

STATEMENT OF A. KENNETH PYE, ASSOCIATE DEAN, GEORGETOWN
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Mr. PYE. My comments will be brief, because I agree in substance with almost everything Mr. Krash has said to the committee.

I agree with a great deal of what the U.S. attorney, Mr. Acheson, said yesterday also, and I shall try to avoid repetition wherever possible.

My views on the subject have been subject to considerable change during recent years.

I served with Mr. Krash on the bar association committee in 1959, which recommended something very similar to the bill that this committee has before it today.

At that time I favored the language which was contained in that bill, as distinguished from the *Durham* rule, as I understood it to be operative in the courts of the District of Columbia.

Mr. Krash indicated, the bar association did not approve its committee's recommendation.

Since that time, I have changed my views drastically. My viewpoint as to what is the appropriate test for responsibility in a criminal case is the same.

The difference is that the law as it has developed by judicial decisions has come around, at least in the way I read these cases, to be substantially what I think it should be.

The CHAIRMAN. By that you mean *Durham* clarified by *McDonald*?

Mr. PYE. *Durham* clarified by *McDonald*, and the practices which have developed in the courts as far as the understanding of testimony, the reluctance of the court of appeals to reverse jury verdicts.

I was originally concerned when *Durham* was interpreted in decisions such as *United States v. Wright* (250 Fed. 2d), that we might be leading toward an area in which the concept of freedom of will was being deleted from the fabric of our criminal law.

That we might be headed toward an area that just because an individual was ill he would be held not responsible for his acts.

Any doubts that I might have had in this particular have been solved, I think, by subsequent opinions of the court.

As I understand the rule at the present time, the test is a workable test, a test which indicates that a defendant should not be held responsible when his capacity to refrain from doing an act has been substantially impaired.

The advantages of the right and wrong test, and the irresistible impulse test are available in addition to this somewhat broader doctrine.

The CHAIRMAN. I don't understand that last statement.

Mr. PYE. The advantages of the recognition factor in the right and wrong test still exists in the law of the District of Columbia.

In an appropriate case the court would instruct not only on *Durham*, but also on *McNaghten*, and irresistible impulse.

The *Durham* test is not a substitute for these other two. It replaces it in those areas where right and wrong is not important.

But a jury would still be instructed in an appropriate case that they should find the defendant not guilty by reason of insanity if they determine that the effect of his disease was such that he could not distinguish between right and wrong.