

BRIEF FOR AMERICAN PSYCHOLOGICAL ASSOCIATION
AMICUS CURIAE

In the
United States Court of Appeals
For the District of Columbia Circuit

No. 16,306

Vincent E. Jenkins, Appellant,

v.

United States of America, Appellee.

Appeal from the United States District Court
for the District of Columbia

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For American Psychological
Association
Amicus Curiae

Filed prior to Oral Argument, February 9, 1962.

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UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 16306

Vincent E. Jenkins, Appellant

v.

United States of America, Appellee

Appeal from the United States District Court for the District of Columbia

BRIEF FOR AMICUS CURIAE

I

STATEMENT OF THE CASE

In the Court below, defendant was convicted of the crimes of housebreaking with intent to commit an assault, assault with intent to rape, and assault with a dangerous weapon. At the trial, defendant relied solely upon the defense of insanity. In support of this defense, defendant presented the testimony, inter alia, of three clinical psychologists with from three to twenty-five years' clinical experience, who had received Ph.D. degrees in institutions approved for clinical training by the American Psychological Association. (1)

One of these three was the Chief Psychologist of St. Elizabeth's Hospital; one was the Chief Psychologist of the District of Columbia General Hospital; and the third was a psychologist on the Staff of St. Elizabeth's Hospital at the time he examined the defendant. (2)

Upon the basis of personal contact with the defendant, review of his case history, and upon the basis of the results of standard psychological tests administered by these psychologists or under their direction, they all testified that on the date the alleged crimes were committed, defendant had been suffering from schizophrenia. One of the three testified that he could give no opinion concerning the relationship between the illness and the crimes but the other two gave it as their opinions, respectively, that the disease and the crimes were "related", and that the crimes were the product of the illness. (3)

At the conclusion of the trial, the judge instructed the jury to disregard the opinions of the psychologists.

On appeal to this Court from the conviction, the panel of the Court which heard the case held, inter alia, one judge dissenting, that the Trial Court had committed reversible error in excluding the expert opinions of the psychologists.

Upon motion of the Government, the Court ordered a rehearing en banc limited to the issue of the correctness of

"* * * the ruling of the District Court which excluded from consideration by the jury the testimony of the psychologist concerning the existence and effects of the 'mental disease or defect.'"

By motion filed January 15, 1962, the American Psychological Association sought leave to file this brief amicus curiae with respect to the issue stated above. Neither appellant nor appellee opposed the motion and the Court granted it by order dated January 29, 1962.

II

STATEMENT OF INTEREST OF AMICUS CURIAE

The American Psychological Association, hereinafter sometimes referred to as "the Association," is the only national membership organization of the profession and science of psychology. As such it has a vital interest in endeavoring to aid the Court in reaching a correct understanding of and decision upon the issue presented in this rehearing.

The Association has been in continuous existence since its foundation in 1892. At present the Association has in excess of 20,000 members, which number includes a majority of the qualified psychologists in this country.

There are three classes of membership in the Association, namely, Fellows, Members, and Associates.

The minimum standards for Fellow status are (a) a doctoral degree based in part upon a psychological dissertation conferred by a graduate school of recognized standing, (b) prior status as a Member for at least one year, (c) active engagement at the time of nomination in the advancement of psychology in any of its aspects, (d) five years of acceptable professional experience subsequent to the granting of the doctoral degree, and (e) evidence of unusual and outstanding contribution or performance in the field of psychology. (4)

The minimum standard for election to Member status is the receipt of the doctoral degree based in part upon a psychological dissertation and conferred by a graduate school of recognized standing. In addition, candidates for Member status must be engaged in study or professional work that is primarily psychological in nature. (5)

The minimum standard for election to Associate status is: (a) completion of at least two years of graduate work in psychology in a recognized graduate school, or (b) the Master's degree in psychology from a recognized graduate school plus a year of acceptable experience in professional work that is psychological in nature. In addition, candidates for Associate status must be devoting full time to professional or graduate work that is primarily psychological in nature. (6)

