

Mr. KRASH. Rather than read the prepared statement, I would simply like to ask that you include it in the hearing record, and I will instead undertake to speak extemporaneously and answer the questions of the committee.

(The statement referred to follows:)

STATEMENT OF ABE KRASH

Nearly a decade has now passed since our court of appeals announced a new standard of criminal responsibility in the *Durham* case. I believe that it is a timely moment to reappraise the situation, and I believe that it is appropriate that this committee should undertake to make a study in depth of the troublesome and complex issues which arise in connection with judicial administration of the insanity defense.

I shall confine my remarks to some of the issues presented by title 2 of the bill pending before the committee—that is, to problems connected with the insanity defense in criminal cases.

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At the outset, I should like very briefly to summarize the principles which I feel should govern consideration of the responsibility issue.

First, I assume that nearly everyone will agree that there are some persons who are so mentally disordered that it would be unreasonable to punish them. The Nazis believed in exterminating the mentally sick, but that idea is abhorrent to us—we believe that mentally ill persons should be cared for and treated. There are differences of opinion with respect to the standard of responsibility which should be followed, but there is virtually no dispute that persons who are not influenced in their behavior by the threat of punitive sanctions should not be punished.

Second, there is general agreement that the judgment as to responsibility should be made ultimately by a jury. Essentially we call upon the jury to make a moral judgment: Should this defendant be held accountable and punished? In order to make an informed judgment of this type, the jury should have the benefit of the greatest possible amount of data concerning the defendant's motivation. Since the issue of responsibility is to be decided by a jury, the test should be simple and intelligible to laymen.

Third, in administering a test of responsibility, the courts need the help of experts, specifically psychiatrists. Whatever the test, psychiatrists should be permitted to state all of their findings concerning the defendant in their own terms. I also believe that the test of responsibility should be consistent with generally accepted scientific theories as to the nature of mental disorder and its effect upon behavior. A test of responsibility which is scientifically absurd will quickly be discredited and, in practice, it will discourage the participation in criminal proceedings of competent medical men.

Finally, it is essential to bear in mind that persons who are found not guilty by reason of insanity are not turned loose in the District of Columbia. The governing statute requires automatic, mandatory hospitalization of all persons acquitted on grounds of insanity. They cannot win their freedom unless they can convince the District court that they no longer suffer from an abnormal mental condition and will not be dangerous to the community or to themselves if released.

As I shall discuss, I believe that the *Durham* rule satisfies the requirements for an acceptable test of criminal responsibility. I believe that it has had a profoundly beneficial effect on the administration of criminal justice. I do not regard the *Durham* rule as a definitive, ultimate solution to this difficult problem, but in my judgment it would be most unfortunate if the test of responsibility contained in H.R. 7525 were to be enacted into law as a substitute.

The *Durham* rule provides simply that an accused person is not criminally responsible if the illegal act was a product of mental disease or defect. In evaluating the implications of this rule, it is necessary to bear in mind the atmosphere that prevailed in the District in July 1954, when the *Durham* decision was announced.

The rules of criminal responsibility applied in the District at that time were the *McNaghten* test—which was first adopted by the House of Lords in 1843—and the irresistible impulse test, which became accepted at the turn of the century. Under *McNaghten*, the issue was this: At the time of the offense, was the