited my con-

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sideration to that and that alone, on a hearing where I had to make a judicial determination thereof, I would necessarily have found, as I am sure most of you would have, that this man is competent within the meaning of this statute, capable of advising and assisting his counsel in the preparation of his defense in such criminal charges as may be presented against him by the Grand Jury of this Court.

Careful examination of Dr. Smith’s affidavit, in the light of subsequent events, clearly reveals that the doctor actually said very little about Walker. Whatever the lawyers may have considered Dr. Smith’s statement to be, he testified very clearly at one of the hearings held in connection with this case that he “made this affidavit, and there is no diagnosis contained in this affidavit.”

Dr. Smith may have started a brief fad in direct distance diagnosis. When it became known in the fall of 1963 that Alabama’s Governor George Wallace was receiving a Veterans’ Administration pension for a nervous condition, several psychiatrists in Washington, D. C., allowed themselves to be quoted — anonymously — as explaining the mental condition of a patient they had never examined. Without question, the high point — or low point — in this controversy was a column authored by Dr. Joyce Brothers, a Ph.D., not an M.D., distributed nationally for publication October 6, 1963, by the North American Newspaper Alliance. Analyzing and discussing Mme. Nhu, Dr. Brothers announced that this lady “was never stimulated to grow beyond the 2½-year-old level of total self-absorption” with her own body and was “very likely” emotionally, but not mechanically frigid.

There may be no way to muzzle mental experts who feel a strange compulsion to analyze patients without seeing them, but it would not seem too much to hope that Congress may require the courts to have some better source of information before depriving a citizen of his liberty. The medical profession, which approved Dr. Smith’s actions in the Walker case, seems to be growing aware of the dangers inherent in the procedures there employed. Mr. Richard P. Bergen, Executive Secretary of the AMA Committee on Medicolegal Problems, has stated in a letter to this author: “From my study of the statutory provisions, I believe that an opportunity exists for abuse of authority by the U. S. Attorney under the present law. It appears that this opportunity could be minimized.” Pointing out that the statute requires an order for psychiatric examination whether or not the judge believes there is reasonable cause for it, Mr. Bergen writes: “It would appear desirable that the court make the determination of reasonable cause after a hearing at which the accused is present and represented by counsel. It would also appear desirable that the accused be permitted to avoid commitment if he voluntarily submits to a psychiatric examination.”

As noted earlier, the statutory scheme established by section 4244 was
approved by the Supreme Court in the Greenwood case. The Walker case involved an unusual situation at a time of great emergency. Whether the Walker case suggests a need for amendment of the statute will be, of course, up to Congress. Historically, however, legal procedures designed to incarcerate citizens without immediate judicial recourse have always proved subject to abuse. It seems difficult to contend that there is a real need for the procedures permitted by section 4244 as they stand today or that justice would be obstructed by insisting that some credible evidence be introduced before a defendant may be held for months in a jail or insane asylum.

EDITORS' ADDENDA

Upon completion of his article, Mr. Walsh sent copies of the manuscript to the following people and invited them to submit comments to the editors on the contents: Mr. Clyde J. Watts of Oklahoma City, Oklahoma, attorney for General Walker; Mr. Herbert J. Miller, Jr., Assistant Attorney General for the Criminal Division, Department of Justice, Washington, D. C.; Mr. Richard P. Bergan, Executive Secretary of the Committee on Medicolegal Problems, American Medical Association, Chicago, Illinois; and Mr. H. M. Ray, United States Attorney for the Northern District of Mississippi, Oxford, Mississippi.

As this article went to press, the Editors, on May 11, 1964, had received the following comments from Mr. H. M. Ray, which in his words "are necessary for the sake of historical accuracy:"

At the outset, I [Mr. H. M. Ray] respectfully disagree with the author's assertion "that the complaint filed in the Walker Case was not legally sufficient." Although the author, as court-appointed counsel in the [case of] Giordenello v. U. S., 357 U. S. 480 [1958], did a most commendable task, it is humbly submitted that Giordenello is not authority for the assertion made by the author with respect to the complaint in [the] factual situation of the Walker Case. Contrary to the Giordenello case, the Walker complaint was based upon information of an eye witness.

