THE LAW

CRIMINAL JUSTICE

Doing in M'Naghten

There was little question that Narcotics Addict Charles Freeman had actually been pushing heroin. And it was hardly surprising that the court found him guilty—despite the defense contention that Freeman may have known that what he was doing was wrong, but had neither the capacity nor the will to be responsible for his acts. The judge was simply following a century-old precedent; he was applying the M'Naghten Rule, which holds that a man may be judged not responsible or insane only if he did not know what he was doing, or did not know that what he was doing was wrong. Nonetheless, in a decision that reflects a growing cooperation between the law and psychiatry, the three-judge U.S. Court of Appeals for the Second Circuit reversed Freeman's conviction last week and ordered him retried. M'Naghten, said Justice Irving Kaufman for the unanimous three-man panel, is out of date.

In a lucid, 45-page decision replete with psychiatric, legal and historical scholarship, Kaufman suggested that M'Naghten has really been out of date since its formulation in 1843, when Daniel M'Naghten tried to assassinate British Prime Minister Sir Robert Peel and killed his secretary instead. M'Naghten was so clearly out of his mind, said Kaufman, that his judges found him not guilty on the enlightened theory that his delusion of persecution by Peel had caused the act. The law's attitude toward insanity seemed to have taken an impressive leap forward.

Queen Victoria would have none of it. Distressed by a spate of assassination attempts (three on herself and one on her prince consort, Albert), she asked the House of Lords to review the case, said Kaufman. "With the Queen's hot breath on him," the presiding judge in M'Naghten's case reversed himself and applied the "right-wrong" standard.

Labels or Classifications. From then to now, Kaufman recalled, critics have complained that the narrowness of the test fails to include many obviously irresponsible people, and prevents psychiatrists from giving the court a complete picture of the accused—information that a jury should properly have if it is to judge a defendant's sanity. "Irresistible impulse" has become an additional ground for finding insanity in a few states, but impulse in practice has often had the effect of absolving "crimes of passion," not the coolly considered plots of equally insane men.

Then, in 1954, in the case of a Washington, D.C., housebreaker, Monte Durham, the District of Columbia Circuit Court of Appeals declared that a person is not criminally responsible if his "unlawful act was the product of mental disease or mental defect." This was a great deal broader than M'Naghten, said Kaufman, but it created new problems. Deciding whether an act is the "product" of a disease is difficult, perhaps impossible. Moreover, such terms as "mental disease and mental defect" give expert psychiatric witnesses a blank check. "It seems clear that a test which permits all to stand or fall upon the labels or classifications employed by testifying psychiatrists hardly affords the court the opportunity to perform its function of rendering an independent legal and social judgment."

Necessary changes in the law have been too long held up by "the outrage of a frightened Queen," wrote Kaufman, and he turned to the American Law Institute for aid in ending the delay. Criminal responsibility, as defined in the A.L.I.'s Model Penal Code, he said, is adopted "as the standard in the courts of this circuit." The A.L.I. test, which may some day be known as *Freeman*, provides that: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law." However, "repeated criminal conduct" does not alone prove such abnormality.

CULVER PICTURES

DANIEL M'NAGHTEN
To know is to appreciate.

Uniformity in Sight. What Kaufman and his fellow judges liked about the new rule was that it was not only a giant step forward from M'Naghten but also a viable solution to the problems in Durham. Instead of "knowing" the difference between right and wrong, the defendant is now subject to the subtler requirement of "appreciating" it. Similarly, proving the act a "product" of the disease now becomes the more reasonable task of showing that the disease resulted in a loss of "substantial capacity" to obey the law. "We do not delude ourselves in the belief that the American Law Institute test is perfect," concluded Kaufman. But "the impossibility of guaranteeing that a new rule will always be infallible cannot justify continued adherence to an outmoded standard."

Advanced though it is, the Second Circuit's decision is binding only in federal cases in New York, Connecticut and Vermont. There is still considerable confusion elsewhere in the country, although three other circuit courts have already adopted similar tests. Until the Supreme Court is induced to set a national standard—something jurists fervently hope it will now do—there will still be widely varying decisions on whether to send a disturbed defendant to prison or to a mental hospital.

The Boy Who Wanted to Die

On a winter morning in 1959, the body of Airline Clerk Mary Meslener, 23, was found on a canal bank three miles from Miami International Airport. She had been shot once in the head. More than two months after the murder, Airman Joseph Shea, 20, waved a bloody shirt at his sergeant in West Palm Beach and vaguely insisted that he had done "something bad." Because Shea had been trying to fake a medical discharge, the sergeant was skeptical; because the Meslener murder was still unsolved, though, Shea became a potential suspect.

After questioning Shea, Miami Detective Philip Thibedeau could find no connection between him and the murder. Even so, Detective Patrick Gallagher soon obtained the airman's oral confession.

After Lie Detector Expert Warren D. Holmes said that his tests indicated Shea was innocent, the airman made another confession and this time signed it. Though Crime Lab Supervisor Edward D. Whittaker testified that Shea's shirt was splattered with his own B-type blood and there was only one spot of Mary Meslener's O-type, the confession persuaded a jury to find Shea guilty of first-degree murder and to recommend mercy.

Self-Accused. Now, six years later, a second jury has voted for acquittal—all because Detective Thibedeau, Polygrapher Holmes and Miami Herald Reporter Gene Miller spent their spare time tracking down evidence that cast deep doubt on his confession. For one thing, Roman Catholic Shea had apparently undergone agonies of guilt after fathering an illegitimate child in the Philippines: "I didn't want to live," he said. Even more important, Detective Gallagher admitted in nine hours on the stand at the second trial that he:

▶ Told Shea that Mary Meslener's blood was "all over" his shirt.

▶ Told Shea that his fingerprints were found on her car, though he knew at