

to those persons who have been subjected to illegal police activity which is not followed by a prosecution in which evidence obtained by the illegal activity is used. In other words, those persons not demonstrably guilty of criminal activity are given no direct relief by this rule. Instead, it operates normally to require the exclusion of competent and reliable evidence which would demonstrate in most cases the guilt of the person charged. Because the policeman erred, the defendant goes free, even though the defendant's crime may have been far more heinous from any general social point of view than the policeman's error. Hence, the only real justification for the rule is that it has the indirect effect of making the police adhere to the rules in all situations. The defendant is allowed to have the evidence excluded not because he has any personal right to go free but because he is the person in a position to raise the issue and give the courts an opportunity to "discipline" the police. Unquestionably, this indirect effect is substantial where high grade police departments are concerned—though there is yet no statistical evidence as to the extent to which it affects the activities of individual police officers and it may be that its primary effect is not at the level of arrest and search but rather at the level of the district attorney's decision whether or not to prosecute. But even assuming that it is fully effective and the police attempt to abide by the governing rules, there is a substantial social cost which must be paid. For the basic rules governing the police are phrased in terms of "reasonable cause" and the best informed police officer cannot know in a wide variety of practical situations how the courts are later going to view his activities. Hence, the price of having the rule is that some undetermined but probably substantial number of criminals will be permitted to go free even where the police are trying in good faith to comply with the restrictions upon them. At some point, the question should be answered whether *as a matter of fact* the benefits of the exclusionary rule outweigh the burdens, whether legislative liberalization of the rules governing civil remedies against the police and particularly against the governmental agencies employing the police might not be a less costly means of obtaining approximately the same results.

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**The Guilty Mind: Psychiatry and the Law of Homicide.** By John Biggs, Jr.  
New York: Harcourt, Brace & Co., 1955. Pp. xii, 236. \$4.50.

**Psychiatry and the Law.** Edited by Paul H. Hoch and Joseph Zubin. New York:  
Grune & Stratton, 1955. Pp. viii, 232. \$5.50.

In 1952 the American Psychiatric Association established the Isaac Ray Award and Lectureship (named in honor of "the father of American psychiatry," 1807-1881) to be given annually for the most worthy contribution to the improvement of the relations of law and psychiatry. Judge Biggs was the third awardee, and his book comprises his Isaac Ray lectures delivered at the University of California.

After a fifty-four page historical review of how Biblical, Egyptian, Chinese, Hindu, Mohammedan, Greek and Roman law dealt with the problem of mental disorder as a criminal defense, Judge Biggs traces the development of the English and American law. He presents some interesting evidence that the judges who wrote the opinion in M'Naghten's case did so under political and social pressure. As he puts it, "the Queen and the lords put a hot fire to the feet of the judges of England."<sup>1</sup> The period was one of unrest, and there had been a number of attempts to assassinate English sovereigns and their ministers. Queen Victoria interested herself in the case (and the prior case of Oxford) by letters to her ministers expressing her indignation that judges and lawyers should "allow and advise the Jury to pronounce the verdict of *Not Guilty* on account of *Insanity*,—whilst *everybody* is morally *convinced* that both malefactors were perfectly conscious and aware of what they did!"<sup>2</sup> The judges were, in effect, called to account for what seemed to be miscarriages of justice. Had circumstances been more favorable, they might have used the occasion to reshape the law. Instead, the law was "frozen, fixed, in a mold which was divorced from reality."<sup>3</sup>

Judge Biggs reviews a number of cases which illustrate the unfortunate gap between psychiatry and law. One of these is the case of James Colbert Smith, whose wanton killing of a taxicab driver led to a long series of legal proceedings, including a habeas corpus proceeding heard by the United States Court of Appeals for the Third Circuit, over which Chief Judge Biggs presides.<sup>4</sup> It was his dissenting opinion in this case that earned Judge Biggs the Isaac Ray Award. In it he suggested, in 1951, the rule that was adopted two years later by the Court of Appeals for the District of Columbia in *Durham v. United States*.<sup>5</sup> He applauds the *Durham* case and joins the list of those who have expressed disappointment with the provision dealing with mental responsibility proposed in the Model Penal Code being drafted by the American Law Institute, which, he says, merely rephrases the M'Naghten formula and adds a rephrasing of the "irresistible impulse" test. "We hope," he comments, "that this able staff of reporters and their astute advisory committee may yet repudiate their rejection of the Durham doctrine."<sup>6</sup>

Judge Biggs also urges adequate psychiatric examination of aberrant individuals before they become dangerous and suggests that all states adopt the Minnesota type of statute for dealing with psychopaths. The latter suggestion seems

<sup>1</sup> P. 107.

<sup>2</sup> P. 103.

<sup>3</sup> P. 108. Judge Biggs expresses his appreciation for much of this material to Dr. Bernard L. Diamond of San Francisco, who has done considerable research on the subject of M'Naghten's trial. Dr. Diamond has since published a short paper, "Isaac Ray and the Trial of Daniel M'Naghten," 112 *Am. J. of Psychiatry* 651 (1956).

<sup>4</sup> United States ex rel. Smith v. Baldi, 192 F. 2d 540 (C.A. 3d, 1951).

