

I renew them here. The *Campbell* case should be overruled and the cases from which it sprang, including *Durham v. United States*,<sup>5</sup> should also be repudiated or substantially modified. My view is that a person who deliberately chooses to do what he intelligently knows is a criminal act, although he has mental capacity enough to refrain from doing it, should not be excused from criminal responsibility because in some other respects he differs from ordinary men. If a defendant has mental capacity to understand the criminality of his act and to refrain from doing it, he is sane in the legal sense, even though he may have some eccentricities or limitations of mental ability in other respects which psychiatrists may say amount to a mental disease or defect.

These are my reasons for dissenting from the reversal of McDonald's conviction.

In the main, I agree with Part I of the majority opinion, particularly with that portion which discusses the "some evidence" holding of the *Davis* case.<sup>6</sup> How much evidence is the "some evidence" referred to in that case? Unless and until the Supreme Court changes the *Davis* rule, which I hope it will do, the district and circuit courts will be forced to answer that question. The majority are correct, I think, in saying, "Certainly it [the *Davis* 'some evidence' rule] means more than a scintilla, yet, of course, the amount need not be so substantial as to require, if uncontroverted, a directed verdict of acquittal." But the majority do not go far enough. They should expressly overrule cases such as *Tatum v. United States*, 88 U. S. App. D. C. 386, 190 F. (2d) 612 (1951); *Clark v. United States*, 104 U. S. App. D. C. 27, 259 F. (2d) 184 (1958); and *Goforth v. United States*, 106 U. S. App. D. C. 111, 269 F. (2d) 778 (1959), which held the insanity issue was raised by

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<sup>5</sup> 94 U. S. App. D. C. 228, 214 F. (2d) 862 (1954).

<sup>6</sup> *Davis v. United States*, 160 U. S. 469 (1895).