

only the attack on the instructions, discussed in the *Lyles* case in Point II, was presented to the court.

*Second, as to my suggestion that the Lyles requirement of the "meaning" instruction is incorrect as a matter of law and should be overruled.* As I have said, in the present case the majority depend entirely upon the gratuitous dictum of Point I of the *Lyles* opinion as requiring reversal. Of course they can, if they choose, adopt the pronouncements of Point I and authoritatively announce here that a failure to give the instruction there prescribed was reversible error, for this is a case in which *the instruction was not given* and, according to the majority, was not affirmatively waived. But they have not made such an original announcement; apparently they have considered themselves bound by the *Lyles dictum*, and have followed it without adopting it as their own holding. I think it should not be adopted here because, in my view, it is not a correct statement of the law. A verdict of not guilty by reason of insanity is covered by what the *Lyles* majority admitted is "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 in the nature or extent of it, or in probation."

If the *Lyles* majority's Point I discussion be regarded as an actual holding instead of a mere statement by the way, for the same reasons I think it should be overruled. In elaboration of those reasons, I reproduce here a portion of Judge Bastian's dissent from Point I of the *Lyles* opinion, in which Judge Danaher and I joined, *id.* at 29-30, 254 F. (2d) at 732-733:

"It seems to me unwise and unnecessary that a jury be told the result of their verdict of 'not guilty by reason of insanity.' In Federal courts, as at common law, the jury are not told the quantum of punishment which may be meted out if they convict, or that probation may be granted. For instance, they are not told that if a defendant is found guilty of manslaughter he may be