

Then this language follows, 103 U. S. App. D. C. at 25-26, 254 F. (2d) at 728-729:

"Sometimes a defendant may not want such an instruction given. If that appears affirmatively on the record we would not regard failure to give it as grounds for reversal. Otherwise, whenever hereafter the defense of insanity is fairly raised, the trial judge shall instruct the jury as to the legal meaning of a verdict of not guilty by reason of insanity in accordance with the view expressed in this opinion."

The implication is clear that a failure to instruct on the "meaning" of such a verdict would be regarded as reversible error, unless the accused had indicated he did not want the instruction.

I suggest that Point I of the *Lyles* majority opinion, which includes the language just quoted, is not an authoritative holding of this court, but is a gratuitous essay on the subject with which it deals. It decides a question which was not presented by the facts of the *Lyles* case, and was not suggested or discussed by the parties. Demonstrably, it is *obiter dictum* which the court is not required to follow in this or any case.

An analysis of the introductory paragraphs of the *Lyles* opinion and its text under Point I will show the foregoing to be true. The *Lyles* majority said in an early paragraph, *id.* at 24-25, 254 F. (2d) at 727-728:

"Our present consideration is addressed to several issues which can be stated as follows:

"1. In cases where the defense of insanity is asserted what, if anything, should the court instruct the jury about the consequences of a verdict of not guilty by reason of insanity, pursuant to D. C. Code § 24-301?"

(Three other "issues" are stated, with which we are not concerned.)

Thus, they were careful not to say this "issue" was presented by the parties or inherent in the record. Consciously, then, they stated an abstract question and pro-