The defendant would have to have possession of a dangerous weapon in order to commit the act charged. "Except for" having possession of the dangerous weapon he could not commit the act; possession of a dangerous weapon was a condition "without which" he could not commit the act; "but for" possession of a dangerous weapon he could not commit the act; the possession of a dangerous weapon would have made the "decisive difference between doing and not doing the act." Yet obviously possession of a dangerous weapon was not an efficient cause of the act. If the defense was self-defense, the jury would be instructed that they should draw no unfavorable inference from the fact that the defendant had possession of a dangerous weapon (a distinct offense).

Other parts of the definition would seem to exclude possession of a dangerous weapon as a cause, or the assault as the "product." The possession of the dangerous weapon would not be critical in its *effect,* or *causal* in the usual sense, nor would the assault be the *result of* the possession of the weapon in the usual sense.

Hence it appears that for the trial judge to give the multiform definition of causality in the *Carter* case could be confusing to a jury; and it goes without saying that a trial judge who should venture to paraphrase the definition or select portions of it to give and portions to leave out would be inviting reversal.

Hence our trial judges are left without a guide for future cases, including re-trials of the reversed cases.

The lack of a legal definition of mental disease and its reliance on medical science to define and apply the term, and the confusing causality requirement and its uncertainty in application to various cases, make a change in the Durham rule desirable if one can be found.

Difficulties of the Prosecution

The Durham rule in application has caused the United States Attorney to lose and abandon prosecutions because psychiatrists would not give opinions on the "product" requirement of the rule.

The law presumes sanity. Hence the government in a crimi-