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Criminal Law - Murder - Evidence - Psychiatric Testimony - Specific Intent - Diminished Capacity

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CRIMINAL LAW—MURDER—EVIDENCE—PSYCHIATRIC TESTIMONY—SPECIFIC INTENT—DIMINISHED CAPACITY—The Supreme Court of Pennsylvania has held that a psychiatrist's expert testimony is relevant and admissible evidence in a prosecution for first degree murder when the testimony is offered to demonstrate that the defendant lacked sufficient mental capacity to formulate the specific intent required for a conviction of first degree murder.

Commonwealth v. Walzack, 468 Pa. 210, 360 A.2d 914 (1976).

In January 1971, Michael Nickles Walzack was tried before a jury on a charge of first degree murder for the shooting death of Ole Abe Toasen. The defendant admitted the killing and did not plead insanity. The defense attempted to prove, however, that, as a result of a lobotomy operation,¹ the defendant lacked sufficient mental capacity to formulate the specific intent required for a conviction of murder in the first degree.² The defense offered the testimony of Dr. Willis, a psychiatrist at the Farview State Hospital, for the limited purpose of reducing the degree of the defendant's responsibility for Toasen's death.³ Although the trial court ruled the testimony inadmissible for this purpose, it noted that the evidence would be competent and admissible at a sentencing hearing subsequent to a conviction.⁴

1. The defendant underwent a lobotomy operation while he was a patient in a New Jersey state hospital. A lobotomy is a psychosurgical procedure in which the sensory tracts connecting the frontal lobes with the remainder of the brain are severed. The frontal lobes coordinate an individual's intellectual functions including judgment, memory, foresight, social consciousness, and learning ability. Individuals who have undergone the surgery often exhibit diminished anxiety, diminished ability to think creatively, and an inability to exercise good judgment. See Stern & Robbins, *Physical Therapies in Psychiatry*, 6 TRAUMATIC MEDICINE AND SURGERY FOR THE ATTORNEY 262, 270 (P. Cantor ed. 1962) (general discussion of types and effects of psychosurgery); Gordy, *Anatomy and Physiology of the Brain*, 2 TRAUMA 1:4, 1:12:14 (M. Houts ed. 1960) (functions of the frontal lobe).

2. The defendant was prosecuted under PA. STAT. ANN. tit. 18, § 4701 (Purdon 1969) (repealed 1972), which provided: "All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing . . . shall be murder in the first degree." The Pennsylvania Crimes Code currently in effect expressly declares that criminal homicide constitutes first degree murder if committed by an intentional killing, 18 PA. CONS. STAT. ANN. § 2502(a) (Purdon 1973), as amended, 18 PA. CONS. STAT. ANN. § 2502(a) (Purdon Supp. 1977-1978).

3. Brief of Appellant at 3, *Commonwealth v. Walzack*, 468 Pa. 210, 360 A.2d 914 (1976) [hereinafter cited as Brief of Appellant].

4. See 468 Pa. at 215-17, 360 A.2d at 917; Brief of Appellant, *supra* note 3, at 3. The trial court's exclusion of the evidence was consistent with the supreme court's express rejection of the doctrine of diminished capacity in earlier cases. See note 30 and accompanying text *infra*.

The jury convicted the defendant of first degree murder, and a hearing to fix sentence was held on January 23, 1971, when the testimony of Dr. Willis was submitted in the form of a stipulation of counsel.⁵ The doctor's testimony disclosed that the defendant had an extensive history of mental illness, that he was a schizophrenic suffering from psychosis with a psychopathic personality, and that he had undergone a lobotomy operation⁶ while hospitalized in a state institution. After hearing the doctor's testimony, the court sentenced the defendant to life imprisonment. The defendant appealed his conviction, alleging that the trial court erred in refusing to permit the psychiatric testimony at trial.

The Supreme Court of Pennsylvania reversed the trial court and granted the defendant a new trial.⁷ In a 5-2 decision,⁸ the court held that the expert psychiatric testimony had been improperly excluded on the issue of defendant's capacity to formulate a specific intent to kill.⁹ The court first addressed the issue of the relevancy of the proffered psychiatric testimony, noting that the test of relevance is whether the evidence, if admitted, tends to make more or less probable a substantive position taken.¹⁰ Walzack was charged with first degree murder;¹¹ the commonwealth, therefore, had to prove beyond a reasonable doubt that he possessed the specific intent to kill—a substantive element of the crime.¹² The psychiatric testimony would

5. See Brief of Appellant, *supra* note 3, at 4.

6. See note 1 and accompanying text *supra*.

7. 468 Pa. at 223, 360 A.2d at 921. The Appellate Court Jurisdiction Act of 1970, PA. STAT. ANN. tit. 17, § 211.202(1) (Purdon Supp. 1977-1978), provides for direct appeal to the Supreme Court of Pennsylvania in cases of felonious homicide.

