

we fail to see that they constitute a valid criticism of the *Durham* rule itself, or bespeak the need for another rule. One of the professed objectives of the test recommended by the majority itself is to "permit expert witnesses to testify freely as to their examinations and findings regarding the mental condition of the accused, and their opinions as to its disabling effect if any * * *" (Report, p. 14). So long as psychiatrists are accorded free rein in this fashion, differences of opinion in the borderline areas may well occur no matter which test is in force.

Durham provided an impetus toward increasing use of psychiatric knowledge in determining the disposition of criminal offenders. We welcome this trend, since we believe that continued collaboration between law and psychiatry can lead to fruitful results.

Second. The majority condemns *Durham* on the ground that the "causality or 'product' part of the rule is * * * confusing" (Report, pp. 2, 8-9).¹² We believe that many of the difficulties have been resolved by the Court of Appeals in opinions subsequent to *Durham*. We are also of the view that the argument is essentially academic and theoretical in nature, and that in practice the objection has not proved to be serious or substantial.¹³

In *Carter v. United States*, 252 F. 2d 608 (D.C. Cir. 1957), the Court of Appeals clarified this aspect of the rule and pro-

¹² This aspect of the rule has evoked criticism from other sources. . See, e.g., *The Criteria of Criminal Responsibility*, 22 Univ. of Chi. L. Rev. 367 (1955), by Professor Herbert Wechsler.

¹³ The Court of Appeals noted that "'Mental abnormalities vary infinitely in their nature and intensity and in their effects on the character and conduct of those who suffer from them. Where a person suffering from a mental abnormality commits a crime there must always be some likelihood that the abnormality has played some part in the causation of the crime; and, generally speaking, the graver the abnormality, * * * the more probable it must be that there is a causal connection between them. But the closeness of this connection will be shown by the facts brought in evidence in individual cases and cannot be decided on the basis of any general medical principle.'" *Durham v. United States*, 214 F. 2d at 875, Note 49. Some psychiatrists maintain that an individual's conduct cannot be dissociated from his total personality. In other words, given "mental disease or defect," the crime is a symptom or manifestation of the illness.