Only those having the status of Fellows or Members are eligible to vote or hold office in the Association. (7)

The purposes of the Association, as stated in Article I of its Bylaws are as follows:

- "1. The objects of the American Psychological Association shall be to advance psychology as a science and as a means of promoting human welfare by the encouragement of psychology in all its branches in the broadest and most liberal manner; by the promotion of research in psychology and the improvement of research methods and conditions; by the improvement of the qualifications and usefulness of psychologists through high standards of professional ethics, conduct, education, and achievement; by the increase and diffusion of psychological knowledge through meetings, professional contacts, reports, papers, discussions, and publications; thereby to advance scientific interests and inquiry, and the application of research findings to the promotion of the public welfare."

Article V of the Association's Bylaws provides for the creation of Divisions within the Association to represent major scientific and professional interests in the general field of psychology. At present there are twenty such Divisions within the Association. They are:

- Division of General Psychology
- Division on the Teaching of Psychology
- Division of Experimental Psychology
- Division on Evaluation and Measurement
- Division on Developmental Psychology
- Division of Personality and Social Psychology
- The Society for the Psychological Study of Social Issues--A Division of the APA
- Division on Esthetics
- Division of Clinical Psychology
- Division of Consulting Psychology
- Division of Industrial and Business Psychology
- Division of Educational Psychology
- Division of School Psychologists
- Division of Counseling Psychology
- Division of Psychologists in Public Service
- Division on Military Psychology
- Division on Maturity and Old Age
- The Society of Engineering Psychologists--A Division of the APA
- National Council on Psychological Aspects of Disability--A Division of the APA
- Division of Consumer Psychology

The psychologists whose testimony is the subject of this rehearing are members of the Association. In addition, one is a Member of the Division of Clinical Psychology; another a Fellow of that Division, as well as a Fellow of the Association. The latter (the Chief Psychologist of St. Elizabeth's Hospital) is also a Diplomat of the American Board of Examiners in Professional Psychology--a mark of professional standing of which more will be said in Part IV, B, of this brief.

III

SUMMARY OF ARGUMENT

1. A qualified psychologist is competent to state, as an expert witness, his professional opinion upon matters within the scope of his qualifications.

2. A clinical psychologist is competent in a criminal proceeding to give an expert professional opinion as to the nature of and the existence or non-existence of mental disease or defect in the accused and as to the causal relationship or lack thereof, between such mental disease or defect and the crime or crimes for which the accused is on trial.

3. In the case at bar, the panel which first heard this appeal properly held that the Trial Judge committed error when he excluded from the jury's consideration the testimony of the psychologists as to the mental condition of the defendant on the day of the crimes, and the causal relationship between his mental condition and the crimes for which he was on trial.

IV

ARGUMENT

A

PSYCHOLOGY IS AN ESTABLISHED SCIENCE

In any inquiry as to the testimonial competence of a psychologist to express an expert professional opinion, it is important to understand that psychology is an established science which makes use of the same fundamental methods of investigation and inquiry and the same criteria of objectivity and thoroughness as are used in all recognized scientific disciplines.

Psychology, the science of human behavior, has its origins in many areas of inquiry. It grew in part from the great philosophical concerns with human behavior and conduct. Its immediate origins as a science, however, can be placed in the period of scientific development in the mid-nineteenth century. It was at the University of Leipzig in 1879 that Professor Wilhelm Wundt established the first laboratory in scientific psychology. Since that time the major emphasis in the development of psychology has been along scientific lines with increased application of the results of research to a wide variety of problems of human behavior.

It is interesting to note that the first intelligence test, the derivative of which are so widely used today in education, industry, government, and institutions, was developed in 1905 by Alfred Binet, a French psychologist who was Director of the Psychological Laboratory at the Sorbonne. The first American adaptation of this test was published the same year, but the 1916 Stanford Revision set the pattern for the measurement of mental ability throughout the United States. Further modified in 1937 as the Revised Stanford-Binet Scale, and again modified in 1960, this test continues to be extensively used today.

