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## TEMPORARY INSANITY — FIRST LINE OF DEFENSE

IRWIN J. BLOCK\*

*The confusion in medical and legal circles surrounding the defense of temporary insanity prompted the author to present the viewpoint of a prosecuting attorney. This article was written partially in response to an earlier article appearing in this publication, Reid, The Working of the New Hampshire Doctrine of Criminal Insanity, 15 U. MIAMI L. REV. 14 (1960).*

*The author expresses the view that until medical science has acquired a determinate knowledge of the complex subject of mental disease, the McNaghten rule should not be rejected.*

The case with which defendants obtain expert testimony that they were "temporarily insane" is the greatest single cause for the continuing battle between the law and psychiatry.

A plea of "insanity" will result in an examination as to the current mental status of the defendant.<sup>1</sup> If he is found insane, and therefore unable to stand trial, he will be committed to an institution and deprived of his liberty. The defendant will probably consider this a greater personal disgrace and more appalling than confinement in the state prison.

Under the plea of "temporary insanity," the defendant lapsed into this insane state while the crime is being committed, and immediately thereafter recovers his sanity. This plea merely requires a determination of the defendant's mental condition as of the time the crime was committed. A verdict of not guilty by reason of temporary insanity will probably return the defendant to society to broadcast, far and wide, his triumph over law and order. The courts have the right to place the defendant in custody on such a verdict,<sup>2</sup> but are extremely reluctant to do so. The writer has witnessed one court's refusal to honor such a request and, in fact, has been unable to find a single case in this jurisdiction<sup>3</sup> where a defendant acquitted by reason of temporary insanity was thereafter placed under any type of restraint. On a plea of temporary insanity the court may, at the same time, require that a determination be made of the defendant's competency to stand trial.<sup>4</sup> In either event, the court will not permit a defendant to proceed to trial unless it concludes that he is mentally competent to stand trial.<sup>5</sup> Thereafter, it would be difficult

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1. FLA. STAT. § 917.01 (1959).
2. FLA. STAT. § 919.11 (1959).
3. Eleventh Judicial Circuit, Dade County, Florida.
4. FLA. STAT. §§ 909.17(2), 917.01(1) (1959).
5. FLA. STAT. § 917.01(2) (1959).

for the court to reverse itself, and place the defendant in custody, upon a verdict of not guilty by reason of temporary insanity. When the law is changed to *require* the commitment to a state mental institution for a minimum period of years of everyone acquitted by reason of temporary insanity, the use of the defense of temporary insanity will be greatly decreased.

The present rule in Florida on the issue of criminal responsibility is based on the Advisory Opinion rendered in the House of Lords in 1843, which stated:

To establish a defense on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he knew it that he did not know he was doing what was wrong.<sup>6</sup>

Today, psychiatry is endeavoring to have the courts abandon the *McNaghten* Rule and adopt what has come to be known as the *Durham* Rule. This rule provides that the accused shall not be responsible for his actions if, at the time he committed the criminal act, he was suffering from a diseased or defective mental condition and the act committed was the product of this diseased or defective mental condition.<sup>7</sup>

Fortunately, the appellate courts in Florida, and in every state but one,<sup>7a</sup> recognize that the issue to be determined is one's accountability for his criminal acts and not the question of whether he is mentally ill.<sup>8</sup> The courts are still convinced, despite vigorous objection, that the *McNaghten* Rule is the best available rule for measuring the mental condition of the individual in terms of accountability for criminal acts.<sup>9</sup> If the *Durham* Rule is adopted as it stands, convictions for serious crimes will be as rare as a "hen's tooth."

Psychiatrists invariably agree that anyone who commits a serious offense is sick—he is suffering from some mental disease or defect—and were it not for the mental disease or defect the accused would not have committed the offense. They have written that the time will come when stealing or murder will be thought of as a symptom indicating the presence of a disease.<sup>10</sup> Notwithstanding the fact that psychiatrists are more limited in their evaluation under the *McNaghten* Rule than the *Durham* Rule, experience has demonstrated that they find little difficulty in diagnosing defendants as temporarily insane. The *Durham* Rule would result in even

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6. *M'Naghten's Case*, 10 Cl. & Fin. 201, 8 Eng. Rep. 718 (H.L. 1843).

