

charged with crime in the district court are being found not guilty by reason of insanity. I personally do not believe that is an abnormally high percentage.

In connection with the statistics, I would say this: sometimes you hear the statistics cited in terms of the percentage of persons found not guilty out of those who are tried. But bear in mind that the cases tried are the most serious. The great majority of cases are dismissed or nolle prossed, or they are pleas of guilty, and so on. So that you would expect to find a very high percentage, relatively speaking, of insanity cases with respect to the cases which are tried.

I do not think that the statistics are in any degree indicating that the *Durham* rule is a failure.

Now, let me say this, Mr. Chairman: We have had the *Durham* rule here for nearly a decade now. And I think it is significant—and I would emphasize this to the committee—that there are very few informed people who have dealt with this subject in the District who favor turning the clock back to the *McNaghten* rule and the irresistible impulse test. When such a proposal was made to the bar association in 1959 in effect it was turned down by a large majority of those voting. The *Durham* rule has been supported for 10 years by a majority of our court of appeals, including three of the last four chief judges—Judge Edgerton, Judge Bazelon, and Judge Prettyman. And, of course, there are judges and lawyers of great competence who are dissatisfied with it, and critical of the *Durham* test. I am critical of certain aspects of it myself. But I think it is noteworthy that nearly everyone now agrees today in the District that we should not go back to *McNaghten*, to where we were before.

The CHAIRMAN. Have other jurisdictions adopted this new test rather than the *McNaghten* test?

Mr. KRASH. No. As far as I am aware—I think that the Virgin Islands and I believe New Hampshire has it, maybe it is also adopted in Maine. I have not made a recent check on that. I undertook to do that in the article I wrote. I do not recall more than that.

There are changes going on throughout the United States in this. For example, there is the *Currens* test of Judge Biggs, which I happen to think is a very good test, by the way.

The point is there is no question that there is in many States for example, Senator Bible, many courts that are reluctant to change the law because they do not have automatic and compulsory hospitalization such as we do in the District. They may not have the hospital facilities that are adequate. Third, there are many places which feel that this change ought to be made by the legislature. And there is no question, there is a great deal of resistance to change in this area of the law. I think it is one of the tributes of the court of appeals here that it has pioneered this field. The fact is there is a great feeling throughout the country, I would say, among the informed people in this area dealing with problems of criminal responsibility that the law needs to be changed.

Now, there are differences of opinion about what the test ought to be.

I would say that the basic reason why I would not change the *Durham* rule here in favor of the American Law Institute test, for which I have no great objection—

The CHAIRMAN. May I ask you a question right at that point? Is there any substantial difference between the *Durham* test as amplified