> firmatively waived it. *Lyles* v. *United States*, supra, 103 U. S. App. D. C. at 25-26, 254 F. 2d at 728-729. Since the case will have to be retried, it may be well simply to note two other inadvertences in the court's charge which we are confident will not recur on retrial."

Thus, the majority are saying that the case will have to be retried because the *Lyles* instruction was not given, *i.e.*, that the judgment is being reversed for that reason. Having so ruled, they say "it may be well *simply to note* two other inadvertences in the court's charge . . .." (Emphasis added.) The majority do not base reversal on either of those "two other inadvertences," nor could they reasonably have done so, as I shall show later in this dissent.

I dissent from the reversal of McDonald's conviction on the ground that the *Lyles* instruction was not given because I am convinced that the majority opinion in the *Lyles* case is in that respect not an authoritative holding of this court and therefore is not binding on us in this or any other case; and that, if it is a binding precedent, it should be overruled as an incorrect statement of the law. I think, moreover, that if the *Lyles* requirement of the "meaning" instruction is considered authoritative, and if it is not overruled, nevertheless McDonald's conviction should not be reversed for the failure to give it, because it appears affirmatively on the record that McDonald did not want the instruction. In that event, the *Lyles* opinion says it is not reversible error to omit the "meaning" instruction.

First, as to my suggestion that the Lyles requirement of the "meaning" instruction is obiter dictum. There the majority correctly but unnecessarily say a verdict of not guilty by reason of insanity "means the accused will be confined in a hospital for the mentally ill until the superintendent of such hospital certifies, and the court is satisfied, that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others."