7. *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954).

7a. See Reid, *The Working of the New Hampshire Doctrine of Criminal Insanity*, 15 U. MIAMI L. REV. 14 (1960).

8. *Piccott v. State*, 116 So.2d 626, 627 (Fla. 1959).

9. *Ibid.*

10. Menninger, *Medicolegal Proposals of the American Psychiatric Association*, 19 J. CRIM. L., C. & P.S. 367, 373 (1929).

this difficulty being removed, and it is quite probable that under the new rule all who commit serious crimes might be considered temporarily insane.

It is truly surprising that the law should have this difficulty with psychiatry when, medically speaking, there is no such entity as temporary insanity.<sup>11</sup> How can the law and psychiatry work out their differences when there is no such medical phenomenon as temporary insanity, but psychiatrists remain willing to testify, time and again, that an accused is presently sane but was temporarily insane at the moment he committed the crime? To medical men temporary insanity is as likely as a momentary uremia in a man with perfectly normal kidney functions.<sup>12</sup> In one case, tried by this author in 1957, the doctor, after testifying to this condition of temporary insanity, said that the shooting by the defendant of her husband was therapy for her. Thereafter, he stated, it would take considerably more stress to cause her ever again to lose her sanity temporarily.

The problem is to prevent persons who commit serious crimes, and are found to be competent to stand trial, from being acquitted and turned loose on society on a psychiatric diagnosis of temporary insanity.

The year 1957 was typical in the prosecution of capital cases in Florida's Eleventh Circuit.<sup>13</sup> An examination of the cases generally, and in the light of both rules, reflects the following:<sup>14</sup>

1. In the fifteen cases in which the defense of temporary insanity was interposed during the year, the jury or the court, under the *McNaghten* Rule, convicted twelve as sane, acquitted one for temporary insanity and, upon examination, committed two as being insane and unable to stand trial.

2. The cases mentioned in the appendix to this article contain projections of the author based on the *Durham* Rule and drawn from conversations with psychiatrists who stated that the criminal act of the defendant was the product of a mental disease or defect. An analysis of the fifteen cases listed in the appendix, using the projections under the *Durham* Rule, reflects that nine of the defendants would surely have been acquitted by reason of temporary insanity and four more might also have been acquitted for this reason. Therefore, it is quite probable that the twelve persons who had been convicted under the *McNaghten* Rule would have been acquitted under the *Durham* Rule. All twelve would probably be walking the streets at this time.

3. The defense of temporary insanity was raised in forty per cent of the capital cases. The defense was not interposed, no matter how bizarre the actions of the defendant, unless the prosecution had a strong case.

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11. GUTTMACHER & WEIHOFFEN, *PSYCHIATRY AND THE LAW* 397, 398 (1952).

12. *Ibid.*

13. FLA. STAT. § 782.04 (1959) (First degree murder); FLA. STAT. § 794.01 (1959) (Rape); Eleventh Judicial Circuit, Dade County, Florida.

14. See Appendix of Cases.

4. Doctors retained by defendants generally believed their patients to be temporarily insane.

5. There are minor discrepancies of psychiatric diagnosis in most of the cases. In four of the cases listed (cases #2, #7, #8, and #14) there is a direct conflict between the experts. In case #2, for example, Doctor "A" says, "No definite evidence of any form of neurosis, psychosis, or personality disorder. . . ." Doctor "B" says, "Neurosis in the form of an inadequate emotionally unstable personality. . . ."

Is this proof of the statement that psychiatry is still more of an art than a science?<sup>15</sup> Through the years the defense of temporary insanity has been mainly successful in cases involving the shooting of a wife's paramour by the husband,<sup>16</sup> or the slaying by the wife of a brutal husband who beat her unmercifully. Does this suggest that psychiatrists, as human beings, occasionally permit their emotions to control their decisions?

