

have been immense strides in medical knowledge of insanity and mental abnormality. The almost universal recognition of the power of the unconscious to determine and influence human behaviour has had a profound effect upon criminology and accepted notions of punishment and blame. The *Durham* decision also reflected recognition that the incidence of mental disorder among persons charged with crime is high, and that existing procedures for dealing with such persons were not adequate. It is this test—the *Durham* rule—which the majority wishes to abandon.

## II

### THE DURHAM RULE HAS PROVED TO BE BENEFICIAL IN PRACTICE

A. The insanity issue may become relevant at different stages of a criminal proceeding. The Defendant's sanity is pertinent to his competence to stand trial. It is germane to the question of the Defendant's responsibility as of the time of the offense, an issue presented at the trial itself. It is also relevant in determining when a Defendant may be released from commitment after acquittal by reason of insanity. In short, it is relevant to pretrial, trial, and post-trial issues. See *Lyles v. United States*, 254 F.2d 725, 729 (D.C. Cir. 1957) (per Prettyman and Burger). The tests are different in each situation.<sup>9</sup> The *Durham* test is applicable solely in determining the Defendant's responsibility as of the time of the alleged offense.

The function of an insanity test for determining whether the accused was responsible at the time of the offense is to

---

<sup>9</sup>The test applied in determining the fitness of the Defendant to stand trial is whether he is "unable to understand the proceedings against him or properly to assist in his own defense" (18 U.S.C. § 4244). In deciding whether a person shall be released from a mental institution to which he has been committed following a verdict of not guilty by reason of insanity, the test is whether, in the opinion of the Hospital Superintendent and the District Court, "such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others." D.C. Code § 24-301 (Supp. VI, 1958). In *Overholser v. Leach*, 257 F. 2d 667, 670 (D.C. Cir. 1958), the Court of Appeals construed the foregoing provision respecting release to require proof of "freedom from such abnormal condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future."