

that responsibility is diminished from full responsibility to partial responsibility – in other words the prisoner in question must be only partially accountable for his actions. And I think one can see running through the cases that there is implied that there must be *some form of mental disease*.”*

A recent appeal (Connelly v HMA 1990) established that all these criteria must be met, in particular “there is something in the mental condition of the accused which can properly be described as a mental disorder or a mental illness or disease.” It had been Dr B’s assertion that these criteria had not been met as there must be evidence of actual mental disease. An essential question is whether or not you can claim that findings from the new techniques (in themselves) do, or do not, indicate the presence of mental disease. Dr A took the view that mental disease had been demonstrated, although as with any investigation the results would be open to interpretation.

In advising the jury in the case of Mr W, the Judge emphasised that diminished responsibility is a question of fact as determined by the jury on the balance of probabilities. It is not enough to establish that mental disease or a defect in brain function is present, it must exhibit itself as mental disease as one would ordinarily understand it. In 1946 Lord Justice-General Normand put it more forcefully (Carracher v HMA), when he said that a trial should not be “subordinated to medical theories.” The latter at

present seems to apply equally to brain imaging techniques and conclusions drawn from them.

(*Author’s italics)

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