8. Justice Nix spoke for the majority, which included Chief Justice Jones and Justices Roberts, Pomeroy, and Manderino. Justice Eagen, joined by Justice O'Brien, dissented. See notes 20 & 21 and accompanying text *infra*.

9. 468 Pa. at 212-13, 360 A.2d at 915. By offering the expert testimony for the purpose of negating specific intent, the defense sought to reduce the crime to murder in the second degree.

10. Pennsylvania has recognized the relevancy tests propounded by Wigmore and McCormick: only evidence having rational and probative value will be held admissible. See, e.g., Commonwealth v. Jones, 459 Pa. 62, 66, 327 A.2d 10, 13 (1974); Commonwealth v. Lippert, 454 Pa. 381, 384, 311 A.2d 586, 587 (1973). See also 1 J. WIGMORE, EVIDENCE §§ 9-10, at 289-95 (3d ed. 1940). Evidence is deemed probative if the desired inference is rendered more or less probable by its admission. MCCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE § 185, at 437 (2d ed. E. Cleary 1972).

11. See note 2 *supra*.

12. The commonwealth must prove all elements of a crime beyond a reasonable doubt. See, e.g., Commonwealth v. Rose, 457 Pa. 380, 321 A.2d 880 (1974); Commonwealth v. Bonomo, 396 Pa. 222, 151 A.2d 441 (1959).

tend to render less probable the commonwealth's position that the defendant had sufficient mental capacity to formulate the requisite specific intent. The court therefore concluded that the evidence was relevant.¹³

The court next considered whether the evidence was properly excluded on the theory that psychiatric evidence was patently devoid of reliability.¹⁴ In the court's view, the evidence could not be excluded for lack of reliability, given the tremendous advancements made in psychiatry during recent decades. To support this position, the court relied substantially upon *Commonwealth v. McCusker*,¹⁵ a decision in which the supreme court expressed its confidence in the science of psychiatry by holding that psychiatric evidence is admissible in determining whether a defendant acted in the "heat of passion" and without malice when he killed his victim.

The supreme court sanctioned the admission of expert psychiatric testimony¹⁶ under the doctrine of diminished capacity: the jury is permitted to evaluate evidence of a defendant's mental disease or defect offered to negate the specific elements of the crime charged.¹⁷

13. 468 Pa. at 220, 360 A.2d at 919. See note 10 *supra*. The *Walzack* court held the psychiatric evidence to be admissible because it was relevant to a material issue in the case—whether in fact the defendant had the mental capacity to formulate a specific intent to kill.

14. See generally notes 30-35 and accompanying text *infra*.

15. 448 Pa. 382, 292 A.2d 286 (1972). The *McCusker* court reversed the defendant's conviction for second degree murder and granted a new trial, stating that admission of psychiatric evidence was "a natural and logical application of the orderly and authoritative development of the law of evidence in such cases." 448 Pa. at 395, 292 A.2d at 293.

16. See notes 8 & 9 and accompanying text *supra*.

17. The majority of jurisdictions which have employed the doctrine of diminished capacity have done so in the context of a first degree murder prosecution. Psychiatric evidence is admitted to show a defendant suffered from a mental disorder other than legal insanity, which deprived him or her of the mental capacity required to commit first degree murder. See, e.g., *People v. Nicolaus*, 65 Cal.2d 866, 423 P.2d 787, 56 Cal. Rptr. 635 (1967); *Becksted v. People*, 133 Colo. 72, 292 P.2d 189 (1956); *State v. Clokey*, 83 Idaho 322, 364 P.2d 159 (1961); *State v. Gramenz*, 256 Iowa 134, 126 N.W.2d 285 (1964); *Starkweather v. State*, 167 Neb. 477, 93 N.W.2d 619 (1958); *State v. Padilla*, 66 N.M. 289, 347 P.2d 312 (1959); *People v. Moran*, 249 N.Y. 179, 163 N.E. 553 (1928); *State v. Nichols*, 3 Ohio App.2d 182, 209 N.E.2d 750 (1965).

