

punished by a fine not exceeding \$1,000 or imprisonment not exceeding 15 years, or both. This is salutary, since their only function is to determine from the evidence the factual issue of guilt or innocence, and in reaching a verdict they should not be swayed by an extra-evidentiary consideration such as whether they approve of the possibility of probation or of the penalty which may be imposed by the trial judge. The jury will probably know, as Judges Prettyman and Burger suggest, that a verdict of guilty will result in the imposition of punishment unless probation is granted, but they will not know what the punishment may be and, therefore, will not be influenced to acquit if they consider the possible penalty too severe.

"The issue of insanity, fairly raised, does no more than present another factual question to the jury: whether the defendant was mentally responsible when the criminal act was done. That issue also should be determined on the basis of the evidence only and, in deciding it, the jury should not be influenced by a consideration of the result of an acquittal by reason of insanity; that is an extraneous consideration wholly unconnected with the evidence from which the jury must reach a determination of the factual issue raised concerning the defendant's mental condition.

"In short, the jury should be told nothing as to how the defendant will be dealt with in case of acquittal by reason of insanity. ..."

A strong statement which takes the same position was made by the Fifth Circuit in *Pope v. United States*, 298 F. (2d) 507 (1962), where the court had an identical question before it. The only error specified by Pope was the refusal of the trial court to grant his request for the following instruction to the jury, which he lifted from the *Lyles* opinion, 298 F. (2d) at 508:

"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 that time arrives he will