

Mr. PYE. I think I disagree with Mr. Acheson's testimony with reference to the provision in paragraph c(1), on page 3, lines 8 through 10, with reference to the language of the act which would make language of mental responsibility an affirmative defense, and require that the defendant must show this by substantial evidence.

I think that this would constitute a considerable change in existing law in the District of Columbia.

It is my understanding that this particular provision originated in the ALI as a result of a compromise between individuals that didn't like the some evidence rule, and individuals who wanted to adopt a statute such as the Oregon statute in *Leland v. Oregon*, placing the burden on the defendant to establish insanity.

The result was a statute which, as I read it, is ambiguous. You cannot tell whether the defendant has to establish the existence of a mental disease by a preponderance of the evidence.

It is clear, however, that he has to produce substantial evidence. Substantial evidence might well be interpreted to mean something different than some evidence. Some evidence has a judicially defined meaning now, as a result of almost 50 years of case law since the *Davis* opinion.

To change the word "some" to "substantial" would give rise to a feeling on the part of some people that the defendant has to produce at least a preponderance of the evidence.

I think it is reasonable to assume he has to produce something more than some, if not a preponderance.

In any case, I see no advantage to confusing the law, unless we are in a situation where substantial detriment is being sustained by the Government in meeting the insanity burden.

As I understand from Mr. Acheson's testimony and his article in our law review of last year, this is not the case.

The fact that the Government has the burden of proceeding as a result of the introduction of some evidence does not at the present time place any severe limitation on the Government; they are able to meet it.

If this is true, I see no point in trying to adopt new statutory language, when the old language is doing the job.

I am particularly concerned with the provisions in paragraphs d to g, which cover pages 3 to 10 of the act. These are the provisions that set forth details of the scope, manner, form, and effect of the pretrial examinations.

This is the very subject which the judicial conference of this circuit has had under study for 3 years. This conference appointed an eight-man executive committee, retained the full-time services of a project director, and obtained \$50,000 of funds in order to conduct the study.

Every case which has involved the assertion of a claim of incompetency to stand trial since 1953 has been studied. The records of St. Elizabeths Hospital have been studied, the court records have been studied, questionnaires have been sent to lawyers and attorneys throughout the country.

This May the committee will report to the judicial conference making recommendations.

Some of these recommendations may constitute substantial changes in existing procedure as to pretrial commitment, what should be in