Some jurisdictions have applied the doctrine of diminished capacity in factual settings other than criminal homicide. See, e.g., *People v. Wells*, 33 Cal.2d 330, 202 P.2d 53 (1949) (psychiatric evidence admissible to show that a defendant was incapable of assaulting a prison guard with malice); *Schwickrath v. People*, 159 Colo. 390, 411 P.2d 961 (1966) (evidence concerning a defendant's mental capacity to commit felonious escape admissible); *People v. Colavecchio*, 11 App. Div.2d 161, 202 N.Y.S.2d 119 (1960) (psychiatric evidence admissible in a prosecution for larceny for the purpose of determining whether the defendant

Although the doctrine had been variously referred to as diminished responsibility, diminished capacity, partial insanity, and partial responsibility,¹⁸ the *Walzack* court found the term "diminished capacity" to be the most accurate designation. Other labels caused confusion and undermined support for the doctrine because they insinuated that a defendant was not fully responsible for his actions.¹⁹ Diminished capacity, however, conveyed the concept underlying the doctrine: a defendant is fully responsible for a crime he has the capacity to commit.

In dissent, Justice Eagen charged that the *Walzack* decision was premised upon the majority's personal beliefs in the competency of psychiatric evidence, beliefs contrary to the well established view in the commonwealth.²⁰ For Justice Eagen, the psychiatric testimony offered by the defense to negate specific intent was patently devoid of reliability. He expressed concern that the admission of such evidence would amount to an invitation for some psychiatrists to manufacture excuses for criminal behavior.²¹

By applying the doctrine of diminished capacity, the supreme court acknowledged that although a mental disease may not amount to legal insanity, it may, nonetheless, diminish the degree of crime committed.²² The doctrine is a recognition of the existence of a spectrum of mental disorders occupying the middle ground between the absolute classifications of sanity and insanity,²³ and an admission of the increasing reliability of psychiatric evidence.²⁴ A policy recognizing that mental disorders short of insanity may affect criminal behavior is a prudent one because the trier of fact will be permitted to focus upon the soundness of a defendant's central nerv-

possessed a criminal intent to deprive an owner of his property). Cf. MODEL PENAL CODE § 4.02(1) (Proposed Official Draft 1962) (evidence of mental defect relevant whenever state of mind is an element of the offense). *But see* State v. Janovic, 101 Ariz. 203, 417 P.2d 527 (1966), cert. denied, 385 U.S. 1036 (1967); Ezzell v. State, 88 So.2d 280 (Fla. 1956); State v. Flint, 142 W. Va. 509, 96 S.E.2d 677 (1957).

18. See W. LAFAYE & A. SCOTT, HANDBOOK ON CRIMINAL LAW §42, at 326-32 (1972) [hereinafter cited as LAFAYE & SCOTT]; Lewin, *Mental Disorder and the Federal Indigent*, 11 S.D.L. REV. 198, 243-46 (1966) [hereinafter cited as Lewin].

19. See 468 Pa. at 215 n.6, 360 A.2d at 916 n.6.

20. *Id.* at 224-25, 360 A.2d at 922 (Eagen, J., dissenting).

21. *Id.* at 224, 360 A.2d at 921 (Eagen, J., dissenting).

22. R. PERKINS, CRIMINAL LAW 881 (2d ed. 1959).

23. See Weihofen & Overholser, *Mental Disorder Affecting the Degree of Crime*, 56 YALE L.J. 959 (1947) [hereinafter cited as Weihofen & Overholser].

24. See note 17 *supra*.

ous system which, to a considerable extent, determined his or her response to the given situation.²⁵ Allowing the introduction of expert psychiatric evidence concerning a defendant's mental capacity to commit a crime is also consistent with the theory that the state of a person's mind is the key to whether he or she should be punished for a crime, and if so, how severely.²⁶ Indeed, the primary focus of the criminal law is upon an actor's "state of mind,"²⁷ as evidenced by the punishment of criminal attempts.²⁸ In light of *Walzack*, Pennsylvania courts should now adopt a more realistic view of human behavior when analyzing a defendant's capacity to formulate specific intent.²⁹

The *Walzack* decision is significant since the court expressly overruled several closely divided decisions³⁰ which rejected the offer of psychiatric evidence to negate the specific intent required for conviction.³¹ Two themes were prevalent in the reasoning of these cases. First, psychiatry was considered an inexact, unstable and vacillating science and hence lacking in reliability.³² The cases³³ suggested that admission of such evidence would abdicate judicial responsibility by substituting vague psychiatric opinions for tangible black letter law.³⁴ This fear that psychiatric opinions would replace legal

25. See Note, *Diminished Responsibility and Psychiatric Testimony in Pennsylvania*, 28 U. PITT. L. REV. 679, 683 (1967) [hereinafter referred to as *Diminished Responsibility*]; see also H. Weihofen, *MENTAL DISORDER AS A CRIMINAL DEFENSE* 179 (1954).