Some time ago a defense psychiatrist who testified that the defendant was psychotic, in contradistinction to the testimony of the court-appointed psychiatrist that the defendant was not psychotic, heard the jury return a verdict of guilty of murder in the first degree with a recommendation of mercy.<sup>17</sup> He left the courthouse, making the statement, "What a disgrace it is to let twelve truck drivers determine whether or not a person is responsible for his actions." This is not an isolated opinion in the profession. One writer considers it thoroughly illogical to entrust the determination of the issue of insanity to laymen.<sup>18</sup> This is what is in the minds of psychiatrists who advocate the adoption of the *Durham* Rule. Psychiatry today presumes that any type of aberrant behavior is due to some personality defect in the individual and that, therefore, he should be treated—not punished.<sup>19</sup> It considers the punitive attitude of society toward offenders to be a shortsighted—if not vindictive—reaction, a carry-over from an earlier, more primitive society.<sup>20</sup> Psychiatry believes that its profession, and not the jury, should determine who is responsible

15. Sullivan, *Psychiatry*, 12 ENCYC. SOC. SCI. 580 (1937).

16. Texas has, to some extent, declared such a homicide justifiable. TEXAS PEN. CODE, tit. 15, art. 1220 (Vernon 1925):

Homicide is justifiable when committed by the husband upon one taken in the act of adultery with the wife, provided the killing take place before the parties to the act have separated. Such circumstances cannot justify a homicide where it appears that there has been, on the part of the husband, any connivance in or assent to the adulterous connection.

17. FLA. STAT. § 919.23 (1959) reduces the penalty from death to life imprisonment; the accused is then eligible for parole.

18. Zilboorg, *Legal Aspects of American Psychiatry*, in ONE HUNDRED YEARS OF AMERICAN PSYCHIATRY, 1844-1944, 513 (1955).

19. Hall, *Mental Disease and Criminal Responsibility*, 45 COLUM. L. REV. 677, 711 (1945):

Conforming to this doctrine, another vigorous psychiatrist-critic of the criminal law denies the responsibility of any criminal; he considers any crime a 'pathological phenomenon.'

20. Blackman, *Criminal Responsibility and the Community*, 4 J. FOR. SCI. 403, 411 (1959).

for his crime. On the surface it appears that the jury does determine this question under the *Durham* Rule, but actually the jury can do no more than echo the opinion of psychiatrists who testify under the rule. As a matter of law, a jury cannot ignore the uncontradicted testimony of the psychiatrist. When the jury does not echo the opinion of the psychiatrist in its verdict, it is incumbent on the court to set aside the verdict as being against the evidence and grant a new trial, or to enter a directed verdict of not guilty by reason of temporary insanity. Lurking in the background of this new rule is the philosophical concept that punishment for crime is outmoded; that ethics and reason play a very small part in determining our behavior; that all who commit serious offenses are sick and should not be held criminally responsible for their actions. The attempt to reshape the law is solely for the purpose of imposing this new theory on society. Psychiatry should admit that its ultimate aim is the elimination of prosecution and the commitment of criminals to the custody of doctors for treatment and disposition. Society, though, is not yet prepared to accept this principle. Under the *McNaghten* Rule the protection of society is the paramount concern. The rule recognizes that the science of psychology and its facets are concerned primarily with diagnosis and therapeutics, not with moral judgments.<sup>21</sup>

Ethics is a basic element in the judgments of the law and should always continue to be so.<sup>22</sup> Until some new rule, based on a firm foundation in scientific fact, for effective operation in the protection and security of society is forthcoming, the *McNaghten* Rule should be followed. The law should not blindly adopt the opinion of psychiatric and medical experts and substitute vague rules that provide no positive standards, for a legal principle which has proven durable and practicable for decades.<sup>23</sup>

In order to promote *Durham*, it is contended by psychiatrists and some authorities in the legal profession that the *McNaghten* Rule creates rigidity and precludes inquiry into new concepts used by the medical profession.<sup>24</sup> This suggestion is untenable. The *McNaghten* Rule first says that there must be a defect of reason resulting from a "disease of the mind." There is no restriction upon psychiatry using any recognized diagnostic concept in determining whether there is a "disease of the mind." There is nothing in the *McNaghten* Rule which prevents a psychiatrist from using the same approach he would use in determining whether the accused has a "disease of the mind" under the *Durham* Rule. If the mind is not diseased, the expert should proceed no further. When the mind is diseased, he is then asked to give an opinion as to whether the disease is such as to prevent the accused from intellectually being aware

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21. *Commonwealth v. Woodhouse*, 401 Pa. 211, 164 A.2d 98 (1960).