From a scholarly discipline and science developed mainly in university centers, the result of psychological effort has become recognized as capable of application in many fields of human activity. In the interval between the two World Wars, applications were taking place in business and industry and in

education. During World War II, the methods and techniques developed by psychologists found extensive application in the wide range of events covered by the war years, and played a vital role in the recruitment, selection, classification, assignment, and training of individuals accepted for military service. Newer applications of psychology were possible in such areas as psychological warfare, aviation and submarine operations, treatment of casualties and offenders, design of equipment, such as radar, with a view towards the best utilization of the skills of the human operator, food and nutrition research, the effect of drugs on behavior, morale and productivity of groups and a host of other problems. Since World War II, new and vitally important practical uses of the skills of psychologists have taken place at a remarkable rate.

The foundation stone, however, of all developments of ^{the} field continues to be a rigid adherence to the principles of science, to a belief in the value of empirical evidence and verification, and to the development of appropriate theory. These are some of the processes which differentiate the sciences from other approaches to the understanding of human behavior.

B

THE PRACTICE OF PSYCHOLOGY IS A LEARNED PROFESSION

As in the case of all sciences, a distinction may be drawn between psychologists whose total or primary endeavors are devoted to basic research and those whose total or primary endeavors are devoted to using their scientific skills and knowledge for the solution of practical problems and the achievement of practical results. Since the founding of the American Psychological Association, the number of psychologists engaged in work of the latter sort has greatly increased. From a primarily academic discipline pursued almost exclusively in the colleges and universities, psychology has developed a full-fledged professional segment. For example, it is estimated that of the more than 20,000 members of the American Psychological Association, approximately half find their primary employment in academic work, and the remainder find their primary employment in Federal, state, and municipal government, in private practice, and in business and industry.

In the course of the development of psychology as a science and profession, the Association has formulated a code of ethics known as Ethical Standards of Psychologists. The professional obligations of psychologists and their responsibilities to the public as professional men are expressed in the Preamble and first Principle of the Ethical Standards as follows:

"The psychologist is committed to a belief in the dignity and worth of the individual human being. While demanding for himself the rights of freedom of inquiry and freedom of communication, he accepts the responsibilities that these freedoms imply. He maintains integrity with respect to the facts of his science and in his relationships with other psychologists and with the public. He does not use his psychological knowledge or insights to secure personal advantage, nor does he knowingly permit his services to be used by others for purposes inconsistent with his own ethical standards."

"Principle 1. General. The psychologist, committed to increasing man's understanding of man, places high value on objectivity and integrity, and maintains the highest standards in the services he offers."

"a. As a scientist, the psychologist believes that society will be best served when he investigates where his judgment indicates investigation is needed; he plans his research in such a way as to minimize the possibility that his findings will be misleading; and he publishes full reports of his work never discarding without explanation data which may modify the interpretation of results."

* * * *

"c. As a practitioner, the psychologist knows that he bears a heavy social responsibility because his work may touch intimately the lives of others."

Further emphasizing the duty of psychologists to maintain high standards, Principle 2 of the Ethical Standards of Psychologists reads in part as follows:

"Principle 2. Competence. The maintenance of high standards of professional competence is a responsibility shared by all psychologists, in the interest of the public and of the profession as a whole."

* * * *

"b. The psychologist recognizes the boundaries of his competence and the limitations of his techniques and does not offer services or use techniques that fail to meet professional standards established by recognized specialists in particular fields."

Additional safeguards dealing with standards of practice are contained in Psychology and Its Relations with Other Professions, a document drawn up by the Association and adopted by it in 1953. Principle 5.3 of this document reads as follows:

"Principle 5.3. In situations in which psychologists share their applied functions with members of other professions, or work in association with them, psychologists accept the obligation:

a. to abide by all applicable legal provisions surrounding the rendering of such professional service;

b. to know and take into account the traditions, mores, and practices of the professional group or groups with whom they work;

c. to collaborate fully with all members of the professional groups with whom a service function is shared."

