

Now, in *McDonald*, the unanimous court made it quite clear that except in a very rare case, almost uncontested the issue must go to the jury.

The CHAIRMAN. Thank you.

Mr. ACHESON. (3) The court redefined "mental disease or defect," the key phrase of the *Durham* rule, so as to leave the character of the mental disease less to speculation and less to the terminology of the medical witness. The definition is "any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls." You will see that in this definition is a new ingredient, the ingredient of the casual consequence of the mental condition upon conduct. This new ingredient thus limits the type of abnormal mental condition which will qualify as a mental disease. It limits mental disease in a particularly relevant way—by using the criterion of effect on conduct. This is particularly relevant because it is responsibility for conduct which is at issue in a criminal trial where the insanity defense is raised.

In formulating these new principles governing criminal responsibility, the court of appeals acted unanimously through all of its judges sitting en banc.

In our experience as prosecutors since the *McDonald* decision, the principles of that case have appeared to us to be workable, sensible, and intelligible to juries. The decision is only a year old. It has been applied more or less uniformly by district judges in instructions to juries and has considerably diminished the controversy over insanity instructions in the court of appeals. We suggest, therefore, and I speak for the Department of Justice and the Law Enforcement Council on this question, that the courts of the District of Columbia be allowed to gain further experience with the *McDonald* rules, without further changes by legislation at this time. We believe that under *McDonald* we are going in a direction that makes sense, and that our courts are developing promising jurisprudence.

In its effect, the test of criminal responsibility in *McDonald* is very close to that formulated in title II of the bill which, of course, is based upon the American Law Institute's model penal code. Both tests make exoneration from responsibility rest upon impairment of controls by a mental disease or defect. Thus, I believe that *McDonald* has accomplished the main objective of subsection (a) of title II of this bill.

The CHAIRMAN. At that point, Mr. Acheson, might I ask you how close title II of H.R. 7525 is to the model law suggested by ALI on the question of insanity?

Mr. ACHESON. It is identical, Mr. Chairman, except in one respect. If you look at the bill, title II, you see section (a), subsection (1).

The CHAIRMAN. Yes.

Mr. ACHESON. At line—

The CHAIRMAN. I am following it.

Mr. ACHESON. At line 18.

The CHAIRMAN. Well, let us read that sentence (a)(1) into the record, it is just one sentence and I understand that this is the heart of title II. Is that correct?