22. *Ibid.*

23. *Ibid.*

24. Sobeloff, *Insanity and the Criminal Law: McNaghten to Durham, and Beyond*, 41 A.B.A.J. 793 (1955).

of what he was doing and knowing it was wrong. During the past one hundred and fifty years the medical profession has said that it is impossible to give an opinion of the intellectual capacities in issue under *McNaghten*. During this period these same experts in the field of psychiatry have taken the witness stand and testified, when necessary, that an individual was or was not aware of the nature and consequences of his act and did or did not know it was wrong.

The *McNaghten* Rule is further criticized as being based on an outmoded theory of faculty psychology.<sup>25</sup> Under the concept of faculty psychology, a man was said to have different faculties of the mind, which were separate entities. The mind was presumed to contain three basic faculties: cognitive—knowing; conative—willing; and affective—emotion. Psychiatrists and psychologists now claim that the *McNaghten* Rule requires the expert to take a single faculty, that is, knowledge—divorce it from the other faculties of the mind, the will and the emotion—and arrive at a decision based on this single faculty.<sup>26</sup> The theory which is now the vogue throughout the psychiatric community maintains that the human personality is an integrated unity in which the cognitive (knowing) faculty cannot be separated from the conative (willing) and the affective (emotion) aspects of human life.<sup>27</sup> The three faculties are allegedly one, and the one is all three. Therefore, an opinion on any one single mental process must necessarily include the other two. This proposal contends that the *McNaghten* Rule is based on an entirely obsolete and misleading conception of the nature of insanity, since insanity does not only or primarily affect the cognitive or intellectual faculty, but affects the whole personality of the patient, including both the will and the emotion.<sup>28</sup>

Nowhere in the *McNaghten* Rule is there any restriction precluding the expert from determining what effect the integrated personality of the accused had upon his reasoning ability to determine right from wrong. If it is claimed that reason and morals no longer control our actions; that the individual is a slave to his integrated personality; that he reacts automatically to the stimulus fed his personality, much like a Univac machine, then the law *should* reject this theory. The only characteristic that distinguishes man from brute is man's ability to reason and be bound by simple moral duties.

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25. *Ibid.*

26. Cohen, *Criminal Responsibility and the Knowledge of Right and Wrong*, 14 U. MIAMI L. REV. 30, 43-56 (1959).

27. Sobeloff, *supra* note 24, at 794:

Medical psychology teaches that the mind cannot be split into water-tight, unrelated, autonomously functioning compartments like knowing, willing and feeling. These functions are intimately related and interdependent.

28. Report of the Royal Commission on Capital Punishment, *Report*, CMD. No. 8932, para. 80 at p. 103 (1953).

*Irresistible Impulse Becomes a Defense Under Durham*

Throughout the years many medical experts have testified, from time to time, that the accused knew right from wrong, but was unable to control his actions because his will (volition) was destroyed. This is generally referred to as an "irresistible impulse."

In one breath it is contended that the conative feature (will—volition) overrides the cognitive feature (knowing) to such an extent that the individual knows that the act is wrong, but his diseased volition prevents him from controlling his actions. In the prior breath it was maintained that the normal personality operates as a unit, and one feature of the personality cannot be divorced from the other feature. If the normal personality operates as a coalescence of the various functions, how is it possible that an essential phase of it, that is, volition—will, can be seriously diseased while, at the same time, the cognitive feature (knowing) can remain normal?<sup>29</sup>