In his article, the author indicates that I "felt keenly a sense of real emergency at the time" (the time the complaint was filed against Edwin A. Walker the morning of October 1, 1962). In view of the coverage by news media of the events leading up to and subsequent to the enrolling of James Meredith at the University of Mississippi, I do not believe it necessary to elaborate on the fact that a real emergency did exist and that "Coxey's Army" did, in fact, come to this small university community and that "re-enforcements" continued to arrive in large numbers at roadblocks outside of this community even into the late hours of the night of October 1, 1962 (twenty-four hours after the riot on the campus). During the night of September 30, two persons had lost their lives on the campus and the rioters moved downtown during the early

daylight hours of October 1 and threatened to burn the colored churches, and engaged in activities of throwing rocks, bottles and timbers at soldiers of the United States Army who were standing fast; hundreds of persons were taken into custody.

Mr. Walsh has quoted me in some instances in his article. I do not remember the exact quotes attributed to me; however, I think it necessary to state that these comments were made while I was in Houston, Texas, on other business (arguing criminal cases that were on appeal). This "off-the-cuff" conversation took place in January 1964 and without the benefit of the more than two filing cabinets (in my office) containing information on the riots.

The author has failed to state that the United States District Court for the Northern District of Mississippi did sustain, after an evidentiary hearing where both parties had the opportunity to call and did call witnesses, the motion of the Government for a psychiatric examination of Edwin A. Walker. Since the opinion and order of the court in this proceeding was never reported in the Federal Supplement, I believe that readers of Mr. Walsh's article would be further enlightened by your publishing both the order and especially the memorandum of the court in its entirety. The memorandum will shed considerable light on the author's article in several particulars.

Mr. Walsh answered the above statement of Mr. Ray on May 20, 1964 with the following observations:

No one contends, of course, that there was not a genuine emergency in Oxford at the time in question or that the situation was not as serious as the government considered it. The question so far as the individual defendant, former General Walker, is concerned is, however, whether he — Walker — was in whole or in part responsible for the emergency. It is at times of great public disorder when it is probably most difficult and most important to preserve the individual rights of the persons involved.

On May 12, 1964, Mr. Clyde J. Watts, attorney for General Walker, submitted the following comments:

I have read with a great deal of interest Mr. Walsh's scholarly and objective analysis of the above statute, as applied by the U. S. Department of Justice in the Mississippi case of USA vs. Edwin A. Walker. He accurately concludes that, under this very dangerous statute, a defendant may be held indefinitely, without bond and without judicial determination of probable cause for his arrest.

As a lawyer, having helplessly watched a close friend suffer six gruesome days and nights in a prison hospital for criminal insane, where he had been committed without notice, counsel or hearing, and upon an affidavit of a psychiatrist who had never seen him, I feel impelled to make the following comments:

1. Although the statute is mandatory . . upon motion by the U. S. Attorney, upon reasonable cause to believe that a defendant may be incompetent to understand the proceedings against him, "the Court MAY order the accused committed." Although the examination is mandatory, the commitment is discretionary; and, if the purpose of this statute, as a shield to protect a helpless defendant, is to be preserved, the discretion of the Court and the U. S. Attorney must be
curbed to prevent its application as a sword for the persecution of a defendant who currently may be in disfavor with officials responsible for administration of the law. THE STATUTE SHOULD BE AMENDED.

2. Upon authority of a telegram from the U. S. Bureau of Prisons, Walker was transported out of the state, and beyond the jurisdiction of the Court, by which he was committed for confinement in the Northern District of Mississippi. If the selection of a "suitable facility" beyond the borders of a state where a defendant is arrested is discretionary with the Executive Branch of the Government, a defendant may be shuttled around the country, like a pea under a shell, in violation of his Constitutional Right to make bail. It would seem that 18 U.S.C.A. 4042, apparently relied upon by the Department of Justice as authority for this drastic procedure should also come under the scrutiny of legal scholars, and, eventually, the Congress. If the "available suitable facility" selected by the U. S. Director of Prisons for Walker's confinement had been in Alaska, rather than Missouri, the further protection of his legal rights would have been a difficult and expensive procedure, at the best.

