

points I made concerning notice, the affirmative defense, and the sociopathic personality, those are embodied in the code which I think is preferable to the state of the law that we have in the District at this time.

The CHAIRMAN. Well, I appreciate that, Mr. Gasch.

I would like to ask you the same question that I asked Judge Holtzoff.

Do you see any difference between the American Law Institute test and the test contained in title II of the House-passed bill, where the words "to know" are inserted by the House?

That is not in the American Law Institute test. The House has also inserted the word "wrongfulness" for the word "criminality" in the ALI insanity test.

Mr. GASCH. I do not have any strong feelings about that.

I think I would agree with Judge Holtzoff, that the addition of the words "to know" makes the formula a little more meaningful, generally more understandable to the laymen who sit on the jury.

Some psychiatrists seem to object to what they call the "cognitive test" because they feel that knowledge is only one aspect of the man's understanding.

They feel that to appreciate is a broader concept than to know, but if you have the two together I think it is a little more meaningful, and I do not feel that it would be a serious mistake to strike the words "to know" if they are objectionable to psychiatrists or those who are oriented in that direction but, personally, I prefer to have the two words.

They are a little more understandable.

The CHAIRMAN. Now, let me ask you this further question because the history of the evolution of the definition of an instruction on insanity in the District of Columbia has come to this jurisdiction by way of case law.

Is that not correct?

Mr. GASCH. Yes, it is, sir.

The CHAIRMAN. Since the inception of the District of Columbia there has never been a code provision on this subject of insanity.

Is that correct?

Mr. GASCH. That is my understanding, sir.

The CHAIRMAN. That has been mine.

Mr. GASCH. We have some statutory procedure pertaining to mental competency.

The CHAIRMAN. I am not talking about the procedural part.

I am talking about the tests because I believe this is contrary to the usual practice in most of the States.

My State, for example, has the definition and the instruction insanity written right into the code, and I think this would be almost uniformly true of the other States.

Now, the purpose of my recitation of that background is to ask you whether you think it is preferable to rely upon case law as it now exists in the District of Columbia, *Durham* amplified by *McDonald*, or whether we should write the insanity test into law, whatever that test may ultimately be?

Mr. GASCH. Well, I prefer leaving statutory matters to the Congress of the United States and letting the judges decide the cases.