

test as a supplementary test for determining criminal responsibility. Without "hesitation" we declared, in *Smith v. United States*, "it to be the law of this District that, in cases where insanity is interposed as a defense, and the facts are sufficient to call for the application of the rule of irresistible impulse, the jury should be so charged."³⁹ We said:

"* * * The modern doctrine is that the degree of insanity which will relieve the accused of the consequences of a criminal act must be such as to create in his mind an uncontrollable impulse to commit the offense charged. This impulse must be such as to override the reason and judgment and obliterate the sense of right and wrong to the extent that the accused is deprived of the power to choose between right and wrong. The mere ability to distinguish right from wrong is no longer the correct test either in civil or criminal cases, where the defense of insanity is interposed. The accepted rule in this day and age, with the great advancement in medical science as an enlightening influence on this subject, is that the accused must be capable, not only of distinguishing between right and wrong, but that he was not impelled to do the act by an irresistible impulse, which means before it will justify a verdict of acquittal that his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse to perpetrate the deed, though knowing it to be wrong."⁴⁰

As we have already indicated, this has since been the test in the District.

Although the *Smith* case did not abandon the right-wrong test, it did liberate the fact finder from exclusive reliance upon that discredited criterion by allowing the jury to inquire also whether the accused suffered from an undefined "diseased mental condition [which] deprive[d] him of the will power to resist the insane impulse * * *."⁴¹ The term "irresistible impulse," however, carries the misleading implication that "diseased mental condition[s]" produce only sudden, momentary or spontaneous inclinations to commit unlawful acts.⁴²

As the Royal Commission found:

"* * * In many cases * * * this is not true at all. The sufferer from [melancholia, for example] experiences a change of mood which alters the whole of his existence. He may believe, for instance, that a future of such degradation and misery awaits both him and his family that death for all is a less dreadful alternative. Even the thought that the acts he contemplates are murder and suicide pales into insignificance in contrast with what he otherwise expects. The criminal act, in such circumstances, may be the reverse of impulsive. It may be coolly and carefully prepared; yet it is still the act of a madman. This is merely an illustration; similar states of mind are likely to lie behind the criminal act when murders are committed by persons suffering from schizophrenia or paranoid psy-

39. 1929, 59 App.D.C. 144, 146, 36 F.2d 548, 550, 70 A.L.R. 654.

40. 59 App.D.C. at page 145, 36 F.2d at page 549.

41. 59 App.D.C. at page 145, 36 F.2d at page 549.

42. Impulse, as defined by Webster's New International Dictionary (2d ed.1950), is:

"1. Act of impelling, or driving on—214 F.2d—55½

ward with sudden force; impulsion, esp. force so communicated as to produce motion suddenly, or immediately * * *.

"2. An incitement of the mind or spirit, esp. in the form of an abrupt and vivid suggestion, prompting some unpremeditated action or leading to unforeseen knowledge or insight; a spontaneous inclination * * *.

"3. * * * motion produced by a sudden or momentary force * * *." [Emphasis supplied.]