

3. The Durham rule conforms more faithfully to modern psychiatric knowledge than does the pre-Durham rule.

*Comment:* The same virtue was claimed for the *Pike* decision in New Hampshire in 1869, which recognized the advances in modern psychiatry since M'Naghten in 1843. Obviously the *Pike* test will keep abreast of advances in psychiatry, since it surrenders the legal test to psychiatry. But the courts have the duty to protect society as well as the duty to respect advances in science. Both these objectives can be accomplished if the test is in terms which do not undertake to reflect psychiatric knowledge ancient or modern; if the psychiatrist is permitted to testify freely in regard to his medical examinations and findings and opinion but is not required to give conclusions, especially conclusions in the words of the test; and if the jury is free on the basis of all the evidence to apply the test whether the psychiatric witnesses give conclusions in terms of the test or not.

4. The Durham rule has at last freed the psychiatric witness to give his honest and unhampered views which the pre-Durham rule restricted.

*Comment:* It must be conceded that psychiatrists are generally agreed on this. Without pausing to question the validity of the observation, it can be said that the degree of freedom allowed psychiatric witnesses has been largely a matter for the discretion of the trial judge, and judges differ in their views on what freedom should be permitted. The pre-Durham rule dealt with diagnosis of a mental condition as does the Durham rule. The "product" part of the Durham test is not a point on which psychiatrists are eager to give an opinion.

Regardless of what the test is, the psychiatrist would have freedom in his testimony if he were relieved from the necessity of adapting his views to the terms of the test. This is desirable. The psychiatrist should not impose his medical test on the courts, and the courts should not impose their legal test on the psychiatrist.