

disturbance which psychiatrists classify as a mental disease or defect. In such a case, the psychiatrically diagnosed "mental disease" could not possibly be the cause of the crime.

It is therefore my conclusion that the judgment of conviction should be upheld and I dissent from its reversal. But, with the limitations indicated, I concur in Parts I and II of the majority opinion, which could largely be retained in an opinion affirming the conviction. In fact, I think the court should go further than it does in those portions of the majority opinion, and should take the steps advocated by a minority of the court in *Blocker v. United States*, 110 U. S. App. D. C. 41, at 61, 288 F. (2d) 853, at 873 (1961). But the court does take two important, much needed and long overdue steps: (a) it says, for the first time, what *we* mean by the term "mental disease or defect" in connection with criminal responsibility; (b) it rules quite clearly that the jury is the sole and final judge of the credibility of all witnesses, including those who testify as experts, and that it is to be so instructed. Heretofore, these two elements have been sadly lacking in this court's opinions.

Taken together, these steps mean that hereafter the jury will know it is not bound by what experts say is a "mental disease or defect" if the abnormal mental condition described by them does not, in the jury's opinion, substantially affect the defendant's capacity to control his conduct in relation to the law. Under this important change, it will be for the jury to decide whether what the experts say in a given case amounts to a mental abnormality which substantially affects the defendant's capacity to control his conduct and conform to the law. These two steps have long been urged. *E.g.*, see the dissenting opinions in *Blocker v. United States*, *supra*, and *Campbell v. United States*, No. 16,414, March 29, 1962, and June 28, 1962.

The rulings to which I refer have become especially necessary because of the frequent alteration and expansion of