The Association has been seriously concerned with the problems of education and training in psychology. Among the permanent Boards and Committees of the Association is the Education and Training Board. By Article X, paragraph 9 of the Association's Bylaws, this Board is charged with "general concern for all educational and training affairs which involve psychology. . . ." Among other duties, this Board has the continuing responsibility for reviewing

and reporting upon the adequacy of graduate training programs in clinical and counseling psychology offered by the different colleges and universities. A list of approved universities is maintained and published. Additionally, the Board also evaluates and approves a list of predoctoral internships in clinical and counseling psychology which meet minimal qualifications.

The Association's evaluation of educational institutions has been going on since 1947. This practice is analogous to the practice of the American Bar Association in conferring or withholding approval of Law Schools. The evaluation program was started at the request of the Veterans Administration and the United States Public Health Service, which had a vital need for reliable information as to the adequacy of graduate training programs in the areas of clinical and counseling psychology, and looked to the American Psychological Association as the authoritative source of such information.

All recognized educational institutions with departments of psychology that offer advanced training utilize a variety of selection techniques for admitting students to such advanced training. Some of these are: analysis of collegiate records and previous training, evaluations and recommendations from professors, special qualifying examinations such as the Graduate Record Examination and the Miller Analogies Test, and personal interview.

Over and above these evaluations, there was established in 1947, the American Board of Examiners in Professional Psychology. This organization confers Diplomate status upon those individuals who are judged to be qualified. The basis for evaluation is experience and the successful completion of rigorous oral and written examinations. Those individuals who have demonstrated their competency are awarded Diplomate status in one of three areas: Industrial Psychology, Counseling Psychology, and Clinical Psychology. (8) The last of these specialties is of particular relevance to the case at bar. Through August 1961, 1520 Diplomas had been issued by the American Board; of which 1100 were in clinical psychology, 243 were in counseling psychology, and 177 were in industrial psychology.

In addition to the intra-professional standards and criteria of status discussed above, the profession of psychology is now given legal recognition in the statutes of seventeen states, four of which have licensing requirements and thirteen of which have certification requirements for psychologists. (9) It is interesting to note that in eleven of these seventeen states, clients of psychologists are granted a testimonial privilege similar to the attorney-client privilege. (10)

In view of all of the foregoing, it is submitted that psychology in its present state of development is clearly an established science and that psychologists are clearly engaged in the practice of an established profession. It would obviously be foolish to assert that any psychologist is testimonially competent to express an expert professional opinion upon all questions relating to the science of psychology. In fact, the Association would oppose any such rule as being contrary to the professional standards to which it and its membership adhere. It is submitted, however, that a psychologist is clearly competent under well-established rules of evidence, to testify as an expert upon matters within the scope of his professional experience.

A CLINICAL PSYCHOLOGIST IS COMPETENT TO EXPRESS PROFESSIONAL OPINIONS UPON THE EXISTENCE OR NON-EXISTENCE OF MENTAL DISEASE OR DEFECT AND UPON THEIR CAUSAL RELATIONSHIPS TO OVERT BEHAVIOR

As will have been noted from the earlier portions of this brief, clinical psychology is given distinct recognition by the Association as a special field within the general science of psychology, requiring its own standards of professional training and competence. Mention has already been made, for example, of the Association's practice of continuously reviewing and approving or withholding approval of the training programs offered by the various colleges and universities in this field.

In addition, the Association has developed and published minimum standards for graduate training programs in clinical psychology. These minimum standards have been synthesized into a statement of fourteen principles. (11) It is believed that the following excerpts from these fourteen principles will furnish a clear picture of the training standards required for a clinical psychologist:

- "1. A clinical psychologist must first and foremost be a psychologist in the sense that he can be expected to have a point of view and a core of knowledge and training which is common to all psychologists..."
- "2. The program of education for the doctorate in clinical psychology should be as rigorous and extensive as that for the traditional doctorate. In general this would represent at least a four-year program which combines academic and clinical training throughout but which includes intensive clinical experience in the form of an internship."
- "3. Preparation should be broad; it should be directed to research and professional goals, not to technical goals. Participants should receive training in three functions: diagnosis, research, and therapy, with the special contributions of the psychologist as a research worker emphasized throughout."
- "4. In order to meet the above requirements the program calls for study in six major areas: a. General psychology; b. Psychodynamics of behavior; c. Diagnostic methods; d. Research methods; e. Related disciplines; f. Therapy. Such a program should go far towards reducing the dangers inherent in placing powerful instruments in the hands of persons who are essentially technicians, persons who from the standpoint of the academic group have no real foundation in a discipline, and who from the standpoint of the clinical group have no well-rounded appreciation of the setting in which they function."
- "5. The program should concern itself mainly with basic courses and principles rather than multiply courses in technique"
- "6. Courses should be scrutinized for their content, rather than judged by their titles. Equally important is the way the content is handled,

that is, the quality of the teaching. Other factors to be evaluated are the internal integration of the course and its integration with other courses, both academic and field"

"7. The specific program of instruction should be organized around a careful integration of theory and practice, of academic and field work, by persons representing both aspects."

"8. Through all four years of graduate work the student should have contact, both direct and indirect, with clinical material."

"9. . . .Equally important is the need for contact with normal material. Opportunities should be provided to enable the student to become acquainted with the range of normal and borderline persons who never establish clinical contacts. Such training is essential in order to keep the student balanced in his interpretation and understanding of the abnormal."

"10. The general atmosphere of the course of training should be such as to encourage the increase of maturity, the continued growth of the desirable personality characteristics earlier considered. The environment should be 'exciting' to the degree that the assumed 'insatiable' interest in psychological problems is kept alive, the cooperative attitude strengthened, and the passivity usually associated with so much of traditional teaching kept at a minimum. The faculty must recognize its obligation to implant in students the attitude that graduate work is only the beginning of professional education."

"11. . . .The program should do everything possible to bring out the responsibilities associated with the activities of the psychologist. There should be persistent effort to have the student appreciate that his findings make a real difference to a particular person and to that person's immediate group."

"12. A systematic plan should be laid to use representatives of related disciplines for teaching the trainee in clinical psychology, and opportunities for joint study with students in these disciplines should be provided."

"13. Throughout the course of training there should be an emphasis on the research implications of the phenomena with which he is faced, so much so that the student is finally left with the set constantly to ask 'how' and 'why' and 'what is the evidence' about the problems with which he is faced."

"14. In addition to the research implications of the data he should become sensitive to the social implications; he must acquire the ability to see beyond the responsibilities he owes to the individual patient to those which he owes to society."

As can be noted from the foregoing excerpts, the principal functions of the clinical psychologist are threefold, namely: (1) diagnosis, (2) therapy, and (3) research. These three functions are closely interrelated. From the

standpoint of the profession of psychology, no one of them is of greater importance than the others. However, the diagnostic function is obviously the most relevant to the issue to be decided in the case at bar. For this reason, the diagnostic function will be discussed in this brief, to the exclusion of the therapy and research functions.

In the diagnosis of mental disease and mental defect, including the formulation of professional opinions as to causal relationships between mental disease or defect and overt behavior, a principal tool of the clinical psychologist is found in psychological tests. These tests fall into two major categories.

The first category consists of tests designed to measure a broad band of abilities or capacities by requiring a person to answer specific questions which can be unequivocally scored as correct or incorrect. The Stanford Binet test, mentioned on page 7 of this brief, is one of the best known tests of this sort. Another is the Wechsler-Bellevue Intelligence Scale, which, as the Court will recall, was one of the tests administered to the defendant in this case. The Wechsler-Bellevue Scale was specifically designed for testing adults and ranks first in frequency of use among all psychological tests designed to measure individual intelligence.

The second major category of psychological tests is designed to reveal information about the personality structure and emotional make-up of a person. In tests of this kind, there is obviously no such thing as a right answer or a perfect score. Rather, the person's responses are classified by comparison with those of defined groups of people exhibiting differential personality or emotional characteristics.

