

bear the stigma of partisanship, and unfortunately at times was even accused of venality. At any rate, it must be obvious that the appearance of partisanship weakens the testimony of the expert. Furthermore, any possible deviations or differences of opinion between the two sides are readily emphasized by the respective lawyers in their methods of cross-examination and in their framing of the hypothetical question.

Another question may arise; namely, whether a defendant's mental deviation is recognized. It is indeed not impossible that a defendant may be mentally ill, though not conforming to the layman's idea of the "raving maniac," so that an injustice may be done him through failure to present the facts to the court concerning his mental illness.

Over forty years ago, the Commonwealth of Massachusetts devised a procedure known as the Briggs Law, whereby persons charged with certain types of offense, particularly capital offenses or cases of recidivism of felony, whereby the defendant was referred automatically to the Department of Mental Health of the Commonwealth for examination by psychiatrists. This report, available to both the prosecution and defense, to the court and to the probation officer, carries very considerable weight since it was obviously impartial and competent. The proportion of defendants found to be clearly mentally ill has been low, and indeed all the types of recommendations for commitment, observation, of suggestion of low intelligence, total less than 20%. Thus the lie is given to those who accuse the psychiatrists of wishing to make out all offenders as mentally deranged. It seems strange that after forty years, only two other states have adopted even in part the provisions of the Briggs Law. It is by far the most practical method yet devised of providing sound information to the court concerning the mental state of the defendant and insuring recollection of his mental deviation, if any.

As the frontiers of psychiatry are extended, as a greater knowledge of human behavior in its wellsprings becomes generalized, and as the public becomes more clearly aware of the fact that there are many so-called borderline cases, the line between criminal behavior and mentally abnormal behavior will not be so clearly drawn as some would like to think. There is every reason to believe that there will be a greater recognition in the courts of the contributions which psychiatry may make for a more enlightened dealing with the offender and thereby a greater degree of protection of society. Perhaps, indeed, we may look forward to the establishment of "treatment tribunals," as proposed by *Wharton* and later by *Sheldon Glueck*, leaving to the jury the question only of guilt of the act and making the matter of disposition a wholly administrative matter. Then, and probably only then, will it be possible to avoid such concepts as "insanity" and "responsibility."

REFERENCES

- [1] *Hadfield's Case*, 27 Howell St. Tr 1282.
- [2] 10 Clark & Fin. 200. For a general discussion of the historical development of these "test" see *Guttmacher M.*, *Archives of Criminal Psychodynamics* 4, 647 (Fall 1961).
- [3] 12 Ohio Reports 483 (1843) and *Wright's Ohio Rep.* 612 (1834).
- [4] 49 New Hampshire 399 and 50 New Hampshire 369.
- [5] *Durham v. U.S.*: 214 Fed. 2nd 862.
- [6] *Insanity and the Criminal Law: From McNaghten to Durham and Beyond.* American Bar Association Journal 41, 796 (1956).
- [7] *U.S. v. Currens*: 290 Fed. 2d 751 (1961).
- [8] See *Burger J.*: Dissenting opinion in *Comer Blocker v. U.S.*, 232 Fed. 2nd 853 (1961).
- [9] Homicide Act of 1957.
- [10] *Fisher v. U.S.*, 328 U.S. 463 (1946). See comment by *Weihofen H.* and *Overholser W.* 56 Yale Law Journal 959 (1947).
- [11] Ch. 123, General Laws, Sec. 100A. See *Overholser W.*, "The Briggs Law of Massachusetts": A Review and an Appraisal. *Journal of Criminal Law and Criminology* 25, 859 (1935).

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The CHAIRMAN. If I understand you correctly, you say that the test that is now being developed by case law in the District of Columbia is an adequate test for insanity. Is that your opinion? You would not enact a statute to define insanity. You would depend upon the courts to lay down the test.

Dr. OVERHOLSER. Precisely, sir. Yes, sir.

The CHAIRMAN. Thank you.