

Mr. ACHESON. That is right; and in 99 cases out of a hundred, he will be able to satisfy the requirement that he does not appreciate the wrongfulness of his conduct, much more easily than he can satisfy the test that he does not know what he was doing.

The CHAIRMAN. Thank you.

Mr. ACHESON. Now, Mr. Chairman, I have some figures on the number of acquittals by reason of insanity which I shall not read, except to say that they show that from 1954 that approximately 2 or 2½ percent of the defendants tried were acquitted by reason of insanity. And in 1955 that figure climbed and it climbed fairly slowly to 1960 and then it climbed very steeply so that in 1962 the figure of acquittals by reason of insanity was 13 percent of all defendants tried.

Now, the figures dropped again, they dropped from 67 acquittals by reason of insanity in 1960, to 50 in 1963 and in percentages it dropped from 13 to 11.2 percent.

I have checked that against the number of trials that we had in the same fiscal year.

The number of trials decreased 21 percent from 1962 to 1963; the acquittal figure is decreased by 25 percent.

Therefore I rather suspect, Mr. Chairman, that the decrease is a function of the lesser volume of criminal trials rather than the result of the new law; namely, the *McDonald* decision—but this is speculation.

The CHAIRMAN. Well, the figures certainly have some meaning.

Mr. ACHESON. I think—let me say this, Mr. Chairman: It is not necessarily a vindication of *McDonald* to have the insanity acquittals drop, though. I think they were too high before. But you can only say that an insanity acquittal was wrong if, in fact, the defendant was not insane. I am just unable to tell whether 57 acquittals by reason of insanity was too high in relation to the number of people that were really insane.

I think the number of cases in which the defense was fraudulent and successful was very, very slight.

The CHAIRMAN. I think that the burden of your testimony is that as the prosecutor for the District of Columbia you are satisfied that the condition of the case law as it is now as the result of the *McDonald* decision is satisfactory, in the definition of insanity, in the test required, and that you do not see the need for a statutory enactment. That is what you are saying, is it not?

Mr. ACHESON. That is absolutely correct. I would like to leave the door open, Mr. Chairman, however, to see how the *McDonald* rule is applied over the next 2 or 3 years. If we have the experience with it over that period that we had in the last year, I think that we could say that we would be entirely satisfied with the case law.

The CHAIRMAN. Do I understand you further, as a result of the *McDonald* case, the case law is substantially the same as that laid down by the ALI?

Mr. ACHESON. I believe it is very substantially the same.

The CHAIRMAN. Well, if that were true and if it is substantially the same, then what is the argument against writing it into the statute so that no one has any doubt exactly what it is?

Mr. ACHESON. Well, only this, Mr. Chairman: A unanimous court has, with very painstaking care, formulated a rule which it is prepared