

testify freely and fully instead of being restricted by criteria having no relation to their science.

In resolving these divergent views, we have felt secure in relying on the practical observations and experience of our membership to select the expert view that conforms to our lay knowledge and experience.

We believe that the Durham rule should be changed and replaced by a statutory definition of insanity.

We believe that the test should be stated in fixed terms understandable to a jury and applicable to all cases.

Meaning of Mental Disease

The Durham rule pitches excuse from criminal responsibility on the existence of a "mental disease" or a "mental defect" (plus causality, which will be discussed hereafter).

"Mental disease" is not defined except to the extent of being differentiated from "mental defect." Hence its meaning is left to the opinions of the particular psychiatrists who give testimony in a given case. Psychiatrists do not agree as to its meaning among themselves, and those who have opinions may change them overnight.

The term is borrowed from physical medicine and is not acceptable to all psychiatrists. "I will say there is neither such a thing as 'insanity' nor such a thing as a 'mental disease.'" (Dr. Roche, *Tennessee Law Review*, Vol. 26, No. 2, Winter 1959, p. 240.)

"Psychosis" is accepted as a synonym for mental disease, although it may not comprehend all mental diseases. But "psychosis" itself is not exact in meaning, since its definition involves extent and degree. In *Psychiatric Dictionary* it is defined as a mental disorder of a "severe" type. When does a mental disorder become a disease or psychosis? In one instance about to be mentioned, that change from disorder to disease, from sanity to insanity, took place in the middle of a criminal trial.

Hence the term mental disease is not precise in its meaning to psychiatrists.

In addition to its vagueness, the term is subject to change in