In Anglo-American law criminal liability is imposed for the intentional, or reckless, commission of forbidden harms.<sup>30</sup> The harm is inflicted by a voluntary act. Voluntary conduct, though, is the active aspect of intelligence.<sup>31</sup> Under the integrated personality, if the volition is very seriously diseased, it must necessarily destroy the cognitive feature—the intellectual ability to distinguish right from wrong—otherwise the premise of the integrated personality fails. If the intellectual ability to distinguish right from wrong is existent, the volition is not so diseased as to prevent voluntary action. This was discussed as long ago as 1892.<sup>32</sup> There is no other scientific method of determining when an individual's actions are irresistible, or merely *not resisted*. Furthermore, those impulses which are now resisted because of the penal law may hereafter become irresistible. Although the law has rejected the theory of irresistible impulse as an

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29. Hall, *Responsibility and Law: In Defense of the M'Naghten Rules*, 42 A.B.A.J. 917, 985 (1956).

30. *Id.* at 987.

31. WYATT, *THE PSYCHOLOGY OF INTELLIGENCE AND WILL* 153 (1930).

32. *State v. Harrison*, 36 W. Va. 729, 751, 15 S.E. 982, 990 (1892):

For myself I cannot see how a person who rationally comprehends the nature and quality of an act, and knows that it is wrong and criminal, can act through irresistible innocent impulse. Knowing the nature of the act well enough to make him otherwise liable for it under the law, can we say that he acts from irresistible impulse and not criminal design and guilt? And if we are sure he was seized and possessed and driven forward to the act wholly and absolutely by irresistible impulse, his mind being diseased, how can we say he rationally realized the nature of the act, — realized it to an extent to enable us to hold him criminal in the act? How can the knowledge of the nature and wrongfulness of the act exist along with such impulse that shall exonerate him? Can the two coexist? The one existing, does not the other nonexist? Can we certainly say that a person who is really driven to an act by such an impulse was capable, at the instant of the act, of knowing its true nature?

excuse for an unlawful act,<sup>33</sup> it would become a defense under the guise of the *Durham* decision.

Since the *Durham* decision there has been more criticism of its rule than even the *McNaghten* Rule has incurred during its long history. The *McNaghten* Rule reflects the traditional concept of our civilization that man is a normal being; that he is sufficiently autonomous to render moral judgments by himself.<sup>34</sup> The reluctance of the courts to accept the doctrines of psychiatry in determining the issue of responsibility is, therefore, on a very sound and firm basis. The plain fact is that the chief limitations on any solution of the problems arising from mental disease is the lack of medical and psychiatric knowledge of mental disease.<sup>35</sup> Under *Durham* the accused could know the nature and quality of his act, know that it was wrong, have the will power to restrain his act and yet, by reason of a mental disease, develop egocentric or sadistic tendencies which could produce homicide with criminal impunity.<sup>36</sup>

#### *The New Hampshire Rule*

The *New Hampshire* Rule will only be mentioned in passing. Fundamentally, the *New Hampshire* Rule and the *Durham* Rule are the same,<sup>37</sup> although there is argument to the contrary.<sup>38</sup> An author recently suggested that the experts in New Hampshire were not familiar with the rule and were not interpreting it properly.<sup>39</sup> According to his article,<sup>40</sup> some doctors in New Hampshire questioned whether the accused knew right from wrong in arriving at an opinion as to sanity. In fact, the experts mentioned in his article are familiar with the rule named after their own state. Every medical school teaching psychiatry has a course in forensic psychiatry where the student doctors are taught the different basic theories of criminal responsibility and which, of necessity, includes a discussion of the *New Hampshire* doctrine. Their actions strongly proclaim their difficulty in giving an opinion on mental competency based on the *New Hampshire* Rule. The conduct of these experts speaks louder than their words. They have come to realize that the application

33. *Griffin v. State*, 96 So.2d 424, 425 (Fla. App. 1957).

34. Hall, *supra* note 19, at 683.

35. *Ibid.*

36. *State v. Davies*, 146 Conn. 137, 148, 148 A.2d 251, 256, *cert. denied*, 360 U.S. 921 (1959).

