

application. The same mental condition may be classified one day as not a disease and next day as a disease. For instance, psychiatrists recognize the term "sociopathy" to mean a mental disorder. Is this disorder also a mental disease? In a criminal trial in the District of Columbia under the Durham rule in which the psychiatrists described the defendant as a "sociopath," two psychiatrists from a government mental institution testified that "sociopathy" is not a mental disease and that the defendant was of sound mind; two days later a third witness from the same institution, a superior of the first two witnesses, testified that sociopathy is a mental disease. He testified that shortly before he came to court that day there had been a conference of officials at the institution at which it had been decided to change the classification of sociopathy from a condition not a disease to a disease. The defendant was acquitted by reason of insanity. Thus by administrative fiat a mental disorder which was not a mental disease became a mental disease, and a person responsible for his act became a person not responsible for his act. Under the pre-Durham rule and under the new rule which we recommend, before that defendant could be held not responsible for his act it would be necessary for the jury to consider not only whether he had a disease, but whether that disease affected his ability to control his actions.

It goes without saying that psychiatrists have the right and duty to differ among themselves and to change their views when intellectual honesty requires it. But the decision to punish or hospitalize the perpetrator of a criminal act should not depend on so uncertain a science.

*The Causality or Product Part of the Durham Rule
Is Confusing*

The Durham rule is that the accused is not responsible for his criminal act if the act was the "product" of a mental disease or mental defect. What does "product" mean?

In the Durham opinion the Court of Appeals suggested a sample instruction for a jury on causality or "product." However, when the trial judge gave that instruction to the jury in the case of *Wright v. United States* (1957) the conviction was