<sup>5</sup> 214 F. 2d 862, 874-75 (App. D.C., 1954), aff'd 344 U.S. 561 (1953) ("The rule we now hold must be applied . . . is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect").

<sup>6</sup> P. 161.

to this reviewer less desirable than adoption of the more recent New York or New Jersey type of statute, which uses pre-sentence investigation to sort out sex offenders for whom special treatment seems to be indicated. He discusses the shortcomings of the death penalty and of the prison system, reviews the recent advances in treating mental illness and reiterates a point that has been made by others—that ninety per cent of youthful offenders could be set right after their first offense if we were willing to provide the probation and psychiatric service that would be required. His book closes with the prognosis that “If time goes on, co-operation between the disciplines of law and psychiatry will increase tremendously and the result will be an amazingly effective one.”<sup>7</sup>

The Hoch and Zubin book is comprised of some fourteen papers read at the 1953 meeting of the American Psychopathological Association. They range over a somewhat miscellaneous list of topics, although all within the broad field of the relationship of psychiatry to law. The first three are by Yale men: the late law professor George H. Dession, law and political science professor Harold D. Lasswell, and psychiatrist Lawrence Z. Freedman. All three are penetrating and provocative. Lasswell's seemed to at least one reader especially stimulating. It essays no psychiatric pronouncements, but in a carefully devised classification of legislative prescriptions, sets forth the points at which psychiatry should be able to make a valuable contribution to law, especially in helping clarify institutional objectives, disclosing the causes and consequences of conformity and nonconformity and estimating and appraising enforcement policy. Professor Lasswell's article might well serve to suggest topics for some future Isaac Ray lecturer who wants to get away from the criminal law field with which forensic psychiatry has been so largely occupied.

Dr. Henry Davidson tersely reviews the various alternatives that have been suggested as better than the M'Naghten right-and-wrong test of criminal responsibility. He quickly puts his finger on the vital spot in each, and concludes, “I know of no workable rule that *is* any better.”<sup>8</sup> This reviewer would disagree with the conclusion (believing that the *Durham* case rule is better), but Dr. Davidson's is probably the best available quick critique of the various alternatives.

Dr. Philip Q. Roche argues for a broadening of the concept of criminal responsibility from its “narrow, medieval meaning, a liability to punishment” to a “broader social therapeutic meaning, a liability to comprehensive treatment provided by law.” Under this broader meaning, the lawbreaker, regardless of mental status, would be liable to a “rational clinical manipulation which has within its resources imprisonment, hospitalization, probation, psycho-therapy and so on.”<sup>9</sup> Various psychiatrists and some lawyers have been saying this for two generations; and while constitutional obstacles and deeply ingrained habits of thought probably make any such fundamental change difficult if not impos-

<sup>7</sup> P. 199.

<sup>8</sup> P. 69.

<sup>9</sup> P. 114.

sible, reiteration that this is the logical and sensible approach can have some effect.

Drs. E. F. Hammer and Bernard C. Glueck, Jr., in "Psycho-dynamic Patterns in the Sex Offender," present evidence based on a study of 200 male sex offenders that one of their most striking characteristics was a pervasive fear of heterosexual contact. The continuum from rape through heterosexual contact with adolescent partners and homosexual actions with adolescent partners to homosexual interactions with child partners "appears to represent in parallel fashion the increasing intensity of castration feelings, on the one hand, and the simultaneously greater distance from the mature female as a potential sex object, on the other."<sup>10</sup>

Commissioner Alfred R. Loos of the New York State Board of Parole describes the use of psychiatry in the prisons and reformatories of his state, and makes some suggestions for improving institutional psychotherapy by such means as intensive in-service training programs and the development and training of group psychotherapy classes. Drs. Samuel Dunaif and Paul H. Hoch present their new concept of "Pseudo-psychopathic Schizophrenia," i.e., schizophrenia in which the patient acts out to such a degree that his behavior can be called psychopathic. Dr. John C. Whitehorn of Johns Hopkins contributes some interesting observations on "Psychiatry and Human Values." Other contributors include Dr. Manfred S. Guttmacher, Professor Samuel Polsky, Dr. Bardwell W. Flower, Superintendent of Worcester (Mass.) State Hospital, and County Judge Hyman Barshay of King's County (N.Y.).

Chapters 5 and 15 are each followed by a few pages of "discussion." It is perhaps just as well that this device was not used for other chapters, for the discussion of Dr. Davidson's able chapter 5 adds nothing but confusion.

The Hoch and Zubin volume, as the work of almost a score of authors, is the meatier of the two books. While not too technical to be understood by lawyers, some of its psychiatric material may be too specialized to interest them. Judge Biggs' makes the lighter reading. Both constitute important contributions to the growing literature on the relationship between criminal law and psychiatry.

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<sup>10</sup> P. 168.

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**Politics, Planning, and the Public Interest: The Case of Public Housing in Chicago.** By Martin Meyerson and Edward C. Banfield. Glencoe, Ill.: The Free Press, 1955. Pp. 353. \$5.00.

"This is a study," the book begins, "of how some important decisions were reached in a large American city. The city is Chicago and the decisions had to do mainly with the location of public housing projects. Through the analysis