3. The news reports "carefully examined" by Dr. Charles E. Smith, Chief Psychiatrist of the Federal Bureau of Prisons, were reports from the Associated Press, that Walker had led a charge against U. S. Marshals. Report from another news service, United Press, was that Walker had begged the students to cease their violence, and was met with a massive jeer. Walker's Army Medical Record, alleged to have been reviewed by Dr. Smith, contained nothing indicating a mental disturbance, and was cut off in 1958, without a report from the Chief Surgeon of U. S. Army HQ, Europe, that Walker was fully sound, mentally and physically. When confronted with this contrary evidence at Walker's sanity hearing on November 21, 1962, Dr. Smith stated that it would not have changed his opinion. This further emphasizes the danger of a statute which would authorize commitment of an American citizen solely upon "probable cause" furnished by a Government Psychiatrist.

Although the Grand Jury refused to indict General Walker, and the Court-appointed Psychiatrist found he was "functioning under the superior level of intelligence," he was confined for six days amid the depressing atmosphere of criminal insanity; but we will all consider this time to be well spent, if his experience should result in a change of the law to protect the rights and freedom of American Citizens in the future.

The Editors agree with Mr. Ray that the order and memorandum of Judge Clayton should be published and, therefore, it is here presented.

IN UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES OF AMERICA
v.
NO. W-C-29-62
EDWIN A. WALKER
ORDER

In accordance with the opinion of the court delivered from the bench in this cause on November 21, 1962, a reporter's certified transcript of which is now on file in this cause, it is

ORDERED:

1) The alternative motion of the United States for a psychiatric examination of Edwin A. Walker, the defendant, shall be and it is hereby sustained.

2) For the record (although they may now be moot) the principal motion which has been presented on behalf of Edwin A. Walker, defendant, the motions dictated into the record by his counsel and all objections stated upon which rulings were reserved are overruled.

3) That the report of Dr. Robert A. Stubblefield of the psychiatric examination heretofore conducted by him of the said Edwin Walker, as stipulated by counsel for both parties, shall be and is taken and considered as the report of the psychiatric examination which has this day been ordered.

Said report of psychiatric examination having been read and considered by the court in accordance with the foregoing stipulations, the court finds is essentially negative; that is to say, no opinion is expressed therein that Edwin A. Walker is presently insane or presently incompetent within the meaning of § 4244, Title 18, United States Code.

It is,

ORDERED:

4) That said report shall be filed in the jacket file as a public record.

5) That a hearing for a judicial determination of the question of sanity or insanity, competency or incompetency is not required and shall not be held.

6) These proceedings shall be and they are hereby removed from the active docket of this court.

7) This order is signed and entered as of the 21st day of November, 1962.

This the 6th day of December, 1962.

/s/ Claude F. Clayton
CLAUDE F. CLAYTON,
DISTRICT JUDGE

The memorandum opinion follows: 10

THE COURT:

In the presentation of the matters for disposition by the Court involved in this hearing, I am sure counsel recognize, as I do, that I have

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10. This opinion is quoted from a certified copy of the original attested by William T. Robertson, clerk.
allowed considerable leeway. Statements have been made, and much evidence has been received which from a legal point of view I consider not at all relevant to the issues with which I am confronted. It was my purpose in doing this to let each side of this controversy have the greatest possible freedom of action. But the time has come to bring the matter back into proper focus, and therefore I first will review chronologically the development of the situation giving rise to the hearing in which we have been engaged since yesterday morning.

On October the 2nd the original motion of the United States Attorney under Section 4244 of Title 18 of the United States Code was filed in this Court, and upon its presentation there was then a determination by this Court that a psychiatric examination of Edwin A. Walker under this statute would be proper. It was reported to me at that time that he had been transferred to the Springfield Medical Center for Federal Prisoners at Springfield, Missouri, since only county jails of minimal standards were available for the incarceration of federal prisoners in Mississippi. A competent psychiatric staff was there available, and in that situation it was directed that the psychiatric examination which had been found to be proper be had at that institution.

Contrary to what has been in this record by implication, this Court fixed no time which the confinement for the examination would run. It was directed that he be held there until the examination was completed.

This goes outside of the questions that are before this Court, but I think it proper for it to be said: If the detention there, if the matter had rested on that order, if the detention there had appeared to be at all unreasonable, upon a showing to that effect to this Court, it goes without saying that that incarceration would have been terminated.

