

conceded that his client was guilty of some degree of homicide, although the trial judge told the jury Clark had raised the issue of insanity by merely saying from the stand, "I must have been insane." By holding that in such a setting defense counsel was ineffective because he did not argue the issue of insanity, this court approved the trial judge's ruling that Clark's statement was sufficient to raise the issue. I suggest that the statement was not "some evidence" of insanity and did not amount even to a scintilla. If a defendant may raise the issue of insanity by simply saying, "I must have been insane," the Government must be prepared to meet the issue in every criminal case. This court's approval of a ruling to that effect should be replaced by disapproval.

The *Goforth* case is equally inconsistent with the majority's holding in the present case as to the "some evidence" rule. As the dissenting judge said:¹¹

"There was not one word of testimony from any source to indicate that appellant was suffering from any mental disease or defect. At the most there was only his own testimony, totally uncorroborated, as to imaginings of his intoxicant-befuddled mind—a not unusual phenomenon of continued and continuous drinking, and a far cry from mental disease or defect."

As to Part II of the majority opinion, I thoroughly agree with the majority that

"... What psychiatrists may consider a 'mental disease or defect' for clinical purposes, where their concern is treatment, may or may not be the same as mental disease or defect for the jury's purpose in determining criminal responsibility. ..."

That is what I meant when I said earlier in this dissent that a person who chooses to do what he knows is a criminal act, when he is mentally able to control his conduct and refrain from doing the criminal act, is sane in the legal sense even though he has some aberration or emotional

¹¹ 106 U. S. App. D. C. at 113, 260 F. (2d) at 780.