

be giving a lead to a great number of areas throughout the country to adopt similar standards so we have something that a fellow does not get tried under one set of rules in one portion of the country and another in this particular jurisdiction.

Mr. KRASH. Well, Senator, I might comment for one moment on your observation.

The fact is there really have not been many changes. The original test for responsibility in the District, the *McNaghten* rule, was adopted by the courts in the 1880's. And then the court of appeals adopted the irresistible impulse test I believe in 1927—I am not sure of the date. Then there was no other change until the *Durham* rule, and there was no other change after that until *McDonald*, which I do not think is really a change at all. It is only a clarification. So there have been very few changes relatively speaking. And during this same period, Senator, I think I should point this out—this has been a whole period of a tremendous change in development in psychiatry. One can really say, as a matter of fact, that all of modern psychiatry I suppose begins with the work of Dr. Freud at the turn of the century. So the last half century has been a field of great change in the field of psychiatry. It has been a period also of great change of public attitude toward the insane and toward the mentally ill. I think this is reflected by the President's proposal now before the Congress in this area. Our whole community attitude has changed, and I think the court of appeals here simply was reflecting the fact that science had developed, medicine had developed, public attitudes had changed, and the law changed.

Why should we have a test in 1963 which was the test in England in 1843, based upon the state of medicine which existed then?

Senator DOMINICK. Mr. Chairman, I wonder if I could ask just one more question?

The CHAIRMAN. Certainly, ask as many as you want.

Mr. KRASH. I would be glad to answer any questions at all.

Senator DOMINICK. This is on a different subject. This is in connection with your question on the word "substantial," and the definition.

In your prepared statement the use of the word "substantial" was part of the establishment of the defense, whereas the use of the word "some" which I thought was preferable was simply defined to create an issue, not to establish the defense.

Now, is there a legitimate distinction in there?

Mr. KRASH. No, I don't think so. Let me try to restate it, and perhaps maybe I can clarify it.

Point 1: We start with a presumption of sanity. And if nothing is said about it, the defendant is presumed sane.

Now, point 2: If the defendant produces some evidence, and, of course, you cannot quantify what you mean by some, but some credible evidence, some probative evidence that he suffered from mental disorder, proof, for example, that he has been discharged from the service on psychiatric grounds, proof that he had a previous record of hospital confinement, proof, for example, of some psychiatric testimony, which would be the best evidence.

But if he produces some credible evidence, then there is an issue which is created as to the insanity issue.