

Simon Sobeloff says, "What we ought to fear above all is not the absence of a definition but being saddled with a false definition [6]." Very few things are certain either in the law or in psychiatry, but it seems clear that the jury which may have to decide complicated questions of finance, of liability, of negligence, and so on, need have no fear of coming to a conclusion on a question of responsibility where they are guided by expert evidence and particularly by a full explanation by the psychiatrist of the case as he sees it.

The American Law Institute, in drawing up a Model Penal Code, has struggled with the problem of a definition of responsibility, a definition which to the author seems quite improper to be embodied in legislation, since it is properly a judicial matter. The "test" proposed includes, in somewhat changed language, a combination of the M'Naghten and the "irresistible impulse" rules. It is doubtful whether it is any advantage whatever over those two rules, both of which are subject to serious criticism. Another serious defect of the Institute's formulation is the vain attempt to exclude "psychopathic personality" as a defense by defining it as a "mental disorder manifested only by repeated criminal conduct or otherwise antisocial conduct." The inadequacy of this definition is presumably obvious to any psychiatrist. Qualifications of the Durham Rule have been suggested, notably by Chief Judge *John Biggs, Jr.*, in the *Currens'* decision [7], and it is safe to say that the last word is far from having been spoken [8]. Opinion seems to be unanimous that M'Naghten by itself ought to be abandoned, and in England, the doctrine of diminished responsibility (recognized in the Swiss law, and in the Scottish law as well), has recently been adopted by Act of Parliament. Under this provision, a person "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 [9]." The principle has been specifically repudiated by the Supreme Court of the United States (with three dissents [10]), although at least one State court has recognized it. As a practical matter, however, the various degrees of crime which are recognized in most of the American states furnish an opportunity for prosecution on a lesser charge if it is thought that there are extenuating circumstances, including mental disorder, of a degree less than is sufficient to warrant finding lack of responsibility.

A modification of diminished responsibility which is recognized in the American law consists in the existence of the so-called sexual psychopath laws. Although this group is not at all well defined psychiatrically, and there are certain objections to this type of legislation, the basis lies in recognition of the fact there are persistent sexual offenders who have shown themselves to be entirely unamenable to routine correctional treatment, but who are not "insane" in the eyes of the law. They are nevertheless, by reason of mental deviation, not readily deterrable. Some of these offenders are sociopaths (psychopathic personalities), more of them probably suffering from neurosis. In any event, here is a recognition of the principle that there is a group of offenders who are less than frankly insane but who should be dealt with by an indeterminate period of detention and, where possible, treatment. As a matter of fact, a fair proportion of these offenders are amenable to psychiatric treatment. It may be mentioned parenthetically here that under the Durham Rule in the District of Columbia, a considerable number of persons diagnosed as suffering from sociopathic or psychopathic personality have been acquitted by reason of insanity, and committed for an indeterminate period to St. Elizabeths Hospital. It would seem that this is a decided advance in the law from the days when it was thought that all offenders were either completely sane or completely insane. Psychiatrists agree that the persistent sexual deviate presents a psychiatric problem.

Granted that the law recognizes that there are mental disorders or deviations conforming to certain so-called tests which will exculpate from charges of crime, the question readily rises as to how the information concerning the mental state of the offender is to be presented to the court. It may be mentioned that in all felony cases the defendant in the United States is entitled, if he wishes, to a jury trial. This practice differs from that in vogue in some of the European states. Furthermore, in the European courts in general, the psychiatrist is an advisor of the court, an expert recognized as authoritative, and, at the same time, impartial. Such, unfortunately, is not the case in the United States and England. Until the 17th Century, it was the common practice for judges to call in medical men to advise them, or indeed, experts in almost any field, but since that time with the rise of the importance of the jury, the practice developed of summoning expert witnesses by the respective parties to the trial, just as is done with ordinary witnesses. In this way, the expert soon came to