Personality tests, themselves, are of two basic types. The first type is represented by the personality inventory which seeks to obtain information about an individual's personality by having him select statements which most nearly describe his feelings or behavior. One of the most widely known of these tests is the Minnesota Multiphasic Personality Inventory, often used in education, business and industry.

The second type of personality test is represented by the projective instrument which seeks to stimulate a person to project or reveal his personality or emotions through his interpretation of or reaction to materials that are not in question and answer form. The person may be asked to tell what he sees in patterns derived from ink blots, as in the Rorschach Test; to select pictures of people he particularly likes and dislikes, as in the Szondi Test; or to tell a story about what is going on in a series of action pictures, as in the Thematic Apperception Test; or to copy groups of dots, lines and geometrical figures as in the Bender-Gestalt Test; or to draw a picture of a man or woman as in the projective drawing tests.

In general, both ability and personality tests are based on extensive normative samples of human behavior, developed according to established principles of psychological measurement, and standardized in administration to eliminate, insofar as possible, extraneous factors which might affect the interpretation of their results.

Infallibility is not claimed for any psychological test, and no professional psychologist would assert that he could reach a valid diagnosis upon the basis of test results alone. However, the use of test results, in conjunction with a review of a person's history and evaluative interviews, can be extremely useful to the clinical psychologist in reaching informed opinions as to the nature and existence of non-existence of mental disease or defect in a given subject and as to the causal relationship or lack thereof between such mental disease or defect and the subject's overt behavior.

As stated by a leading authority on psychological tests: (12)

"All in all, psychological testing is an accomplishment its developers may well boast of. Errors of measurement have been reduced year by year, and the significance of tests has been increased, until today all facets of American society feel the impact of the testing movement. The school, industry, marriage, governmental policy, and character-building agencies have all been aided by tests. Interpretations of test data are daily creating better lives by guiding a man into a suitable lifework, by placing an adolescent under therapy which will avert mental disorder, or by detecting causes of a failure in school which could turn a child into a beaten individual. Methods are now available which, if used carefully by responsible interpreters, can unearth the talents in the population and identify personality aberrations which could cause those talents to be wasted. Building on these techniques we are in a position to capitalize as never before on the richness of human resources."

D

EXPERIENCE IS THE ESSENTIAL LEGAL INGREDIENT OF COMPETENCE
TO GIVE AN EXPERT OPINION

Although the question presented upon this rehearing is one of first impression in this jurisdiction, it does not involve any new or novel legal principles, but rather involves the application of well-established and simple legal principles to a factual situation which this Court has not heretofore been asked to consider.

The fundamental legal principle governing the competence of a witness to express a professional expert opinion is in essence no different from that which governs the competence of any witness to testify in a judicial proceeding. As has been aptly observed by Wigmore, (13) the essential qualification of any witness, lay or expert, is that he have sufficient experience with the subject of his testimony to enable him to testify reliably. In the case of the lay witness, this essential experience is usually nothing more than suitable ability and opportunity to observe and remember the event or occurrence as to which he testifies. Except in the case of children of tender years and perhaps a few other special cases, it is assumed that the lay witness possesses these essential requisites and he is not required to demonstrate them before giving the substance of his testimony.

In the case of the expert witness there must be a showing that he possesses some special and peculiar experience before he is permitted to proceed to the substance of his testimony. However, there is nothing arcane about this requirement of a showing of special and peculiar experience. As stated by Wigmore:

"This special and peculiar experience may have been attained, so far as legal rules go, in any way whatever; all the law requires is that it should have been attained. Yet it is possible here to group roughly two classes of experience which are usually, though not necessarily, found separately:

- (a) There is, first an occupational experience,--
- (b) There is, secondly, a systematic training

Now, the line, if any can be drawn, between these two has no general legal significance. In truth, no accurate line can be drawn. Each shades into the other imperceptibly. In some instances, the witness will need both; in some instances he may have both, though he does not need both. Neither is generally favored above the other by the Courts. The question in each instance is whether the particular witness is fitted as to the matter in hand." (14)

Applying the foregoing basic principle to the issue presented upon this rehearing, we submit that the clinical psychologist is fully qualified both by occupational experience and by systematic training to express a professional expert opinion in a criminal case upon the existence or non-existence of mental disease or defect in the defendant and the causal relationship or lack of causal relationship between such mental disease or defect and the criminal conduct with which the defendant is charged.

