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## Book Review: Insanity Defense: By Richard Arens

Gustav Goldberger

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## BOOK REVIEW

INSANITY DEFENSE: By RICHARD ARENS

*Philosophical Library, Inc.*, New York, N.Y., 1974. Pp. 328

**I**T IS NOT OFTEN that the average criminal trial lawyer will seriously contemplate the use of the insanity defense. The law presumes a defendant sane and counsel will naturally attribute sanity to his client unless obvious signs trigger the consideration of the insanity defense.

Richard Arens in the writing of his book, *Insanity Defense*, has made a significant contribution to legal literature because he speaks to those unfamiliar with the problems and pitfalls associated with insanity as a legal defense. Further, he does so in an interesting and captivating style.

The reader's interest is particularly sparked as the author recounts specific cases that he personally litigated. In fact, a portion of the book contains the actual transcript of court proceedings. All of this lends itself to a lively presentation of the subject matter leading up to the moral of the story which appears to be that the *Durham* test of insanity—whether the accused acted because of a mental disorder—never caught on in the District of Columbia Courts. Perhaps even more important, the author strongly suggests that there exists in the District of Columbia a conspiracy of sorts between the D.C. courts, the prosecution and the St. Elizabeth hospital staff which has as its conspiratorial goal to keep drug addicts, epileptics, sex perverts and victims of delusionary and hallucinatory experiences out of the realm of the insanity defense without regard to whether or not in fact such persons are mentally ill. The apparent motive is simply the lack of facilities at the mental hospital.

Thus, *Insanity Defense* details and expresses very strong negative and irrational behavior on the part of certain judges and hospital personnel in Washington, D.C., as pertains to the concept and procedure of the insanity defense.

Without detracting from its significance as a work on the subject of insanity and the law, the instant book does have shortcomings in the opinion of this writer.

*Insanity Defense* as a book is not very well organized in terms of context and material and generally does not measure up as a scholarly treatise. This is somewhat of a disappointment because the author does indeed have impressive credentials as Professor of Law at the University of Toronto and Visiting Professor of Law at Temple University.

Perhaps the principal defect from the standpoint of legalistic value lies in the fact that the author relates his personal experience as an

adversary, expecting the reader to conclude that this limited experience in one jurisdiction establishes a pattern for all other jurisdictions.

Throughout the book there are consistent references to thoughts, statements and actions on the part of the author either quoted from transcripts or otherwise which by way of ridicule would have those that disagree with Mr. Arens be wrong. This tone of ridicule is particularly directed toward one judge and toward the St. Elizabeth hospital staff. In fact, the book could be interpreted to be a personal effort by the author to vindicate himself with respect to his many frustrations with the court and said hospital and all at the expense of the reader's patience. After all, what practicing lawyer has not experienced a hostile court and hostile expert witnesses with opposing opinions? Richard Arens is no exception and in the context of that fact, his experience in D.C. really does not present to the reader an objective picture of the subject matter presented. This writer, for example, has great difficulty in assessing whether the author's hostility is due to a personality clash or whether in fact such a hostile presentation is justified.

Richard Arens has fallen victim to his own emotional involvement and is almost paranoid in his characterization of those opinions that differ sharply from his—be they judges or psychiatrists. He has failed to focus attention on other jurisdictions as a means of comparing ways of handling similar problems. The author has established no statistical validity for the conclusions reached.

To the lawyer the book fails as reference material. It contains no index and has a poorly designed list of contents. In at least one instance, the citation checked was erroneous.

In spite of these shortcomings, one cannot help but feel that the problem presented by Richard Arens is a national one and, to be sure, that impression is well made and in all probability is well taken. Certainly, the author has demonstrated that at least in Washington, D.C., there is strong judicial and medical resistance to the *Durham* test and that in the course of time it has been eroded to the point where it no longer exists—almost as a matter of law. The author has effectively demonstrated that government psychiatrists in the District of Columbia do not have as their primary concern the personal interest and welfare of each individual patient. Their overriding concern is rather on the more practical, to wit: are there sufficient beds at the hospital to effectively care for those that they do certify as mentally ill?

It is most difficult to determine what tests are actually applied by the D.C. courts in lieu of *Durham*. To be sure, the opinions of government psychiatrists are as a matter of record couched in language consistent with *Durham*. Yet the spirit of that opinion has effectively been ignored. One must conclude that the test is still valid but that it is entirely controlled by the government psychiatrists and that the courts are prone

not to disturb their judgment in the matter.

It is suggested by the author—and this writer agrees—that a partial solution to the apparent inequity would be to make available to indigent defendants a panel of psychiatrists of their own choosing. Courts would then be exposed to differing views as to the nature of mental illness; and in time decisions in this field would reflect a greater awareness, perception and understanding of the complex problems involved.

The private practitioner as well as public defenders would be well counseled to take the government psychiatrist to task in any case where the sanity of their client is in question. It is incumbent upon the trial attorney to seek out the opinions of other doctors in an effort to present a more balanced psychiatric evaluation of the defendant to the court. Only in that way can the defendant be assured of a proper defense to which he is entitled, and as interpreted by *Durham*.

One cannot seriously argue with the philosophy urged by the author which would have many more accused persons treated as mentally ill. It is, however, somewhat arrogant and presumptuous to take the position as stated earlier that judges and psychiatrists that disagree with this approach are necessarily violating the constitutional rights of those determined not to be mentally ill. It is all a matter of judgment—for better or for worse—by those professionals who preside over a branch of medicine called psychiatry which admittedly is far from being an exact science.

Finally, *Insanity Defense* stirs up the kind of controversy most stimulating to those who are most interested in the subject, be they lawyers, social scientists, medical men or lay persons. It is recommended reading to all criminal lawyers who contemplate the use of the insanity defense and who desire good and effective approaches as well as solid arguments in favor of the liberalized view of insanity as enunciated in *Durham*.

GUSTAV GOLDBERGER \*

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\* B.A., Sir George Williams University, Montreal, Canada; J.D., Rutgers State University Law School; Deputy Director, Summit County Legal Defender's Office, Akron, Ohio.