

fendant has recovered his sanity and "will not in the reasonable future be dangerous to himself or to others." We have set out in the margin a table which demonstrates that the Hospital authorities are slow to release such individuals, and that relatively few of the persons who are treated and released have subsequently become enmeshed with the law.¹¹

III

THE MAJORITY'S CRITICISM OF DURHAM

The majority report attacks the *Durham* rule principally on three grounds:

(i) The majority maintains that "the basic difficulty in the *Durham* rule is that it makes the legal test of criminal insanity the same as the medical test of mental disease" (Report, p. 13). The majority insists that "there is no clear definition of mental disease or mental defect" and that since psychiatrists differ among themselves there is uncertainty and inequality in the administration of the criminal law.

(ii) The majority claims that the "causality or 'product' part of the rule is * * * confusing" (Report, p. 2), and they feel the test deficient for the reason the United States Attorney has "los[t] and abandon[ed] prosecutions because psychiatrists

¹¹ The practical results of acquittals under the Durham rule, July 1, 1954, to May 7, 1958, Column 1 shows the number of defendants in criminal cases acquitted by reason of insanity. Column 2 shows the number of these defendants who are still confined at St. Elizabeths hospital. Column 3 shows the number released from the hospital as recovered. Column 4 shows the number of those released who have since gotten into serious criminal trouble.

Crime	Acquitted	Still Confined	Released	Later Serious Trouble
Murder	7	6	1	0
Assault	5	3	2	0
Robbery	8	4	4	1
Housebreaking	8	2	6	1
Forgery	6	2	4	1
Auto theft	6	5	1	0
Others	6	1	5	0
Totals	46	23	23	3

SOURCE: The Washington Post, May 9, 1958, p. D3, col. 7.