37. Roche, *Durham and the Problem of Communication*, 29 TEMPLE L.Q. 264 (1956):

[T]he *Durham* decision [marks] the passing of the *McNaghten* right and wrong (knowledge) and the irresistible impulse tests . . . in the District of Columbia, and the adopting of the essentials of the *New Hampshire* rule which in sum determines that one cannot be held responsible if the evidence considered by the jury shows beyond a reasonable doubt that the unlawful act was the *product* of mental illness or defect. (Emphasis not supplied.)

38. Reid, *The Working of the New Hampshire Doctrine of Criminal Insanity*, 15 U. MIAMI L. REV. 14 (1960).

39. *Ibid.*

40. *Ibid.*

of the rule, in its strict interpretation, would result in every individual involved in a crime being absolved from responsibility for his actions. The right and wrong test is applied because they cannot determine if one's criminal act was the product of a mental disease. These experts do not know of any other approach to use in determining legal responsibility.

The conflict between the law and psychiatry will not terminate until the experts are ready to admit on the witness stand what they maintain medically: that there is no medical entity known as "temporary insanity." If the accused was competent to stand trial, then psychiatry should admit he was competent when he committed the crime.

#### CONCLUSION

This article has not attempted to answer every objection to the *McNaghten* Rule, but it does demonstrate that a proper answer is available for every objection. The true basis for the criticism of *McNaghten* is that psychiatry seeks to have some vehicle available at its command by which it can determine for itself whether an individual should be responsible for his actions. Those psychiatrists who wish to change the law do not believe that a person who is medically ill should be held criminally responsible for his actions. Today, society still believes that mental illness, no more than appendicitis, should excuse an individual from responsibility for his criminal actions, if he was aware of its nature and knew it was wrong to do it. Psychiatry is performing a noble service to mankind in diagnosis and therapeutics. It should not bring disrepute upon its profession by the illogical objections raised to the law. The *McNaghten* Rule is capable of honest, sensible opinions, and does not restrict the experts solely to a discussion of the patient's reasoning abilities in the abstract.<sup>41</sup> Since the issue of responsibility is the true enigma of psychiatry, it should attempt to re-educate the public in accordance with the new point of view opposing punishment for misdeeds. Let them present compelling reasons, if they can, and obtain legislation modeled after the criminal sexual psychopath law.<sup>42</sup> Let them attempt

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41. CLECKLEY, *THE MASK OF SANITY* 520 (3d ed. 1955).

42. Criminal Sexual Psychopaths, FLA. STAT. § 917.12(1) (1959):

(1) *Definition.* — All persons suffering from a mental disorder and not insane or feeble-minded which mental disorder has existed for a period of not less than four months immediately prior to the appointment of the psychiatrists provided for in subsection (2)(c) coupled with criminal propensities to the commission of sex offenses and who may be considered dangerous to others are hereby declared to be criminal sexual psychopaths.

FLA. STAT. § 917.12(2) (d) (1959):

If such person is determined to be a criminal sexual psychopathic person by the court, then the court shall order and commit such person to an appropriate institution under the jurisdiction of the board of commissioners of state institutions until there are reasonable grounds to believe that such person has recovered from such psychopathy to a degree that he will not be a menace to others.

FLA. STAT. § 917.12(5) (1959);

*Inapplicability in Capital Cases.* — This act shall specifically not apply to those persons charged with a capital offense.

to enact a law which declares that everyone who commits murder is a criminal psychopathic murderer and should be committed to a mental institution. It is more dignified to acknowledge that this is the true problem, and strive for its solution openly, rather than try to confound the law with new unworkable and unrealistic definitions.

When psychiatry concedes that temporary insanity is an invention of the creative minds of the legal profession, the conflict between the law and psychiatry will end. This author has seldom witnessed a conflict or dispute in opinion between psychiatrists on the issue of present insanity. The dispute always arises on the issue of "temporary" insanity. After four years of almost daily contact with psychiatrists, this author is more convinced than ever that there is no scientific method of determining whether the accused's criminal action was the product of a mental disease or defect. It is hoped that there will soon be a breakthrough in the field of psychiatry which will scientifically reveal what causes a person to commit a crime. Until then, and until society is prepared to abandon punishment for crime, to substitute psychiatrists for prosecutors and hospitals for prisons, the law should reject any backhanded attempt to accomplish this result by so-called new modern formulas.

