

In fact, if necessary, the sections comprising that title could be taken out and made a separate bill, because it may well be that some people will be in favor of title II, who might be opposed to other sections of the bill.

The basic provisions of title II, relating to insanity, are taken from the Model Penal Code of the American Law Institute, which was the product of several years of intensive study and work performed by a group of distinguished scholars, lawyers, and judges.

I am heartily in favor and support title II very largely because it is taken from the Model Penal Code of the American Law Institute, and because these provisions will completely solve some of our problems and meet some of our difficulties in connection with the defense of insanity in criminal cases.

While I am going to make my remarks very succinct and brief, because I know you have a number of witnesses, I do want to go back for a moment to highlight one or two matters of what might be called history.

We often hear criticism of the well-known *M'Naghten* case, decided in England over a century ago, in which the so-called right and wrong test was laid down, in which the test of insanity, for the purpose of criminal cases, was whether the defendant knew or was able to distinguish between right and wrong and, if he knew which was wrong, could he adhere to the right.

With the advance of the psychiatric science over the years many people recognized that that test was insufficient because there might be some insane people who knew that they were doing wrong and yet were unable to adhere to the right.

Now the Federal courts long ago abandoned sole reliance on the *M'Naghten* case. Consequently, it seems to me inappropriate, as many people have said, that the reason for the *Durham* case was because the *M'Naghten* was bad.

We abandoned the sole reliance on the *M'Naghten* case years ago.

The Supreme Court, in the *Davis* case, in 165 U.S. 373, at page 378, added to the right and wrong test the test known as the ability to adhere to the right, and it defined insanity, in connection with criminal cases as follows:

The term "insanity" means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong or unconscious, at the time, of the nature of the act he is committing or, though conscious of it, unable to distinguish between right and wrong, and yet his will, by which I mean the governing powers of his mind, has been overcome and voluntarily so completely destroyed that his actions are not subject to it but are beyond his control.

Now, this test has prevailed in the Federal courts ever since the decision of the *Davis* case.

It still prevails in all of the Federal courts outside of the District of Columbia.

The bill that you are discussing really reenacts the same test in somewhat more modern language which, I think, is very well written.

It provides that a person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.