

New York is an example of that. They are now trying to change the law in New York because psychiatry has passed the law by quite a way.

Once you get in the statute a definition of this sort, you are, so to speak, stuck with it for a long time; whereas in the course of the operation of the courts, there is an opportunity to yield, as the views of psychiatry and of medicine in general become generally accepted. That, of course, is what the New Hampshire courts did back in 1860, and it was what the District of Columbia Court of Appeals did something over 80 years later, by adopting the *Durham* rule.

The *McDonald* interpretation is, I think, in general an improvement. It clarifies some points which were not entirely clear in the operation of the *Durham* rule.

The American Law Institute, in which my colleague, Dr. Guttmacher, who is present here this morning, Mr. Chairman, and I had the honor of serving, on the advisory committee, together with Dr. Lawrence Freedman, now of Chicago, sat through all of the deliberations of the committee of the American Law Institute.

To my mind the definition of the American Law Institute has two objections, and I will, if I may, Mr. Chairman, file a statement which was published in the American Journal of Psychiatry, which Dr. Freedman, who I have already mentioned, Dr. Guttmacher and I all very happily signed, objecting to the formulation of the American Law Institute.

In the first place, that formulation is in many ways a change of language without change of idea, much of the *McNaghten* and irresistible impulse rule.

In addition, it makes what is to my mind a very serious error in legislating on a medical matter. In the bill which is before your committee now, you will note that the flat statement is made that sociopathic or psychopathic personality is not a mental disease or defect.

The views of the psychiatric profession are not perhaps unanimous. But certainly in the official nomenclature of the American Psychiatric Association you will find that this condition is mentioned under the general heading of mental disorder.

Furthermore, as a psychiatrist, I certainly do not know of any mental disease or defect which is evidenced only by repeated criminal or otherwise antisocial conduct. That is a very unsuccessful attempt to eliminate this particular diagnosis.

To my mind, the psychopath or the sociopath, the true one, is a sick person, mentally sick, and this should be taken into consideration and not struck out by statute.

So I think it is unfortunate if we get any legislation on this topic at all.

I think the judges should be given their heads, and I think that they, in the long run, will keep up with the margin of progress in other fields of science, including medicine, better than a statutory fixation which is likely to become pretty much fixed.

I note, too—not being a lawyer, I cannot say, and I hope that someone will refer to this—I note that under subsection (1) of section (c), page 3—that it is stated that the defense is an affirmative defense which the defendant must establish by the showing of substantial evidence.