

legal chart or guide to guide them, and without any standard to apply—to say that a man should be acquitted on the grounds of insanity if the act charged against him is a product of mental disease or mental defect, as stated in the *Durham* rule—that furnished the jury no guide whatever as to what a mental disease is.

I do not think the rule is improved very much by the language used in the *McDonald* case, because the *McDonald* case in one aspect of it virtually departs from insanity and makes a man's guilt depend upon his emotions. If he has an abnormal condition of mind, that causes his emotional processes to influence his behavior substantially.

I think that that is opening the door to a man who merely refuses or fails to discipline himself, as many people do, and makes his emotional processes rather than his inadequate mental processes a criterion. And I think this statute furnishes a very good criterion, because in effect it goes back and gets the substance of the rule in the *McNaghten* case and the substance of what we used to call the irresistible doctrine, and makes a very simple, direct rule which I think a jury can understand and gives them a standard by which to measure the man's capacity to commit a crime, and a standard by which his responsibility could be adequately measured.

I think it realizes what we necessarily have to realize, and that is that there is a distinction between a mental abnormality in the mind of medicine, which is interested in trying to alleviate or cure that condition, and the fact that the law must have some standard or accountability.

The rule is almost in—set out in title II, is almost the same rule that is in the model code, and I think it is good for that reason.

In addition, I am also glad to note that title II provides that insanity is an affirmative defense, except of course in those cases where there is a requisite mental intent as a part of the crime. That is the law in most of the States. It is the law I am familiar with in North Carolina—that the burden of establishing insanity is on the accused, and it is an affirmative defense to be interposed by him. I think that is good.

The CHAIRMAN. I thought the general rule was—and I can certainly stand corrected on this—that it is an affirmative defense which the defendant must establish, either by a showing of some evidence or substantial evidence. But I thought after you were beyond that point of raising it by some evidence or substantial evidence, as the case may be, that the burden shifted then to the State to prove the accused's sanity beyond a reasonable doubt.

Senator ERVIN. Well—

The CHAIRMAN. Isn't that the general rule?

Senator ERVIN. Well, I think it is a general rule that the burden—the courts—I mean in the different States they are divided. There are some courts that hold that after—as you state—that after the defendant has introduced some evidence, that the burden shifts to establish the possession of the requisite mental condition, to be accountable for crimes, to the prosecution. Though a great many States are on the contrary. The burden is on the defendant to satisfy the jury.

Now of course in all cases, in both of these jurisdictions, where there is a specific mental intent required as an essential ingredient of the crime, in that case the prosecution always has to—where it is called