

are needed for the protection of the public and for justice to the offender, it is up to the legislature and the administrative authorities to see to it that those facilities are provided. With one of Chief Justice Weintraub's points at least I am in hearty agreement. He favors "the admission of full psychiatric testimony for the jury's consideration in determining whether a man should live or die." I would go further—if desirable in a capital case, why not in other prosecutions as well where the issue of sanity is raised? As a matter of fact, this is precisely what the *Durham* rule encourages.

A word may be said here in behalf of the Scottish and (now) English doctrine of diminished responsibility. In 1957 the Homicide Act of Parliament provided in part that an offender shall not be convicted of murder "if he was suffering from such abnormality of mind . . . as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing." This doctrine has been in force in Scotland for nearly one hundred years, and now has finally been adopted by the English Parliament. The principle has in practice been employed in some American trials in lowering the grade of the offense, although it was specifically rejected by the Supreme Court of the United States in the *Fisher* case (328 U.S. 463 (1946)). There are gradations in responsibility.

I am very glad that the *Durham* rule was adopted, and in my opinion it is working well. It has taken the psychiatric witness out of a straitjacket, it has given the juries an opportunity to be fully informed about the mental state of the offender, it has been fair to the offender who is mentally deranged, while at the same time the public safety has not suffered. The rule has been indorsed by many legal writers, and it is my hope as a psychiatrist that we may eventually see other courts follow the lead of New Hampshire and the District of Columbia. As the Court of Appeals said in the case of *Stewart v. United States* (247 F. 2d 42 (D.C. Cir., 1957)) :

"The rule laid down in *Durham* requires no different examination by the psychiatrist, but only a different examination of the psychiatrist by the lawyers. . . . (It) simply allows the psychiatrist to testify in terms of mental health or illness without being required necessarily to answer questions on what he may consider 'nonmedical topics [such] as "malice", "right and wrong", and "criminal intent".' One of the purposes of the rule is to remove some of the 'barrier[s]' to communication between lawyers and physicians". It allows greater altitude for evidence which throws material light on 'whether the accused acted because of a mental disorder'."

In closing, may I quote Chief Judge John Biggs' dissent in *Smith v. Baldi* (192 F. 2d 540, 568 (3d Cir. 1951)) : "The rule in *M'Naghten's Case* was created by decision. Perhaps it is not too much to think that it may be altered by the same means."

Dr. OVERHOLSER. The other article, Mr. Chairman, is an article of mine which appeared in the American Bar Association Journal, which constituted an address I made before the Chief Justices of the United States 2 or 3 years ago, in which I tried to take up some of these problems as a psychiatrist sees them. And the most recent thing I have written appeared in a foreign journal, but that was in English, may I hasten to add, and I called it "Psychiatry and Some Problems of Criminal Responsibility," in which I tried to put the thing in a historical context.

The CHAIRMAN. It will be received. We are very happy to have your testimony.

(The article follows:)

#### PSYCHIATRY AND SOME PROBLEMS OF CRIMINAL RESPONSIBILITY

(By W. Overholser, Washington, D.C.)

It is a high privilege to have the opportunity to pay honor to Professor *Manfred Bleuler* on the occasion of his 60th birthday. Ever since he assumed the Chair at the University of Zürich, he has been an indefatigable contributor to psychiatric literature, an eminent practitioner and lecturer. He bears an honorable name and he does so with honor to himself and to the memory of his distinguished father.