On October the 6th a petition to vacate this order for the psychiatric examination was filed on behalf of Edwin A. Walker. On that same day — that is to say, on October the 6th, which was a Saturday — as a result of day long negotiations between counsel for the United States and counsel for Edwin A. Walker, with this Court staying constantly available here in Oxford, the parties stipulated that a psychiatric examination could be conducted; that is to say, the parties agreed that a psychiatric examination could be conducted; and in accordance with that stipulation or with that agreement, this Court ordered that the examination be conducted by Dr. Robert Stubblefield, Chief Psychiatrist of the Southwest Medical Center, and that order also provided that the examination would be conducted not only by Dr. Stubblefield but by a psychiatrist engaged in private practice to be named by the United States. In accordance with that agreement or that stipulation, the order of this Court so directed.

There was a later modification of that order, as I will mention further on.
In the petition which was filed on behalf of Edwin A. Walker on October 6th certain questions were raised which I felt to a large extent, and I think that view is shared by counsel in view of the statement made in response to my question yesterday, that many of the questions raised by that petition were merged into and fell by the wayside as a result of the stipulation and the order of that same day. There were, however, reservations made on behalf of Edwin A. Walker, who further raised questions with respect to the validity of the proceedings prior to that date had in this Court. Generally, these rights to challenge — and I do not intend to try to specify them in detail — They were not to be restricted in any challenge they cared to make with respect to the jurisdiction of this Court, with respect to due process or lack of notice or lack of representation by counsel, or the physical absence of Edwin A. Walker from the Northern District of Mississippi on October 2nd. I will deal with these questions to some extent later.

It might be well to note, again outside of the calls of what is proper for a disposition of the matters before the Court now, that on that same day, that is to say, on October 6th, on application of counsel for Edwin A. Walker, the amount of his bond was by this Court, reduced to fifty thousand dollars. I think it also proper for me to say that this was the first time the question of bail had been presented to this Court, that is to say, to me. The amount of this reduced bail bond was, in effect, by a stipulation between the parties. I understand this bail was promptly posted and Edwin A. Walker promptly released.

Again, this has nothing to do with this matter with which we are concerned today. I do not mind saying that if the matter had been left to my determination, the amount of the bail, that probably the bail bond would have been smaller than that now fixed.

Then on the 12th of October, a joint motion, that is to say, a motion presented by the United States and by Edwin A. Walker, was filed, to amend the order of the 6th of October so as to permit the examination to be made only by Dr. Stubblefield, and there were other minor modifications of the order which are not relevant here. On that same day an order was signed in response to that motion modifying or amending the order of the 6th of October.

Then on the 16th day of October, a motion was filed by Edwin A. Walker to strike from the files of this Court all of the original motion filed by the United States for the psychiatric examination, or in the alternative, to strike the two paragraphs of that motion having to do with the evidence of the expressed opinion of Dr. Smith, upon which the United States Attorney's motion was partially, at least, predicated. That motion bore also as to the, or against, the materials which were shown
to have been considered by Dr. Smith in arriving at the views he then entertained.

This was the first motion which was presented on this hearing, that is to say, the hearing that began yesterday morning at ten o'clock.

I do not know that it has any significance to note that this motion was not noticed for hearing, and as I recall, counsel for Edwin A. Walker never made a direct request to this Court to set that motion for hearing and consideration.

On the 23rd day of October, opposition of the United States to this motion to strike was filed in this Court, and jointly with it, and as a part of it, there was an alternative motion on the part of the United States for a psychiatric examination as contemplated by Section 4244, Title 18. These were noticed for hearing, and the request was made for a prompt hearing and prompt disposition of them. It was as a result of these requests that all of these matters were set for hearing beginning yesterday morning.

With the disposition I am making of the issues here, I need not deal specifically with some of the questions that have been raised on behalf of Edwin A. Walker by his counsel.

