

The CHAIRMAN. And which is case law and not statutory?

Mr. ACHESON. That is right.

The CHAIRMAN. Therefore, as for the remaining sections of title II, you would be opposed, mildly opposed, let us say, to this particular section; is that right?

Mr. ACHESON. That is right.

The CHAIRMAN. Other than that there are no radical changes.

Mr. ACHESON. And just so it is clear on the record, on page 11 the provision beginning at line 7 I think would seriously complicate our present court procedures governing release from the hospital.

The CHAIRMAN. You would be opposed to that because unless it were properly qualified it would unduly encumber the present procedures, as I understand your testimony and you do say in that connection that if that were to become the practice in the courts that maybe the doctors would be in court even more often than they are now.

Mr. ACHESON. That is right.

The CHAIRMAN. Now, let me ask you just a few more questions, if you don't mind.

Mr. ACHESON. Yes indeed, Mr. Chairman.

The CHAIRMAN. You may or may not have this and if you do not you may supply it for the record—the suggested question is as follows:

Is it a fact that the vast number of the States have their insanity law set forth by statutes?

Mr. ACHESON. I don't know.

The CHAIRMAN. You do not know?

Mr. ACHESON. I do not know the answer to that.

The CHAIRMAN. Well, I am not asking you to research that.

Mr. ACHESON. I know that New York has its insanity test defined by statute and there is a big controversy going on at the present time there over whether they should abandon the McNaghten rule there and adopt something like the American Law Institute test.

The CHAIRMAN. Well, I know in my own State of Nevada, where you have a definition of insanity, that having the definition in a statute, the mere fact that it is set out in the statute, and you have changes in the words in the statute, it does not make it any less difficult than where you have a rule or definition of insanity not set forth in statutory form as in the District of Columbia.

Mr. ACHESON. That is a very, very difficult problem. And I think you put your finger on precisely the reason why one ought not to pass a statute even though it is like the case law test under *McDonald* because, as you say, you change the words in the statute and immediately you start a train of new jurisprudence and if you had a pretty good test before, you are likely to get it loosened up.

The CHAIRMAN. I would be glad to have you clarify this because the argument otherwise is that if you have the ALI test and that is substantially the test laid down by the case law in the *McDonald* decision, then there would be no harm in having a statutory definition.

Mr. ACHESON. I strongly disagree with that, Mr. Chairman.

The CHAIRMAN. Then you would be in disagreement to having the definition of insanity and the instruction to be given, set forth in statutory form.

Mr. ACHESON. Correct.