

The American Law Institute leaves the decision whether to punish to the jury. The *Durham* rule leaves only the medical facts of mental illness and product to the jury; the moral decision is an automatic consequence of the medical findings.

It might be fair to summarize the *Durham* rule as a medical test, and the American Law Institute rule as a moral test. There is a sharp split on whether a medical test or a moral test is best.

Both views have respectable support. The fact of approval of the moral test by the American Law Institute is a factor not to be ignored. Consisting of outstanding attorneys, it is in a good position to weigh the rights of the individual and the public, and its deliberations have been thorough and scholarly.

Title II proposes legislation only for the District of Columbia. Any such legislation should constitute an effort to balance the interests of the public and the accused. Prior to the adoption of the *Durham* rule in 1954, according to a recent report, less than 1 percent of the criminal cases tried in the U.S. District Court for the District of Columbia resulted in verdicts of not guilty by reason of insanity.

And it was only yesterday testimony was given before this committee indicating that the current rate approaches 13 percent of all defendants tried.

The CHAIRMAN. Well, again, the point that I make and I am asking the staff to check through this very carefully, even though you arrive at these percentages, those defendants are still institutionalized at St. Elizabeths?

Mr. NORWOOD. That is right.

The CHAIRMAN. This is the point that I am making. They are institutionalized, and certainly society is safer from the particular individual during the time of incarceration, whether he is in the penitentiary or in an asylum.

Mr. NORWOOD. Well, I think the validity and the justification of the points that you are bringing up now will be covered and brought out later.

The CHAIRMAN. Yes, fine. Thank you very much, Mr. Norwood.

Mr. NORWOOD. Yes, sir.

Summary of the point by which title II of H.R. 7525 improves upon the existing law:

In the following respects, title II accomplishes a decided improvement over the existing law:

1. The *Durham* rule is too general in its definition of mental disease and defect. The proposed title II provides a working formula which has the approval of the American Law Institute.

2. Under the *Durham* rule and related cases, the "some evidence" rule imposes the impossible burden of proof on the Government. The proposed language places the burden where it belongs. It imposes upon the defendant the duty of establishing his defense by substantial evidence.

3. The present law does not require the defendant to give notice of his defense. The proposed title II places that burden upon the defendant. This will reduce the use of the defense of insanity in a justice-thwarting manner.