#### APPENDIX

Contained herein are the basic diagnostic findings of the psychiatrists taken from their actual testimony or their reports filed in the cases. The projected verdicts under the *Durham* Rule are those of the author, based upon conversations with the psychiatrists involved in the particular cases, who stated that the criminal act was caused by a mental disease or defect of the subject examined. The author believes that no purpose would be served by naming the doctors or the cases involved.

##### *Case No. 1:*

CHARGE: FIRST DEGREE MURDER

Dr. "A"

Organic brain syndrome; delusional.

VERDICT — McNAGHTEN RULE:

Insane at time of examination. Committed to State Hospital.

PROJECTED VERDICT — DURHAM RULE:

Same as above.

##### *Case No. 2:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF FIRST DEGREE MURDER WITH RECOMMENDATION  
OF MERCY

*Dr. "A"*

No definite evidence of any form of neurosis, psychosis or personality disorder; no evidence of unstable personality or inadequate emotionality; immature intellectual capacity; legally sane.

*Dr. "B"*

Neurosis in the form of an inadequate emotionally unstable personality; knew nature and quality of act but emotional condition was such as not to permit the use of his mental faculties to determine right from wrong at the time the act was committed.

*Dr. "C"*

Defendant has I.Q. of 62 and is therefore mentally defective; on the basis of psychometric examination, establishing that he is mentally defective, his ability to determine right from wrong is seriously impaired.

## VERDICT — McNAGHTEN RULE:

Sane.

## PROJECTED VERDICT — DURHAM RULE:

Insane.

(Dr. "B" suggested the defendant would be insane under either rule and Dr. "C" suggested that the defendant's crime was a direct result of his mental defectiveness.)

*Case No. 3:*

## CHARGE: RAPE

RESULT: CONVICTED OF ASSAULT WITH INTENT TO COMMIT RAPE

*Dr. "A"*

Cannot express an opinion as to whether or not the defendant knew right from wrong because "right from wrong" is not a clinical entity; can only say whether (a) the individual could exercise conscious control of his behavior, or (b) he was consciously unaware of what went on about him. The doctor testified the defendant was medically sane. (See Note under Case 15, Dr. "D")

*Dr. "B"*

Legally sane, if sober; passive personality; basically unable to assume responsibility in a mature fashion.

## VERDICT — McNAGHTEN RULE:

Sane.

## PROJECTED VERDICT — DURHAM RULE:

Unknown.

*Case No. 4:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF FIRST DEGREE MURDER WITH RECOMMENDATION  
OF MERCY

*Dr. "A"*

Personality trait disturbance; emotional instability with psychotic episodes in the past; doubtful that he knew right from wrong at time of incident.

*Dr. "B"*

Underlying psychotic process; most likely schizophrenic reaction of a paranoid type; knew right from wrong at time of incident.

*Dr. "C"*

Paranoid, schizophrenia; presently competent but unable to distinguish right from wrong at time of crime.

*Dr. "D"*

Schizophrenia, paranoid type, mentally competent; knew right from wrong at the time of the incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Insane.

*Case No. 5:*

CHARGE: FIRST DEGREE MURDER

*Dr. "A"*

Dementia praecox, paranoid type. Insane at time of examination.

*Dr. "B"*

Chronic paranoid schizophrenia. Insane at time of examination.

VERDICT — McNAGHTEN RULE:

Insane at time of examination. Committed to State Hospital.

PROJECTED VERDICT — DURHAM RULE:

Same as above.

Note: Four months after commitment of this defendant to the State Hospital she was released as being medically and legally competent.

*Case No. 6:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF SECOND DEGREE MURDER

*Dr. "A"*

Non-psychotic. Knew right from wrong at time of incident.

*Dr. "B"*

Non-psychotic. Knew right from wrong at time of incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Unknown.

*Case No. 7:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF MANSLAUGHTER

*Dr. "A"*

No evidence of psychiatric or neurologic disease; knew right from wrong at time of incident.

