

insanity defense was so clearly established. Such defendants would be committed to Saint Elizabeth's.

As a practical matter, the basic controversy where an insanity plea is made is this: Did the Defendant suffer from a mental disease or defect? As to this issue, there is not the slightest indication that the prosecution has any difficulty in obtaining psychiatric assistance. All of the facilities of one of the greatest mental hospitals in the world, Saint Elizabeth's, are readily at its disposal. The vast majority of defendants—perhaps 95%—are indigent, and it is only proper and just in our view that the prosecution, with the enormous resources at its disposal, should bear a heavy responsibility for producing and presenting expert testimony respecting the accused's mental condition (see *Blunt v. United States*, 244 F. 2d 355, 364, note 23 (D.C. Cir. 1957)).¹⁴

Third. We do not think any inference against *Durham* can logically or fairly be drawn from the action by courts of other jurisdictions. In most, the *M'Naghten* rule still prevails though that rule is thoroughly discredited. That these jurisdictions have chosen to retain an obsolete test is hardly compelling evidence of its soundness, nor does it constitute a cogent reason for discarding *Durham*. In any event, unique factors which are inapposite here were present in most such cases. Other Circuit Courts, for example, have held they were not free to follow *Durham* because they do not enjoy the same "autonomy" with respect to local criminal law as our Court of Appeals. *Sauer v. United States*, 241 F. 2d 640, 644 (9th Cir. 1957); *Howard v. United States*, 232 F. 2d 274, 275 (5th Cir. 1956). Some state courts have been inhibited by statutes defining criminal responsibility. *People v. Johnson*, 169 N.Y.S. 2d 217 (1957).

The fact is that no other court in the United States has subjected the question of criminal responsibility to the same intensive scrutiny as our Court of Appeals. Since 1954, the

¹⁴ Many of the prosecution difficulties have been alleviated by a 1955 amendment to the District Code. The normal doctor-patient privilege does not apply in a criminal case where insanity is an issue as a result of a plea by the defendant, with the result that the prosecution may freely use the testimony of psychiatrists who have examined the defendant. D.C. Code § 14-308 (Supp. IV, 1957).