26. See Weihofen & Overholser, *supra* note 23, at 962.

27. *Id.*

28. *Id.*

29. See *Diminished Responsibility*, *supra* note 25.

30. The decisions overruled were *Commonwealth v. Tomlinson*, 446 Pa. 241, 284 A.2d 687 (1971) (4-3 decision); *Commonwealth v. Weinstein*, 442 Pa. 70, 274 A.2d 182, *cert. denied*, 404 U.S. 846 (1971) (3-3 decision); *Commonwealth v. Rightnour*, 435 Pa. 104, 253 A.2d 644 (1969) (3-3 decision); *Commonwealth v. Phelan*, 427 Pa. 265, 234 A.2d 540, *cert. denied*, 391 U.S. 920 (1967) (5-2 decision); *Commonwealth v. Ahearn*, 421 Pa. 311, 218 A.2d 561 (1966) (4-3 decision).

31. 468 Pa. at 215, 360 A.2d at 917. Prior to *Commonwealth v. Ahearn*, 421 Pa. 311, 218 A.2d 561 (1966), psychiatric testimony on a defendant's capacity to premeditate and deliberate was held admissible. See, e.g., *Commonwealth v. Carroll*, 412 Pa. 525, 194 A.2d 911 (1963); *Commonwealth v. Jordan*, 407 Pa. 575, 181 A.2d 310 (1962); *Commonwealth v. Tyrrell*, 405 Pa. 210, 174 A.2d 852 (1961). The primary issue addressed in those cases was the degree of weight to be given the psychiatric evidence. See Note, *Commonwealth v. Ahearn: Psychiatric Testimony Ruled Inadmissible in Murder Trial to Show Lack of Deliberation and Premeditation*, 71 DICK. L. REV. 100 (1966) [hereinafter cited as *Psychiatric Testimony*].

32. Justice Eagen's dissenting opinion in *Walzack* is premised upon this notion. See 468 Pa. at 224, 360 A.2d at 921.

33. See notes 30 & 31 and accompanying text *supra*.

34. The concern that the admission of psychiatric evidence would constitute an abdic-

standards was reinforced by the belief that acceptance of the doctrine of diminished capacity would greatly endanger the safety of the citizenry by reducing criminal convictions.³⁵

The *Walzack* majority's rejection of the traditional view urged by Justice Eagen has merit. The proposition that psychiatry is an unreliable science is weakened considerably by the admission of psychiatric evidence as reliable and useful in many areas of the criminal law. Psychiatric evidence has been held admissible to show that a defendant is incompetent to stand trial,³⁶ that a defendant acted without malice and in the heat of passion,³⁷ that a defendant's belief he was in imminent danger and had a right to claim self-defense was reasonable,³⁸ and that the defendant did not have the capacity to author a detailed confession.³⁹ Psychiatric evidence is also admissible at the sentencing stage of a trial to guide the judge in fixing an appropriate penalty for the defendant.⁴⁰

Similarly, proof that a defendant was intoxicated or under the influence of drugs has been held admissible to negate the specific intent necessary for a conviction of first degree murder.⁴¹ To deny the defendant an opportunity to negate specific intent with psychiatric evidence of a mental deficiency, therefore, would be unreasonable since alcohol and drug ingestion are often self-inflicted, while a mental illness, which is equally capable of depriving an individual of the capacity to premeditate and deliberate, usually is not.⁴² In

tion of judicial responsibility is arguably unwarranted, since the ultimate decision in the case will be made by the trier of fact and not by the testifying psychiatric expert. See *Commonwealth v. Weinstein*, 442 Pa. 70, 89, 274 A.2d 182, 190 (1971) (Roberts, J., dissenting); *Commonwealth v. Rightnour*, 435 Pa. 104, 120, 253 A.2d 644, 652 (1969) (Roberts, J., dissenting). But see notes 55-57 and accompanying text *infra*.

