

*The Durham Rule*

The existing definition will be referred to in this report as the Durham rule. It means the definition of insanity which the United States Court of Appeals for the District of Columbia Circuit announced on July 1, 1954, in the case of *Durham v. United States*, 93 U.S. App. D.C. 228, 214 F. 2d 862, 45 A.L.R. 2d 1430, as that definition has been affected by subsequent decisions of the same Court.

The Durham rule may be stated as follows:

THE ACCUSED IS NOT RESPONSIBLE FOR A CRIMINAL ACT IF SUCH ACT WAS THE PRODUCT OF A MENTAL DISEASE OR MENTAL DEFECT. A MENTAL DISEASE IS A DISEASED MENTAL CONDITION WHICH MAY GET BETTER OR GET WORSE; A MENTAL DEFECT IS A DISEASED MENTAL CONDITION WHICH CANNOT GET BETTER AND CANNOT GET WORSE. THE CRIMINAL ACT WAS THE PRODUCT OF THE MENTAL DISEASE OR MENTAL DEFECT IF THE ACT WOULD NOT HAVE OCCURRED EXCEPT FOR THE DISEASE OR DEFECT; AND THAT IS SO WHETHER THE DISEASE OR DEFECT WAS THE ONLY CAUSE OF THE ACT, OR THE PRINCIPAL ONE OF SEVERAL CAUSES, OR ONE OF SEVERAL CAUSES.

*The Pre-Durham Rule*

The rule which the Durham decision replaced will be called in this report the pre-Durham rule. It is the irresistible impulse test superimposed on the right-and-wrong test of the M'Naghten case. The rule is stated in *Smith v. United States*, 59 U.S. App. D.C. 144, 36 F. 2d 548, 72 A.L.R. 654 (1929), which reversed a conviction of murder in the first degree for failure of the trial court to give a requested instruction in the terms approved by the Supreme Court in the case of *Davis v. United States*, 165 U.S. 375, 17 S. Ct. 360, 41 L. Ed. 750.

The pre-Durham rule may be stated as follows:

THE ACCUSED IS NOT RESPONSIBLE FOR HIS CRIMINAL ACT IF AT THE TIME OF THE ACT HE WAS