

quently represented with great competence and devotion and skill by appointed counsel, the truth is that they are not so represented in all cases, and I do not think anyone would seriously suggest that if a man who has large sums of money or who had—could hire any lawyer—that he is in the same situation as a man who has no funds—who can retain psychiatrists, experts, and so on. There really is a disadvantage to the indigent defendants, despite the dedication of many lawyers particularly in the District, who serve without a fee in the Federal courts in case after case.

So that I do not think that it is reasonable to increase the burden on the defendants beyond some evidence. That is the law throughout the United States, and I see no reason why it should be changed here. I think the bill would change it. And I think it would be undesirable.

The CHAIRMAN. What is the case law in the District of Columbia at the present time?

Mr. KRASH. In the District of Columbia it is this: The defendant is presumed to be sane. If the defendant produces some evidence—

The CHAIRMAN. "Some" is the word used?

Mr. KRASH. That's right. I have the *McDonald* case before me.

The CHAIRMAN. In the *McDonald* case.

Mr. KRASH. In the *McDonald* case. It repeats the language of the *Davis* decision. If there is some evidence, then there is an issue. Now, some evidence does not justify a directed verdict. That is one of the points of the case. But if there is some evidence, then the issue must be put to the jury.

Now, the prosecution has, of course—the law then is that the prosecution, where there is some evidence, must prove beyond a reasonable doubt that the defendant did not suffer from a mental disease, or the act was not a product of his illness.

Now, it is true that a larger number of persons have escaped responsibility, if you want to put it that way, under the *Durham* test than was true before. No question about that. But that does not prove that the test is either good or bad.

What is the optimum number of people who should be found not guilty is, of course, not a medical question. It is really a moral question. There may be some people who should have been found not guilty by reason of insanity who have not been so found. It may also be true there are some people who have escaped responsibility under the *Durham* test who should have been found responsible.

My impression, however, is this, that the people who are being found not guilty by reason of insanity, and the hospital could really confirm this better than I, are really very sick people. In other words, in the District of Columbia at the present time we are not finding not guilty by reason of insanity people who would be regarded as sane. They are really sick. And the hospital psychiatrists who are the principal witnesses, both for the defense and the prosecution, are really quite conservative about this.

I think also you have got to keep the magnitude of the problem in perspective.

The largest number of defendants acquitted in any one year was 67, in 1962. In that year, there were, according to the U.S. attorneys office, about 1,493 people charged with a crime. So that what you are saying is roughly between 4 and 5 percent of the persons who are