

jury must consider in certain cases whether the ability of the accused to have the requisite knowledge or intent was so affected by intoxication that he was not capable of performing these cognitive and volitional functions.

For centuries juries have confined or released their fellow-men by their answers to these questions. In some cases expert testimony was received. In many cases it was not. The verdict was for the sole determination of the jury, with or without expert testimony, and where it was given the verdict was in conformity with it or contrary to it, as the jury decided. Why should a different rule be applied to cases where the defense of insanity is raised?

*The Rule We Recommend*

The legislation which we propose is intended to put back into the test of insanity a legal standard of responsibility; to state that standard in terms understandable to a jury; to make that test applicable to all cases and sufficient for all cases; to permit expert witnesses to testify freely as to their examinations and findings regarding the mental condition of the accused, and their opinion as to its disabling effect if any, but not to require such witness to give his conclusions; and to leave to the jury the ultimate question of criminal responsibility whether experts have given conclusions or not.

*Reference Is Now Made to the Resolution*

The government's burden of proving sanity beyond a reasonable doubt is retained and re-stated.

"Impaired or defective" mental condition avoids the use of the medical term disease and covers any unsound mental condition of whatever origin and duration and whatever its psychiatric classification. It is later limited by its disabling effect.

"Substantially lacking" meets the criticism that the old rule of irresistible impulse required total incapacity, which psychiatrists say rarely exists in persons suffering from frank, seriously disabling mental disease.

"Appreciate" covers functions of the personality broader than cognition, to which "know" may be limited. It is said that very few insane persons do not "know" the nature of their conduct;