On the question of notice, representation by counsel, opportunity to be heard, physical absence of Edwin A. Walker from the Northern District of Mississippi, with respect especially to the motion and the order of October 2nd, let me say that authority perhaps pre-eminent in our jurisprudence has held that the proceedings which stem from such a motion, that is, the motion under 4244, for psychiatric examination, has said that those proceedings are not adversary proceedings. Thus, many of the questions raised on behalf of Edwin A. Walker, so ably presented by his counsel, are not relevant to an inquiry with respect to the validity of such proceedings. Respectable authority has said, for example, that such a motion might even be presented orally and informally. It is well to point out that this Court of its own motion, if it felt that there was reasonable cause in contemplation of this statute, could order a psychiatric examination, and even commitment, for the purpose of a psychiatric examination in order that the ends of justice could be met, in order that the rights of the parties concerned could be fully protected.

It might be well for me to add something that I am sure is known to counsel: that on October 2nd, although he was physically absent from the jurisdiction of this Court, he nevertheless was within the jurisdiction of this Court within contemplation of one version of the Great Writ.

But, there can be no question now that with respect to the hearing which began yesterday morning Edwin A. Walker did have notice, he has been physically present throughout the hearing, he has had counsel — and I might say again, very able counsel — he has been heard, he has
been confronted with witnesses, he has had the right of cross examination, he has had, as I have indicated heretofore, what I consider full opportunity to get into the record for consideration by the Court whatever he and his counsel felt bore on the issues here.

It has been held that the judicial aspect, the questions to be decided by the Court, by this Court, on such a motion are very narrow and very limited. They are: Has the Defendant been arrested on a charge of violating Federal law? There is no dispute here that Edwin A. Walker was so arrested. The legality of this arrest, as I gather, is challenged by him through his counsel, but it is my view that this question is not properly before this Court for my determination now. If and when an indictment is returned stemming from the charges upon which he now is held answerable to this Court, there in this forum on that case, according to my view, would be the time and the place and the case for that question to be fully explored.

The basic, underlying question, as we all have understood, I am sure — that is to say, certainly counsel and I — the basic, underlying judicial question which I have characterized as narrow is: Does the United States Attorney have reasonable cause to believe that a person so arrested, that is to say, arrested on a Federal charge, does the United States Attorney have reasonable cause to believe that such a person is presently insane or otherwise so presently incompetent as to be unable to understand the proceedings against him, and is the motion frivolous, or is it filed in bad faith?

I necessarily dealt with these narrow judicial questions on October the 2nd. In the context of the situation then existing here in Oxford, it appeared that the United States Attorney had such reasonable cause, and, I had no reason or basis then to say that his filing of this motion was in any way frivolous or motivated in the slightest by bad faith. It is my view that those proceedings were valid.

However, I prefer to base my disposition on the second motion, about which, with respect to the questions I have mentioned, no one can doubt that this man has had notice, that this man has had counsel, eminent counsel, that he has been physically present, that he has had an opportunity to be heard, an opportunity to be confronted with the witnesses, an opportunity to develop publicly his side with respect to these narrow issues.

Adverting to the evidence which bears on whether or not there now exists reasonable cause, I was especially impressed with the testimony of Dr. Guthmacher. To my mind, he impressed me as being highly intelligent, exceptionally objective, extremely cooperative on the stand on cross examination, and if I recall his testimony correctly, he does not have, and has never had, except for military service of a rather brief character and the very short period as a consultant, any connection with the United
States of any kind. If I remember correctly, he said that this was the first case that he had been concerned with for the Department of Justice or the Bureau of Prisons; a man obviously greatly experienced in the field with which we are concerned; and his opinion is to the lay mind, with which I am possessed, somewhat supported by other evidence which has been presented on this hearing.

Considering all of that evidence, and especially the opinion expressed under oath from the witness stand on this hearing from this man pre-eminent in his field, I now find as a fact that reasonable cause does exist for the psychiatric examination contemplated by Section 4244 of Title 18 of the United States Code.

Therefore, the alternative motion of the United States Attorney should be and is sustained; and for the record, in order that you may preserve your position, for what it may be worth: the principal motion which has been presented on behalf of Edwin A. Walker, the motions dictated into the record, and all objections stated upon which rulings were reserved, are overruled.

Insofar — and this is a practical approach to the matter, gentlemen — insofar as the psychiatric examination which now seems proper, I am quite willing to accept the examination already made by Dr. Stubblefield, and his report, which I assume I already have in the sealed envelope which I have not opened, as the psychiatric examination which I feel is required under all of the evidence before the Court.