35. Support for this belief has eroded considerably since the civil commitment provisions of the Mental Health and Retardation Act of 1966 provide the commonwealth with ample means to effect the continued confinement of dangerous individuals who have been acquitted of criminal charges. See PA. STAT. ANN. tit. 50, §§ 4404-06 (Purdon 1969); *Commonwealth v. Weinstein*, 442 Pa. 70, 89, 274 A.2d 182, 190 (1971) (Roberts, J., dissenting).

36. See, e.g., *Commonwealth v. Novak*, 395 Pa. 199, 150 A.2d 102, cert. denied, 361 U.S. 882 (1959); *Commonwealth v. Moon*, 383 Pa. 18, 117 A.2d 96 (1955).

37. *Commonwealth v. McCusker*, 448 Pa. 382, 292 A.2d 286 (1972).

38. *Commonwealth v. Light*, 458 Pa. 328, 326 A.2d 288 (1974).

39. *Commonwealth v. Jones*, 459 Pa. 62, 327 A.2d 10 (1974).

40. See, e.g., *Commonwealth v. McCusker*, 448 Pa. 382, 392 n.15, 292 A.2d 286, 291 n.15 (1972); *Commonwealth v. Wooding*, 355 Pa. 555, 559, 50 A.2d 328, 329 (1947).

41. *Commonwealth v. McCausland*, 348 Pa. 275, 35 A.2d 70 (1944); *Commonwealth v. Lehman*, 309 Pa. 486, 164 A. 526 (1932). See *Diminished Responsibility*, *supra* note 25.

42. *Commonwealth v. Tomlinson*, 446 Pa. 241, 259, 284 A.2d 687, 699 (1971) (Roberts, J., dissenting).

view of the foregoing, the *Walzack* court apparently reasoned that exclusion of psychiatric evidence on the issue of diminished capacity was an unjustified inconsistency, there being no basis upon which the law might discriminate between incapacity by reason of intoxication and incapacity by reason of mental illness.

Surprisingly, the majority failed to discuss the opportunity for cross-examination to test the reliability of the particular psychiatric conclusions involved in the case. The Anglo-American system of law has long recognized cross-examination as the fundamental test of the truth, accuracy, and completeness of testimony.⁴³ Cross-examination affords an opportunity to dissect the psychiatric testimony and can assist the trier of fact in distinguishing between psychiatric fact and personal opinion.⁴⁴ The majority's failure to discuss the safeguards of cross-examination rendered its decision less convincing than it might otherwise have been. Nonetheless, the opportunity for cross-examination does support the majority's reception of the psychiatric testimony as reliable evidence and militates against Justice Eagen's position.

The second theme that had permeated the traditional debate over the doctrine of diminished capacity was the suggestion that recognition of the doctrine was tantamount to acceptance of the irresistible impulse test for insanity.⁴⁵ The M'Naghten test⁴⁶ for insanity has

43. MCCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE § 19, at 43 (2d ed. E. Cleary 1972); 5 J. WIGMORE, EVIDENCE § 1367, at 32 (3d ed. 1940).

44. See note 57 and accompanying text *infra*.

45. The irresistible impulse test is a test for legal insanity which is broader than the M'Naghten standard. See note 46 *infra*. As one commentator characterized the irresistible impulse test:

[T]his rule requires a verdict of not guilty by reason of insanity if it is found that the defendant had a mental disease which kept him from controlling his conduct. Such a verdict is called for even if the defendant knew what he was doing and that it was wrong. . . .

LAFAYE & SCOTT, *supra* note 18, § 37 at 283.

The legal consequence of a successful insanity defense is a finding that the defendant was not criminally responsible for his or her actions, and such a finding is usually followed by commitment of the defendant to a mental institution. *Id.* § 42, at 326. If psychiatric evidence is deemed reliable for the threshold determination of whether an individual may avoid total criminal responsibility for a homicide, it logically follows that such evidence should be deemed reliable for a determination of what degree of homicide a legally sane individual has the capacity to commit. See *Commonwealth v. Ahearn*, 421 Pa. 311, 333, 218 A.2d 561, 572 (1966) (Roberts, J., dissenting).

