

could not give opinions on the 'product' requirement of the rule" (id. at p. 10).

(iii) The majority also finds it significant that the *Durham* rule "has not been accepted" by other federal or state courts (Report, p. 11).

We shall examine each of these objections in turn.

*First.* We think the majority mistaken in contending that the *Durham* rule equates the legal test of criminal responsibility with the medical test of mental disease. To be sure, one of the principal objectives of the Court of Appeals was to bring an obsolete legal standard into harmony with generally accepted medical opinion. But the *Durham* rule does not adopt a medical test; it does not, for example, provide that "all defendants diagnosed to be suffering from 'paranoid schizophrenia'" or that "all defendants diagnosed to be suffering from manic-depressive psychosis" shall not be criminally responsible. It sets forth a legal guide which allows psychiatrists to testify in their own terms about the defendant's mental state. Moreover, if the test were purely medical, the testimony of laymen presumably would be incompetent and irrelevant. However, testimony concerning the defendant's mental condition by arresting officers, acquaintances, and members of the accused's family is freely received. See *Carter v. United States*, 252 F. 2d 608, 618 (D.C. Cir. 1957). Finally, and fundamentally, the *Durham* rule does not disturb the basic principle that the jury should be the ultimate arbiter. The jury considers the lay and expert testimony in light of the legal test. As the Court stated in the *Durham* opinion:

"[I]n leaving the determination of the ultimate question of fact to the jury, we permit it to perform its traditional function, which, as we said in *Holloway*, is to 'apply our inherited ideas of moral responsibility to individuals prosecuted for crime.'" (214 F. 2d at 876).

The jury's verdict is final unless it is arbitrary.

We do not share the majority's view that the terms "disease" or "defect" are unduly vague. In the *Durham* case, the Court defined disease as "a condition which is considered capable of either improving or deteriorating" (214 F. 2d at 875). It de-