

alternative verdicts available to the jury. But both times it failed to include 'not guilty because of insanity.' Thus, before charging on the issue of insanity, the court instructed the jury to return one of the following five possible verdicts: (1) guilty of second degree murder, (2) guilty of manslaughter, (3) guilty of assault with a dangerous weapon, (4) guilty of assault, or (5) not guilty. Later the court did charge the jury on criminal responsibility, concluding: 'If you . . . are not satisfied beyond a reasonable doubt that the act was not a product of a mental defect, then your verdict must be not guilty because of insanity.'

"After the charge was concluded, the court called a bench conference at which defense counsel expressed substantial satisfaction with the instructions . . . Thereupon the court told the jury:

"I am going to repeat something that I said to you earlier and that is that you may return any one of five possible verdicts in this case. Your verdict may be either guilty of second degree murder or guilty of manslaughter or guilty of assault with a dangerous weapon or guilty of assault or not guilty."

No further reference to McDonald's second attack on the instructions is made by the majority except the following comment after the final announcement of reversal because of the omission of the *Lyles* "meaning" instruction: "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." The first of these "inadvertences" was thus described: ". . . [F]ollowing a bench conference after the judge had concluded his charge, an additional instruction was given the jury, outlining the alternative possible verdicts, without including not guilty by reason of insanity. . . ."

Thus, the fact that the trial judge, although he instructed the jury carefully, correctly and at considerable length³

³ The portions of the charge having to do with the possible verdict of not guilty by reason of insanity aggregate about five pages of transcript.