Not only for the protection of the United States, but for the protection of this man, about whom it would be improper for me to express my personal views — I do think, however, it would be proper for me to say that I know his career as a soldier and as an officer personally to a much greater extent than has been developed in the record here. I have long admired the character of his service in that capacity. I had, and still have, the greatest respect for him for that outstanding service in which he followed the flag wherever duty called. That, too, goes outside of the record, the matters that are competent for consideration here. I think for his own good that with the development of this matter, this Court must now have for its consideration, to determine whether or not a judicial hearing is required, this Court must have for its consideration the report of a competent psychiatrist after, or as the result of, an examination of the type considered indicated by such a man, for its consideration.

In order that counsel may confer to determine whether or not the psychiatric examination of Dr. Stubblefield and his report may be taken as the psychiatric examination which I now am ordering, I will in a moment or two recess in order that you may so confer and announce whether or not you are able to arrive at a stipulation in that respect.
One concluding aspect of this that I feel would be proper to cover: my impression is that there has been a general misapprehension of the nature of these proceedings in this Court. My impression is that the press generally has not quite understood in some instances, and other newsmedia, as well, what type of proceeding we are concerned with. Simply stated, we are concerned only with whether reasonable cause, which I have discussed is found to be present, and whether the psychiatric examination is to be ordered, as I have ordered it. The report of that psychiatric examination may end the matter. If that report by the psychiatrist is to the effect that the person with whom he has been concerned in that examination is not insane according to his opinion, that he is not incompetent within contemplation of the statute with which we are concerned, that could end the matter.

On the other hand, should his report indicate the person with whom he is concerned is insane, or that he is incompetent within the meaning of this statute, a further judicial hearing would be required for a judicial determination of those questions, not by a psychiatrist, but by the Court, and at that hearing the statute requires, and the decisions require, full notice, full opportunity to be heard, full presentation, so that the Court may determine as a judicial question of law, and not a question of psychiatry, whether the man is competent or incompetent, sane or insane, within the meaning of this statute.

I suggest, gentlemen, that you probably should be able to determine the one question with which I am now concerned by a conference of fifteen minutes, and with that in view, Court is in recess until 4:20.

(Thereupon, at 4:05, p. m., Court was recessed.)

THE COURT:

Be seated, please.

In response to my inquiry to counsel as to whether they could stipulate that the examination already conducted by Dr. Stubblefield and his report to me as a result of that examination might be taken and considered as the psychiatric examination and report which I this day ordered, counsel on both sides of the table promptly came to me in Chambers during the recess and agreed that that examination and that report might be accepted as the examination and report with which I have dealt here today.

In their presence in Chambers the report from Dr. Stubblefield was opened and read, and it was essentially negative; that is to say, there was no opinion expressed in it that Edwin A. Walker is presently insane or presently incompetent within the meaning of Section 4244, Title 18, United States Code.

Under the provisions of this statute with such an examination and
with such a report, no hearing for a judicial determination of the question
of sanity or insanity or competency or incompetency is required.

I therefore order that there will be in these proceedings no such
further hearing.

The matter from the standpoint of the proceedings leading to this
disposition now being made are at an end.

The psychiatrist's report will be filed with the Clerk in the jacket file
and will become a public record when that is done as agreed.

I might add in conclusion, again something that really has no proper
place in this record: from the appearance of Edwin A. Walker on the
witness stand, his response to the questions put by counsel, from a lay-
man's standpoint as distinguished from the psychiatric standpoint, if I had
limited my consideration to that and that alone, on a hearing where I had
to make a judicial determination thereof, I would necessarily have found,
as I am sure most of you would have, that this man is competent within
the meaning of this statute, capable of advising and assisting his counsel
in the preparation of his defense in such criminal charges as may be pre-
sented against him by the Grand Jury of this Court.

This, so far as I am concerned, brings to an end these proceedings
bearing on the question of this man's sanity or insanity, competency, or
incompetency.

An order encompassing both dispositions that I have made, reciting
that this report was received and publicly filed, in accordance with the
stipulation that I have mentioned, may be prepared and presented for
entry.

The hearing of the case of the United States against Edwin A. Walker
is finally adjourned.