ceeded to give an advisory and directory opinion about it. This is not, I think, a function of an appellate court. The *Lyles* majority announced, in effect, that failure to give the "meaning" instruction is reversible error; but they said it in a case in which the instruction *had been given* in language which they said was satisfactory!

This is apparent from the text of the *Lyles* majority opinion under Point I which discusses the "issue" quoted above. The discussion begins thus, *id.* at 25, 254 F. (2d) at 728:

"The judge told the jury:

> " 'If a defendant is found not guilty on the ground of insanity, it then becomes the duty of the Court to commit him to St. Elizabeths Hospital, and this the Court would do. The defendant then would remain at St. Elizabeths Hospital until he is cured and it is deemed safe to release him; and when the time arrives he will be released and will suffer no further consequences from this offense.' "

Nobody criticized or attacked the foregoing statement in the court's charge and, as I have pointed out, the *Lyles* majority said it was satisfactory. Giving the instruction just quoted was not, therefore, one of the "Plain errors or defects affecting substantial rights" which Rule 52(b) of the Federal Rules of Criminal Procedure says "may be noticed although they were not brought to the attention of the court." Regardless of that, they said, after quoting from the charge:

> "This point arises under the doctrine, well established and sound, that the jury has no concern with the consequences of a verdict, either in the sentence, if any, or the nature or extent of it, or in probation. *But we think that doctrine does not apply in the problem before us.* . . ." (Emphasis supplied.)

But, as shown above, there was no problem before the court of the sort which the *Lyles* majority stated and discussed under Point I, except a so-called "issue" which they themselves posed as a problem, but which was not in the