

How that gibes with the *McDonald* ruling I do not know.

The CHAIRMAN. At that point, Doctor—and I will let my legal men check me out—if I remember Mr. Acheson's testimony on that point correctly yesterday, he testified that such section is not a burden-of-proof section, but rather it is a provision of law requiring the defendant to raise the insanity issue by a showing of substantial evidence, and if he does that, then the burden shifts, as it now is, to the Government to prove beyond a reasonable doubt the opposite of his contention. I understood him to say this was substantially the practice in the District of Columbia at the present time.

Dr. OVERHOLSER. I hope that is the case.

The CHAIRMAN. This was the testimony, I believe, I will recheck it, since you have again directed our attention to this subsection. I believe this is what Mr. Acheson said. Reading from page 127 of his testimony yesterday, he said:

I do not believe that provision changes the burden of proof. I think it is intended only to require that the issue be raised initially by a showing of more than a scintilla of evidence.

Then I asked the question:

Well, are there sections within title II that involve the burden of proof?

Mr. ACHESON. I think not, no. There are none, Mr. Chairman.

The CHAIRMAN. Then you say this is not a burden-of-proof section?

Mr. ACHESON. This is not a burden-of-proof section. It is a section only requiring that the defendant raise the issue, introduce the issue into the case by a showing of substantial evidence. If he does that, then the burden shifts as it now is to the government to prove beyond a reasonable doubt the opposite of his contention.

The CHAIRMAN. Then if the section would become law, it would have no effect upon the present case law in the District of Columbia as far as the burden of proof is concerned?

Mr. ACHESON. That is right.

The CHAIRMAN. The burden of proof still starts with the defendant, and after he has produced some evidence, then the burden of proof shifts to the prosecution to prove the contrary.

Mr. ACHESON. To prove otherwise; that is right, Mr. Chairman. The provision would make it a little bit more difficult for the defendant to raise the issue initially. But if he did, the burden of proof would remain where it now is.

That was Mr. Acheson's statement as of yesterday.

Dr. OVERHOLSER. I simply hope that this was not an attempt to circumvent *Davis v. the United States*, which is still good law, as far as I know.

The CHAIRMAN. I do not think *Davis* has been reversed.

Dr. OVERHOLSER. Yes, sir.

I do not want you to think that I am opposed to everything in this section. I am opposed to most of it, Mr. Chairman. But I do agree with this matter of notice. The notice of intent to plead insanity as a defense—that is done in a good many States.

I think it is entirely fair to the defendant. There are enough safeguards as far as the discretion of the judge is concerned. But at times in the past in some cases, both here and elsewhere, the defense of insanity has been sprung, so to speak—taking perhaps the prosecution off base. After all, the attempt ought to be to get the facts on both sides, rather than to take one side by surprise.

The CHAIRMAN. Well, on that point, the U.S. attorney is in complete agreement with you. He favored the notice section. He did say, as a practical matter, it caused them no great problem in the Dis-