in jurisdictions which follow that standard to the ALI standard would greatly increase the acquittal rate. As I have said, this is not necessarily something to be avoided.

One final word on the subject of medical application of the *Durham* and *McDonald* rules. The matter of psychopaths is a difficult problem in the District of Columbia, and one on which doctors divide. Mere repeated anti-social conduct is normally not categorized as mental disease, but the difficulty arises when that phenomenon accompanies a "personality disorder," such as a diagnosis of "inadequate personality." Some doctors call it mental disease; others do not. Perhaps the matter can safely be left to the evidence in each case. But it should be noted that the exception in the ALI proposal for "repeated criminal or otherwise antisocial conduct" would not necessarily except a personality disorder diagnosed from psychological tests. Many doctors would call that disorder "mental disease" for medical purposes.

CONCLUSION

In summary, our experience in the District of Columbia under the *Durham* rule has been an unhappy one. From my point of view the legal changes in the standard of responsibility and in subsidiary rules, resulting from the *McDonald* decision, are highly desirable. The legal standards now obtaining in the District of Columbia under *McDonald* should result in a state of affairs satisfactory from a prosecutor's point of view. However, at the same time they will provide a standard that will be fair to defense and prosecution alike, and will permit the advantageous use of medical learning wtihout permitting psychiatrists to run riot.

Mr. ACHESON. Thank you, Mr. Chairman.

All three of these problem areas of the *Durham* rule were, from our point of view, favorably clarified in a decision of the U.S. Court of Appeals of the District of Columbia in *McDonald* v. *United States* (312 F. 2d 847 (1962)). Briefly, that opinion worked three significant changes:

(1) In order to raise the issue of insanity as a defense, a defendant must offer some evidence of a mental disease or defect, the precise quantum of evidence being more than a scintilla, though not so substantial as to require, if uncontroverted, a judgment of acquittal;

(2) The opinion dispelled the previous notion that, if the Government had no affirmative rebuttal evidence, it must suffer a judgment of acquittal. The court emphasized that the question whether expert testimony may overcome the presumption of sanity depends upon the weight and credibility of that testimony, and weight and credibility are for the jury. This, in effect, is to say that nearly every case, no matter how one-sided the evidence might appear, must go to the jury for an evaluation of the testimony supporting the defense of insanity.

The CHAIRMAN. If I may interrupt you there, Mr. Acheson. I am not quite clear how that varies from the general rule of the law. I thought that the general rule of the law was that the weight or credibility of testimony or the credibility of witnesses always went to the jury. Does *Durham* raise a different standard?

Mr. ACHESON. Well, prior to *McDonald*, Mr. Chairman, there were a number of cases in the court of appeals in which the court of appeals frequently divided panels of the court, held that evidence was so slight in favor of the Government on the insanity issue, that the trial court should have directed the verdict of acquittal by reason of insanity. One such case was *Wright* v. *United States*, 102 U.S. App. D.C. 36, 250 F. 2d 4 (1957), and there were many more along that line.

Prosecutors and district judges were never clear just how much evidence it took to rebut the insanity defense, to get to the jury.