> jury may be instructed, provided there is testimony on the point, that capacity, or lack thereof, to distinguish right from wrong and ability to refrain from doing a wrong or unlawful act may be considered in determining whether there is a relationship between the mental disease and the act charged. It should be remembered, however, that these considerations are not to be regarded in themselves as independently controlling or alternative tests of mental responsibility in this Circuit. They are factors which a jury may take into account in deciding whether the act charged was a product of mental disease or mental defect. *Wright* v. *United States,* supra, 102 U. S. App. D. C. at 44, 250 F. 2d at 12; *Misenheimer* v. *United States,* 106 U. S. App. D. C. 220, 271 F. 2d 486, *certiorari* denied, 361 U. S. 971."

The *Wright* opinion is wrong, as I think I demonstrated in dissenting from it. Judges Danaher and Bastian joined in my dissent, and Judge Burger concurred only in the result reached by the majority opinion. I think the *Wright* case should be reexamined and repudiated.

The *Misenheimer* case cited by the majority does not seem to me to support their conclusion. But I must admit that *Campbell* v. *United States,*[4] which I think should be overruled as grossly erroneous, does support it. The latter case makes specific a rule which the court had in effect adopted in the *Durham* case and subsequent decisions: that a defendant may be sane to the extent that he is able to distinguish right from wrong and to control his conduct so as to refrain from doing wrong, and yet have some other sort of mental infirmity which excuses him from criminal responsibility. For example, that he is "emotionally unstable;" that, as here, he may be led by a dominant personality; that he is a "sociopath," which really means that he cannot get along with other people.

This rule has been developed over my repeated protests.

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[4] No. 16, 414, decided March 29, 1962.