*Dr. "B"*

Psychoneurosis; dissociative reaction in a somewhat schizoid personality.

*Dr. "C"*

Psychoneurosis; mixed type; severe with dissociative reaction; did not know right from wrong at time of incident.

*Dr. "D"*

Schizoid personality; tendency to obsessive compulsive behavior; probably knew right from wrong at time of incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Insane.

*Case No. 8:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF FIRST DEGREE MURDER WITH RECOMMENDATION  
OF MERCY

*Dr. "A"*

Psychoneurosis severe with considerable psychomotor activity to paranoid ideas.

Dr. "B"

Simulating psychosis; sane at time of incident.

Dr. "C"

Schizophrenia — paranoid type; insane at time of incident.

Dr. "D"

Schizophrenia; paranoid type; insane at time of incident.

Dr. "E"

Schizophrenia. Sane at time of incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Insane.

*Case No. 9:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF FIRST DEGREE MURDER WITH RECOMMENDATION  
OF MERCY

Dr. "A"

Personality disorder with emotional instability and pathological  
sexuality; knew right from wrong at time of incident.

Dr. "B"

Schizophrenic reaction, border line; personality pattern disturbance;  
psychiatrically sick; knew right from wrong at time of incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Insane.

*Case No. 10:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF SECOND DEGREE MURDER

Dr. "A"

Mental deficiency; I.Q. of 58; alcoholism; knew right from wrong  
at time of incident.

Dr. "B"

Schizophrenic reaction — simple type; knew right from wrong at time  
of incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Insane.

*Case No. 11:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF FIRST DEGREE MURDER WITH RECOMMENDATION  
OF MERCY

*Dr. "A"*

Hyperexcitable and overly emotional; knew right from wrong at time  
of incident.

*Dr. "B"*

Large amount of paranoid material, but not psychotic and legally sane  
at time of incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Unknown.

*Case No. 12:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF FIRST DEGREE MURDER WITH RECOMMENDATION  
OF MERCY

*Dr. "A"*

No evidence of mental disease, defect or derangement.

*Dr. "B"*

No defect noted.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Unknown.

*Case No. 13:*

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF FIRST DEGREE MURDER WITH RECOMMENDATION  
OF MERCY

Dr. "A"

Non-psychotic; knew right from wrong at time of incident.

Dr. "B"

Acute alcoholism; psychoneurosis; obsessive compulsive reaction; does not know if defendant knew right from wrong at time of incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Insane.

Case No. 14:

CHARGE: FIRST DEGREE MURDER

RESULT: CONVICTED OF SECOND DEGREE MURDER

Dr. "A"

Non-psychotic; laboring under considerable emotional stress at time of incident, but knew right from wrong.

Dr. "B"

Acute dissociated reaction; is not medically *responsible* for his acts, although knew right from wrong at time of incident.

(Note the attempt of the doctor to tell the court that in his opinion the defendant should not be held responsible for his acts.)

Dr. "C"

No psychotic manifestations; knew right from wrong at time of incident.

VERDICT — McNAGHTEN RULE:

Sane.

PROJECTED VERDICT — DURHAM RULE:

Insane.

Case No. 15:

CHARGE: FIRST DEGREE MURDER

RESULT: NOT GUILTY

Dr. "A"

Personality pattern disturbance; schizoid personality without psychosis; knew right from wrong at time of incident.

Dr. "B"

Sexual disturbance; flattening of affect; suggestion of disturbed personality make-up but knew right from wrong at time of incident.

*Dr. "C"*

Personality disorder; emotionally unstable personality; panic reaction-state of disassociation; did not know right from wrong at time of incident.

Note: Dr. "C" testified that every one who commits murder is suffering from some mental disorder.

*Dr. "D"*

Acute transient psychiatric maladjustment or disorder; did not know right from wrong at time of incident.

Note: Dr. "D" is the same expert who in Case No. 3 testified that he could not give a clinical psychiatric opinion as to whether or not an individual can distinguish right from wrong.

## VERDICT — McNAGHTEN RULE:

Insane.

## PROJECTED VERDICT — DURHAM RULE:

Insane.