It is submitted that the case of People v. Hawthorne, (1940) 293 Mich. 15, 291 N.W. 205, cited and discussed in the briefs of both appellant and appellee herein, illustrates the correct application of established legal principles to the question of the clinical psychologist's competence to testify in criminal cases as an expert witness of professional standing. In that case, a defendant charged with murder proffered a psychologist as an expert witness in support of his defense of insanity. The trial court refused to permit the psychologist to give his professional opinion upon the defendant's mental condition in response to a hypothetical question. On appeal from conviction, a majority of the Supreme Court of Michigan, although affirming the conviction upon other grounds, joined in an opinion declaring that the trial court had erred in rejecting the professional opinion of the psychologist. In reaching this conclusion, and in rejecting the argument that only a doctor of medicine should be permitted to give such testimony, the opinion states:

"There is no magic in particular titles and degrees, and in our age of intense scientific specialization we might deny ourselves the use of the best knowledge available by a rule that would immutably fix the educational qualifications to a particular degree."

CONCLUSION

In light of the foregoing it is clear that psychology is an established science and profession. It is also clear that psychologists are highly trained experts in their profession. As an adjunct to these conclusions it is also clear that the clinical psychologist, through systematic professional training and through professional experience, is qualified to formulate and express expert professional opinions in the field of mental disease and mental defect.

By reason of this professional competence, it is submitted that the clinical psychologist is fully qualified under the established legal principles governing competence of expert witnesses, to express a professional expert opinion in criminal cases upon the issues governing criminal responsibility under the Durham rule.

For these reasons it is respectfully urged that the issue presented upon this rehearing was correctly decided by the panel of this Court that first heard this appeal.

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AMICUS CURIAE

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- (1) This Court's Slip Opinion of October 26, 1961, in this case, p. 12.
 - (2) Ibid.
 - (3) Id., at p. 9.
 - (4) Bylaws of the American Psychological Association, Article II, Paragraphs 2 and 3.
 - (5) Id., Article II, Paragraphs 4 and 5.
 - (6) Id., Article II, Paragraphs 6 and 7.
 - (7) Id., Article II, Paragraph 6.

- (8) See Kelley, Sanford, and Clark, The Meaning of the ABEPP Diploma, 15 AM. Psychol. 132.
- (9) Arkansas Statutes, Section 72-1501 et seq.
California Code, Business and Professions, Section 2900 et seq.
Session Laws of Colorado (1961), p. 594 et seq.
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(Education Law), Section 7601 et seq.
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Code of Virginia (1950), Title 54, Section 103 et seq.
Revised Code of Washington, Sections 18.83.010 et seq.
- (10) Arkansas Statutes, Section 72-1516.
California Code, Business and Professions, Section 2904.
Session Laws of Colorado (1961), p. 603.
Code of Georgia, Chapter 84, Section 3118.
Kentucky Revised Statutes, Chapter 319.110.
Michigan Statutes, Section 14.677 (18).
New Hampshire Revised Statutes, Chapter 330A:19.
McKinney's Consolidated Laws of New York, Book 16, Part 3,
(Education Law), Section 7611.
Tennessee Code, Section 63-1117.
Utah Code (1953), Title 58-25-9.
Revised Code of Washington, Sections 18.83.110.
- (11) See Report of the Committee on Training in Clinical Psychology of the American Psychological Association, 2 AM. PSYCHOL. 539, 543-545.
- (12) Cronbach, Lee J. ESSENTIALS OF PSYCHOLOGICAL TESTING, New York, Harper and Brothers, 1960, Pages 607-608.
- (13) WIGMORE ON EVIDENCE (3rd. Ed.) Vol. II, Sections 555, 556.
- (14) Id., Section 556.