

result in mechanical recitation *in haec verba* of the formula alone. It would drain the defense of vitality. The recommendation is contrary to the trend of permitting more liberal scope to the trial judge in commenting upon the evidence. We oppose this recommendation by the majority.

(iii) The majority also recommends that where "sufficient evidence," both lay and expert, has been received as to the nature and extent of the defendant's mental condition, the court shall leave to the "sole determination of the jury the question as to the incapacitating effect if any of such mental condition. * * *" This proposal would preclude a court from ever directing a verdict of not guilty by reason of insanity. While we think that the question of responsibility is primarily for the jury, we do not see any sound reason for depriving the court of its traditional prerogative of directing a verdict where the evidence so overwhelmingly points one way—in this instance, insanity—that reasonable men could come to no other conclusion. See *Douglas v. United States*, 239 F. 2d 52 (D.C. Cir. 1956). We therefore oppose this recommendation by the majority.

VI

CONCLUSION AND RECOMMENDATIONS

In April 1955, a Committee on Mental Disorder as a Criminal Defense, appointed by the Council on Law Enforcement of the District, and headed by George L. Hart, Jr., now District Judge, submitted a report to Congress on the *Durham* rule. We are in accord with the conclusion of this distinguished committee.¹⁹ (Senate Rep. No. 1170, 84th Cong., 1st Sess., p. 10):

"It is the opinion of the Committee that the test of criminal responsibility established in the *Durham* case represents a significant and desirable advance over the 'right and wrong' and 'irresistible impulse' tests, and is in the interests of justice.

"It is the opinion of the Committee that, while the *Durham* test is by no means the ultimate test or the perfect test, it would not be feasi-

¹⁹ In addition to Judge Hart, the Committee included Donald A. Clemmer, Leroy H. McKinney, Hugh F. Rivers, and Vernon E. West.