

Memorandum of Dissent

By ABE KRASH AND SELMA M. LEVINE

We dissent from the report and recommendations of the majority of our colleagues on the Committee on Criminal Responsibility.

The majority recommend that this Association should adopt a resolution urging Congress to abrogate the test of criminal responsibility promulgated by our Court of Appeals in 1954 in *Durham v. United States*, 214 F. 2d 862 (D.C.Cir. 1954). The Association is urged to support enactment by Congress of a new "statutory definition of insanity" devised by the majority. We do not agree that a case has been made out by the majority for abolishing the *Durham* rule. To the contrary, we submit that the *Durham* rule has worked remarkably well. Moreover, we do not believe that the novel and complex test proposed as a substitute by the majority would be more satisfactory. Many of the objections levelled by the majority against *Durham* would be equally applicable to the formulation proposed as a substitute. In addition, the majority's suggested rule would spawn a host of new and troublesome problems. In any event, we feel it would be unwise to freeze any rule in a statute at this time, during a period of transition and rapid developments in this field and before there has been a full opportunity to appraise the *Durham* rule.

The *Durham* test has been widely praised. It has commanded the support of a majority of our Court of Appeals for five years. It has been approved by the present Chief Judge, E. Barrett Prettyman;¹ by the former Chief Judge, Henry Edgerton;² by the Chief Judge of the Court of Appeals for the Third Circuit, John Biggs;³ by the Chief Judge of the Court of Appeals for the Fourth Circuit, Simon Sobeloff;⁴ and by Supreme Court Justice William O. Douglas.⁵ It is approved by the overwhelming majority of psychiatrists,⁶ and is strongly

¹ See e.g. *Carter v. United States*, 252 F. 2d 608 (D.C. Cir. 1957).

² *Durham v. United States*, 214 F. 2d 862 (D.C. Cir. 1954) (per Bazelon, Edgerton, and Washington).

³ See Biggs, *The Guilty Mind* (1955).