

much as a repudiation of the *Durham* rule, as an effort to develop it, give it more specific content, and establish criteria to provide guidance to trial courts and juries.

The *Durham* rule simply states—

that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.

In that case the Court discarded a well established test of insanity as a defense that is the rule in the *M'Naghten* case. The *M'Naghten* rule held that a person was responsible for his criminal conduct if he possessed the capacity to distinguish between right and wrong.

By way of comment and observation, it is interesting to note that the *Durham* rule has been considered by a number of State and Federal courts. In every case it has been rejected by the courts. Twenty States place the burden on the defendant of proving insanity as a defense by a preponderance of the evidence. For example, the State of Oregon imposes upon the defendant the duty of proving such a defense beyond a reasonable doubt. Substantiation of this burden, as was mentioned earlier by Judge Holtzoff, has been upheld by the Supreme Court of the United States in *Leland v. Oregon* in 1952.

In the District of Columbia, there are shocking signs of abuse of the defense of insanity that can only be corrected by a change in the burden of proof rules. A particularly shocking example occurred recently in the testimony of the roommate of Paul McGee. McGee was acquitted by reason of insanity of armed holdup of the Apex Theater in the course of which McGee shot and wounded a police officer.

The roommate testified that he had discussed "jokingly" with McGee where a robbery should be committed by a thoughtful criminal and suggesting to McGee that he select New York as a community where his family might be most influential. McGee's reply was that he would select the District of Columbia because in the District of Columbia he could feign insanity as a defense and retain his freedom even though he might be apprehended.

Gentlemen of the Senate District Committee, this constitutes one more example of the prevalence of thought with the criminally inclined that the District of Columbia is "soft on crime" and a haven from prosecution and conviction for the criminal.

The CHAIRMAN. I have heard this a great deal, and I have asked the staff to check it out, because I was somewhat impressed with the testimony that we had yesterday that runs counter to the common misconception. (See p. 700 re statistics furnished by Judicial Conference of the District of Columbia Circuit on Commitments and subsequent release from St. Elizabeths Hospital.)

Now, McGee, when he was acquitted by reason of insanity, was, of course, committed to St. Elizabeths.

And the testimony yesterday was, and I have not had the staff verify it, but my understanding was from the testimony yesterday that if you take it on a case-by-case basis you will find that the men who are acquitted by reason of insanity, here in the District of Columbia and are committed to St. Elizabeth's will actually be institutionalized for a longer period of time than if they had been convicted of the crime with which they were charged.