acquittals by reason of insanity in the District of Columbia. The statistical experience is as follows: [22]

Fiscal year	Defendants tried	Defendants acquitted by reason of insanity	Percentage insanity acquittals of defendants tried
1953	1,017	3	0.29
1954	600	9	1.5
1955	485	12	2.5
1956	503	21	4.2
1957	485	12	2.5
1958	570	21	3.7
1959	525	35	6.7
1960	438	36	8.2
1961	521	66	12.7
1962	516	67	13.0

One cannot say that the present rate of insanity acquittals is too high or too low, without a fixed standard of comparison and without knowing whether that standard is sound or unsound. Perhaps before *Durham* too few were acquitted, and perhaps now too many. Certainly even a prosecutor cannot proceed from the premise that the insanity defense should never succeed. However, it is likely that such acquittals, as a percentage of total defendants tried, is higher in the District of Columbia than in any jurisdiction in the United States.

A very significant fact that the statistics cited above do not reveal is that between two-thirds and three-fourths of our insanity acquittals are uncontested acquittals by the court sitting without a jury, upon waiver by both sides. Cases are handled in that fashion when the examining staff panel at the hospital is unanimous that the defendant had mental disease and that the crime was a product. When the Government lacks any contrary evidence and believes that the medical staff judgment is well supported, it simply submits its case-in-chief and offers, and indeed possesses, no rebuttal on responsibility. In cases of this kind, it would probably make little difference whether the District of Columbia had *Durham*, the American Law Institute proposal, or *McDonald*. Doctors who will not make a finding of mental disease without being satisfied that there is a substantial deprivation of behavior control would probably find the same way under all three tests. Apparently they were satisfied of this in these uncontested cases where the panel was unanimous. And in such cases, of course, one would expect the same result from the liberal medical school which tends to infer mental disease from criminal conduct.

In more difficult cases, however, amounting to one-fourth to one-third of the cases where the issue is raised, it may be that the more skeptical school of medical thought will find fewer cases of mental disease under *McDonald* than under *Durham*. It is too early in *McDonald's* career to know. I have my doubts. I think the same medical approach will be used as formerly. The behavioral consequence of mental disease is now part of the *legal* definition, but that fact will not much alter the analysis of a doctor who always used it, anyway. The real point is that the skeptical school of medicine appears to be dying out among the government staff physicians. This fact is far more important than the legal difference between *Durham* and *McDonald*. My own guess is that insanity acquittals will continue on the rise. It may very well be that the relevant question is not so much whether *Durham* or the Model Code is the preferable legal test of responsibility, as what kind of psychiatrists will administer either standard. I do not believe that the adoption of the Model Code provision in the District of Columbia would make nearly as much difference in the analysis of psychiatrists or in the acquittal rate as would a less liberal attitude on the part of the medical profession. But I should think that even the most liberal psychiatrist is closely harnessed by the *M'Naghten* standard, and that a change

[22] These figures relate to the U.S. district court only; municipal court figures are not included.