lationship between the mental disease and the act charged. It should be remembered, however, that these considerations are not to be regarded in themselves as independently controlling or alternative tests of mental responsibility in this Circuit. They are factors which a jury may take into account in deciding whether the act charged was a product of mental disease or mental defect. *Wright* v. *United States,* supra, 102 U.S.App.D.C. at 44, 250 F.2d at 12; *Misenheimer* v. *United States,* 106 U.S.App.D.C. 220, 271 F.2d 486, *certiorari* denied, 361 U.S. 971.

Reversed and remanded.

DANAHER, *Circuit Judge,* concurring: I concur in Parts I, II and III of the court's opinion.

As to the *Lyles* point with respect to hospital confinement following a verdict of not guilty by reason of insanity, I have not changed my view.

Here the defense did not request such an instruction although various other requests were submitted. Rule 30 provides that no omission from the charge shall be assigned as error by the appellant unless before the jury retires, objection be made "stating distinctly the matter to which he objects and the grounds of his objection."

The judge specifically asked trial counsel if he had "any other objection to the charge, as given." He replied, "No other objection to the charge."

Of course the instruction, if requested, would have been given. Cf. *Bruno* v. *United States,* 308 U.S. 287 (1939). But in view of the trial strategy, the accused may not have wanted an instruction on the *Lyles* question. We now seem to say that the defense could sit back, wait to see what verdict the jury might reach, and thereafter secure reversal here because it does not "affirmatively" appear that the *Lyles* instruction was waived. *Lyles* thus becomes a legal