

The CHAIRMAN. At that point, Judge, would you permit an interruption?

I would like to have your views as to the difference between the language in H.R. 7525 and the language of the test which you have just read from the American Law Institute.

The House, in passing this bill, added two words. They added the words "either to know or appreciate."

I will have the staff show you the words that they have added and ask if you think that that makes a difference in the test.

What I am pointing out is that the language contained in the bill before us is not identical with the ALI test to which you have just referred.

Judge HOLTZOFF. Well, substantially, your bill is the definition contained in the American Law Institute code.

The CHAIRMAN. With the exception of the words "to know"?

Judge HOLTZOFF. Yes.

The CHAIRMAN. Would you point those out, please?

Judge HOLTZOFF. Yes. The words "to know", I think, are a desirable insertion although they are not a necessary insertion.

I think it makes it easier to understand the definition to know or appreciate the unlawfulness of his conduct, whereas the words "to know" are not in the penal code.

I do not think this changes the sense any, but I think it makes it easier to understand. So I would favor that change or modification.

Now, the *Durham* case, which was decided by our court of appeals in 1954, sought to abandon any definition of insanity and is to the effect that if a person, at the time of the commission of a crime, was suffering from a mental disease or mental defect, and the crime was the product of such mental defect or such mental disease, then he shall not be responsible for his criminal offense.

Well, the difficulty with that definition is not a theoretical one. It is a practical one.

It is so vague and general that it does not guide juries. What constitutes a product of a mental disease?

Even psychiatrists have frequently said, from the witness stand, "I do not know what you mean by 'product'."

Over the years I have acquired a mounting admiration for juries but, at the same time, juries need concrete guidance, and the difficulty we have had with the *Durham* case is because the format of the *Durham* case is so general as to be no concrete test and, for that reason, I hope that the Congress will enact the provisions of H.R. 7525.

There is another difficulty that we have had that really was due to something that happened at St. Elizabeths Hospital.

A person with a psychopathic personality had never been regarded as an insane person. He could not be committed civilly. He was not excused for any crimes that he had committed.

He was just a maladjusted person.

By the way, they have changed the term "psychopathic" to the term "sociopathic." Psychiatry changes its nomenclature very frequently.

In recent years there developed a school of psychiatrists who adopted the view that a sociopathic personality is a mental disease. Unfortunately, those in charge of St. Elizabeths Hospital became adherents to that view and several years ago, after the *Durham* case was de-