

referred to as alloplastic, most commonly found in the psychopathic personality in which the symptom of psychopathology consists in the *acting out*. The manifestation of a man's abnormality may consist precisely in his repeated or otherwise antisocial conduct. To exclude such conduct from "mental illness" is to make a psychiatric judgment eliminating behavioral or conduct disorders.

Apparently there is no insistence on legal formulae in diagnosing physical diseases, so why in this case? If the physician were similarly forbidden to use one outstanding symptom as criterion for physical illness, the absurdity of such an approach would become apparent, or if he were limited to two tests it would be considered unscientific.

If the intent is to exclude the so-called psychopathic personality from irresponsibility, it is hard to see how it can succeed in this way. If the Committee does not want to excuse as psychiatrically ill individuals the so-called psychopathic or sociopathic personality, this formula will not serve that purpose, for its use depends upon the testimony of psychiatrists; those who consider psychopathic or sociopathic personality a mental disease or defect will so testify and those who do not will not.

In summary, essentially the Model Penal Code formula has added to the cognitive criteria volitional criteria. It has eliminated behavioral criteria except when they are combined with other phenomena.

The Durham Decision permits free communication of psychiatric information and the American Law Institute creates roadblocks to such transmission. The Durham formula puts no limitations on psychiatric testimony except those which are implicit in the present state of the discipline. The American Law Institute formula requires psychiatric judgments as to substantial capacity, demands essentially cognitive criteria concerning capacity to control, and insists upon including legal criteria in the old tradition by attempting to eliminate the psychopathic personality.

Neither the Model Penal Code nor the Durham formula resolves the problems of psychiatry; no legal formula can. Psychiatry is an incomplete scientific and medical specialty. Indeed all medicine and science are developing and hence are incomplete. This is reason to encourage its contribution rather than to emphasize its limitations in the courts.

For these reasons, we recommend the adoption of the historic practice of the New Hampshire Court as recently reformulated in the case of *Monte Durham*.

CRIMINAL RESPONSIBILITY: A PSYCHIATRIST'S VIEWPOINT

In the first half of Dr. Overholser's article, he discusses the meaning of psychiatry, the makeup and development of personality, some of the disorders to which personality is subject, and the nature of a mental examination. With this as background, he proceeds to express his views as a psychiatrist about the various legal tests for determining criminal responsibility. Commenting with favor on the *Durham* rule (214 F. 2d 862 (District of Columbia Cir., 1954)), he states that the psychiatrist is interested in the very criterion outlined in the *Durham* case, namely, productivity. In his criticism of the *McNaghten* test, he refers to it as unrealistic and moralistic, and out of tune with psychiatric knowledge.

(By Dr. Winfred Overholser, St. Elizabeths Hospital, Washington, D.C.)

During the past decade or more, communication between the legal profession and the psychiatrists has become more active. Especially has this been true in the field of criminal law, and in that field hardly any question has been the subject of more interest, discussion and argument than that of criminal responsibility. It seems in order, therefore, for a psychiatrist to venture to a legal readership his views on this subject.

The disciplines of law and medicine deal with the behavior of people. The approach of the lawyer and the judge is bound to be different from that of the psychiatrist, yet it seems reasonable to suppose that some of the psychological facts now known concerning behavior may be of value to the legal profession and to the lawmaker as well in bringing about improvement, both in the protection of society and in the assurance of justice to the individual accused.