

vided specific and clear guidance for trial courts. As the Court put it (252 F. 2d at 617):

"When we say the defense of insanity requires that the act be a 'product of' a disease, we mean that the facts on the record are such that the trier of the facts is enabled to draw a reasonable inference that the accused would not have committed the act he did commit if he had not been diseased as he was. There must be a relationship between the disease and the act, and that relationship, whatever it may be in degree, must be as we have already said, critical in its effect in respect to the act. By '*critical*' we mean *decisive, determinative, causal*; we mean to convey the idea inherent in the phrases 'because of,' 'except for,' 'without which,' 'but for,' 'effect of,' 'result of,' 'causative factor'; *the disease made the effective or decisive difference between doing and not doing the act*. The short phrases 'product of' and 'causal connection' are not intended to be precise, as though they were chemical formulae. They mean that the facts concerning the disease and the facts concerning the act are such as to justify reasonably the conclusion that 'But for this disease the act would not have been committed.'" (Emphasis supplied.)

The Court added that "The ultimate inferences *vel non* of relationship, of cause and effect, are for the trier of facts" (252 F. 2d at 617). We believe that confusion has arisen from failure to heed this admonition. In other words, whether the crime was a product of the illness so as to exempt the defendant from criminal responsibility is essentially an ultimate judgment to be reached by the jury on the basis of the entire record (See Note 12, *supra*). It is not essentially a psychiatric question, though the psychiatric testimony may bear heavily on it. It is the function of the psychiatrist to explain the dynamics of the illness and how it affects "the mental and emotional processes of the defendant." While lawyers have asked psychiatrists whether the crime is the product of the illness, and psychiatrists have replied, the question is not essential, and this practice may be objectionable as calling for a conclusion which is properly within the province of the jury.

So far as we are aware, the United States Attorney has not dropped cases because of his inability to obtain expert assistance on the "product" phase of the test. In some cases, pleas of not guilty because of insanity may have been accepted because the