

cided, overnight they made a public announcement that hereafter "we will testify that a sociopathic personality is a mental disease," although previously they testified otherwise.

Now, the result of that has been that many persons who used to be called "psychopaths" and now are called "sociopaths", and who were always regarded as mentally responsible for their crimes, are being acquitted on the ground of insanity because the psychiatrists from St. Elizabeths Hospital take the witness stand and say that this man has a sociopathic personality, that is a mental disease, and the crime was a product of his personality.

Now, other psychiatrists will testify otherwise.

The result is very incongruous. We get a group of people who are not regarded as insane, from the standpoint of civil law, who could not be committed to St. Elizabeths Hospital by a civil commitment proceeding, and yet who are acquitted of any criminal offense that they committed on the ground of insanity.

Now, the American Law Institute and your bill takes care of that and does away or makes it impossible hereafter to regard or classify a sociopathic personality as a person with a mental disease.

In subsection (2) of section 927(a), as amended, by section 201 of the bill, it is provided:

The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

That would eliminate the sociopath as being a mentally diseased person. This would be very wholesome and salutary and a very necessary operation.

Now, there are two other matters that I want to refer to. One is the question of the burden of proof.

The burden of proof on the issue of insanity is on the prosecution in the Federal courts. In many States the burden of proof is on the defense to prove insanity as an affirmative defense.

In fact, the State of Oregon goes so far as to require that the defense is to be established beyond a reasonable doubt. Other States require it to be established by a preponderance of the evidence.

Now, it is almost an intolerable burden on the U.S. attorney's office to disprove an allegation of insanity because they have to get evidence to prove that on a particular date, some time ago, the defendant was not insane, and—

The CHAIRMAN. May I ask a question there, Judge?

Judge HOLTZOFF. Surely.

The CHAIRMAN. In an insanity case, what is the case law in the District of Columbia with regard to the burden of proof?

Judge HOLTZOFF. The case law now is that the prosecution has to prove beyond a reasonable doubt that the defendant was free of mental disease or mental defect on the date of the crime and, further, that if he did have a mental disease or mental defect that the crime was not the product of his mental disease or defect.

Now, that renders almost an intolerable burden on the prosecution, and I know there have been cases where defendants have been acquitted on the ground of insanity, not because they have been proven insane but because the Government was unable to prove that they were not insane.