

capacity to appreciate that his conduct was wrong or in violation of law. * * * " The majority would exempt the defendant from criminal responsibility if he was "*substantially* lacking * * * in his capacity to appreciate that his conduct was wrong," etc. Questions of substantiality are necessarily questions of degree, and questions of degree invite disagreement.

(iii) The majority challenges the requirement in the *Durham* rule that the criminal act must be the product of mental illness. But the test devised by the majority would require proof of logical connection or relationship between (a) the impaired or defective mental condition and (b) the defendant's capacity to appreciate that his conduct was wrong. It would not be sufficient to prove "impaired or defective mental condition," that is that the Defendant was mentally ill. We believe the proposed test would also require proof of a connection between impaired capacity and the specific crime charged. Abstract proof of a lack of capacity to appreciate wrongfulness or to conform conduct to the requirements of law might well not suffice. The issue would be: "Did the defendant lack the capacity by reason of impaired or defective mental condition to appreciate that the *specific act* with which he was charged is wrong or in violation of law."

(iv) We do not think the majority's proposed formulation would be more intelligible or meaningful to a jury than the short, lucid *Durham* test. The *Durham* test phrases the ultimate question simply, directly, and succinctly. We think the majority test verbally awkward and complex.

(v) The test devised by the majority was never submitted to psychiatrists for their appraisal. The committee met with psychiatrists on two occasions. Every one of the psychiatrists agreed that *Durham* represented a notable advance over the pre-existing rules. A few of the psychiatrists felt there could be further improvement in *Durham*. Some of the physicians with whom the committee met were sharply critical of the test proposed in the Model Penal Code by the American Law Institute, which served as the model for the majority's proposal. We do not believe any test of criminal responsibility should be