

Mr. Warren E. Magee filed a brief on behalf of the American Psychiatric Association, as *amicus curiae*.

Before WILBUR K. MILLER, *Chief Judge*, and EDGERTON, BAZELON, FAHY, WASHINGTON, DANAHER, BASTIAN, BURGER and WRIGHT, *Circuit Judges*, sitting *en banc*.

PER CURIAM: Appellant was convicted of manslaughter and sentenced to from five to fifteen years' imprisonment. He had been charged with second degree murder for aiding and abetting his employer, Davis, in the shooting of one Jenkins during an altercation. The District Court allowed this appeal *in forma pauperis* and we appointed new counsel. After the case was heard by a division of this court, a rehearing *en banc* was ordered *sua sponte*.

In this appeal appellant urges that the court's charge to the jury was fatally defective in two respects. First, the court failed to state that, if acquitted by reason of insanity, appellant would be confined in a mental hospital until it was determined that he was no longer dangerous to himself or others. D.C.Code §24-301(d). This statement is required unless it "appears affirmatively on the record" that the defendant did not want it. *Lyles v. United States*, 103 U.S.App.D.C. 22, 25, 254 F.2d 725, 728, *certiorari* denied, 356 U.S. 961.

Second, in its charge the court twice enumerated the alternative verdicts available to the jury. But both times it failed to include "not guilty because of insanity." Thus, before charging on the issue of insanity, the court instructed the jury to return one of the following five possible verdicts: (1) guilty of second degree murder, (2) guilty of manslaughter, (3) guilty of assault with a dangerous weapon, (4) guilty of assault, or (5) not guilty. (Tr. 275.) Later the court did charge the jury on criminal responsibility, concluding: "If you * * * are not satisfied beyond a reasonable doubt that the act was not a product of a mental defect, then your verdict must be not guilty because of insanity." (Tr. 288.)