46. This is the familiar test for insanity which has become the dominant rule in the United States. The rule derives from the famous M'Naghten Case:

[T]o establish a defence on the ground of insanity, it must be clearly proved that, at

been firmly established in Pennsylvania law since the 1846 decision of *Commonwealth v. Mosler*,⁴⁷ and the supreme court has consistently rejected "irresistible impulse" as a supplemental test.⁴⁸ Prior decisions⁴⁹ that treated diminished capacity and irresistible impulse as equivalents, however, failed to distinguish between a determination of a defendant's guilt or innocence and a determination of a defendant's degree of guilt.⁵⁰ Irresistible impulse is a test used in some jurisdictions to prove that an individual was insane at the time he or she committed a criminal act.⁵¹ Criminal responsibility is avoided provided sufficient evidence is available to prove insanity.⁵² In contrast, under the doctrine of diminished capacity, a defendant concedes general criminal responsibility, but psychiatric evidence is admissible to prove the defendant was mentally incapable of committing the degree of crime charged.⁵³ Many jurisdictions embracing the M'Naghten standard employ the doctrine of diminished capacity as a supplement.⁵⁴

While the doctrine of diminished capacity may be a needed modification of Pennsylvania criminal law, the *Walzack* court may have erroneously equated recent advancements in the field of psychiatry with reliability. The majority failed to consider objective data which could measure or test the reliability of psychiatric evidence, thereby

the time of the committing of the act, the party accused was labouring 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 did know it, that he did not know he was doing what was wrong.

M'Naghten's Case, 8 Eng. Rep. 718, 722 (1843).

47. 4 Pa. 264 (1846).

48. See, e.g., *Commonwealth v. Tyrrell*, 405 Pa. 210, 174 A.2d 852 (1961); *Commonwealth v. Woodhouse*, 401 Pa. 242, 164 A.2d 98 (1960).

49. See notes 30 & 31 *supra*.

50. See *Psychiatric Testimony*, *supra* note 31.

51. See note 45 *supra*.

52. The degree of proof necessary will depend upon which test a jurisdiction uses for determining legal insanity. See notes 45 & 46 *supra*.

53. A determination of whether a defendant was motivated by an irresistible impulse reflects upon the defendant's responsibility or irresponsibility for a particular criminal act, as contrasted with a diminished capacity analysis which concedes responsibility but focuses on "degree" of responsibility as measured by the defendant's mental capacity. See Lewin, *supra* note 18, at 243-54; Note, *Commonwealth v. Weinstein: Psychiatric Testimony in Pennsylvania*, 33 U. PITT. L. REV. 650 (1972); *Psychiatric Testimony*, *supra* note 31.

54. *People v. Henderson*, 60 Cal.2d 482, 386 P.2d 677, 35 Cal. Rptr. 77 (1963); *Becksted v. People*, 133 Colo. 72, 292 P.2d 189 (1956); *State v. Gramenz*, 256 Iowa 134, 126 N.W.2d 285 (1964); *People v. Moran*, 249 N.Y. 179, 163 N.E. 553 (1928). See *Diminished Responsibility*, *supra* note 25, at 680.

making difficult the segregation of value judgments and scientific fact. By failing to formulate a test or designate guidelines as to what psychiatric evidence is competent, the court arguably disregarded the limitations of the science. In future cases, the trier of fact will have the difficult task of determining how much psychiatric testimony is based on psychiatric fact and how much is based upon the personal values of the expert who is testifying.⁵⁵ The deliberations of the jury may become exceedingly complicated if manufactured psychiatric evidence is submitted.⁵⁶ Finally, the danger is posed that the expertise of all psychiatric evidence will be taken for granted, with the decisions of the fact finder resulting from scientific intimidation rather than free choice.⁵⁷

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55. Halleck, *A Troubled View of Current Trends in Forensic Psychiatry*, 2 J. PSYCH. & L. 135, 138 (1974) [hereinafter cited as Halleck].

56. See 468 Pa. at 225, 360 A.2d at 922 (Eagen, J., dissenting).

57. Halleck, *supra* note 55, at 138-39. Guidelines concerning the reliability of psychiatric evidence will insure that the psychiatrist's role is that of an expert witness rather than a decision-maker on the issue of a defendant's criminal responsibility for a particular degree of crime. Although the trier of fact is the ultimate decision-maker, the psychiatrist has often been exploited to provide pseudo-scientific rationalization for decisions the fact finder would reach in any event. See S. HALLECK, *PSYCHIATRY AND THE DILEMMAS OF MODERN CRIME* 207-28 (1967).

