

# THE ROLE OF PSYCHIATRY IN LAW

*By*

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## INTRODUCTION

**I**N REVIEWING the list of distinguished lecturers, since the Thomas Salmon Lecture series was inaugurated in 1932 by my great teacher, Adolf Meyer, I note that there has been a tendency to select men who represented some phase of psychiatry that was currently of particular importance, due to new scientific advances or to changes in the social climate. During World War II you had as lecturers the Englishmen, Richard Gillespie and John Rees, and recently Seymour Kety and Joel Elkes as representatives of the current epoch, in which the chemistry of mental illness is being so widely investigated. In response to the present spate of college dropouts you had Dana Farnsworth as last year's lecturer. In selecting me as this year's lecturer, I feel that recognition has been given to the upsurge of interest in legal psychiatry which has developed during the past fifteen years, a period marked by great change in many aspects of our society, many of them with constantly increasing force. Barbara Ward, the noted English economist, said, "As the world enters the nineteen sixties one fact seems sure. The pace of revolutionary change in every human sphere will gather momentum." The Law as an instrument, as well as a regulator, of society has been intimately involved in this.

Psychiatry touches nearly every area of law, but my discussion will be confined largely to its role in the criminal process. During my more than thirty years of service to the courts of Baltimore, my work has been chiefly for the criminal courts.

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In 1950 the American Law Institute began the monumental task of writing a Model Penal Code. I am told that a quarter of a century earlier the Institute had approached the Rockefeller Foundation for the funds needed to carry out this project, but at that time, Dr. Alan Gregg, a man of great wisdom, counseled the Foundation to wait, that the behavioral sciences were on the threshold of development to the point at which they could



be of great assistance. Apparently, the Institute concluded that the time has arrived. The Criminal Law Advisory Committee on the drafting of the Code, which met twice annually for a number of years, had among its thirty-five members nine representatives of the behavioral sciences, three of them psychiatrists. The draft of the Code, which has already been adopted by the Institute, reflects the current views of psychiatry in many places. The British Royal Commission on Capital Punishment, which met from 1949 to 1953, and came to this country to get the testimony of leading American jurists and behavioral scientists, recommended in its published report the abandonment of the M'Naghten Rule of Responsibility. This so-called "knowledge of right and wrong" rule had served for more than a century as a fixed and inviolate symbol which has plagued forensic psychiatry in England and this country since its inception.

A year after the issuance of this report, the United States Court for Appeals of the District of Columbia, under Chief Judge David Bazelon, rendered its epochal decision in the Monte Durham case. Durham was brilliantly represented in the appeal by court appointed counsel, Abe Fortas, now a member of the Supreme Court. Much of the current searching and appraisal that is constantly going on, as to psychiatry's role in the legal process, and in the field of criminality, is due to the fearless leadership of Judge Bazelon. In 1961 John Biggs, Jr., Chief Judge of the Third Circuit of the United States, issued a scholarly opinion in the Currens case, in which his jurisdiction abandoned the M'Naghten Rule for a new rule of its own.

In the past few years the legislature of Maine has enacted the Durham Rule and the legislatures of Vermont, Illinois, Missouri and New York have abandoned the M'Naghten Rule for enactments modeled after the test of responsibility found in the new Model Code of the American Law Institute. According to a *New York Times* dispatch of July, 1966, the Wisconsin State Supreme Court has ruled that a defendant shall have the right to elect whether the trial court shall use the M'Naghten Rule or the American Law Institute Rule when he pleads insanity. Unfortunately, the test of criminal responsibility, enacted by the New York Legislature in 1965 has pretty well