

of the opinion that a "sociopathic personality" constitutes a mental disease; other psychiatrists are of a different opinion. In our view, it is for the jury to decide whether, on the record, the defendant suffered from a "mental disease or defect" at the time of the crime so as to be exempt from criminal responsibility. If questions phrased in terms of the test are asked, we think it essential that the trial judge should charge the jury that the views of the psychiatrists as to this ultimate question are not binding upon it. We believe that this problem can be dealt with adequately by the Courts and that legislation is unnecessary.

(ii) The majority also recommends that "An instruction in substantially these terms [i.e., the terms of the rule proposed by the majority] shall be sufficient in all cases." We think this proposal could seriously prejudice the right to a meaningful jury trial.

The right of a jury trial necessarily implies that the jury shall be given adequate guidance. See *Williams v. United States*, 131 F. 2d 21 (D.C. Cir. 1942). The instruction must necessarily be shaped to the facts of each particular case. In *Carter v. United States*, 252 F. 2d at 618, Judge Prettyman pointed out, in speaking for the Court of Appeals, that "A trial judge faced with a defense of insanity in a criminal case ought not attempt to be brief or dogmatic. He ought to explain—not just state by rote but explain—the applicable rules of law and the duties of the jury in respect to the matter. He should explain not only in general terms but in terms applicable to the disease and the act involved in the case at bar. Because, after all, the jury must make its findings upon the facts in the case before it, not in some nebulous generality or supposition."

In some cases it would be appropriate for the trial judge, in assisting the jury, to point out areas of agreement or conflict in the expert testimony. See *Durham v. United States*, 214 F. 2d at 875, note 50. Elucidation by the trial judge might be essential in answering a juror's request for guidance. See *Wright v. United States*, 250 F. 2d 4, 11 (D.C. Cir. 1957).

The rule proposed by the majority would tend in time to