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THE DEFENSE OF WALTER X. WILSON: AN INSANITY PLEA AND A SKIRMISH IN THE WAR ON POVERTY

BY RICHARD ARENS†

I.

INTRODUCTION

IT IS COMMONPLACE to observe that with the best lawyer in the world a man may lose a case that he ought to win for lack of a happy pairing of merit and money. If his pocket is not sufficiently well-lined, he will be unable to secure the kind of investigation that alone is capable of establishing his case to the satisfaction of a trial jury.

In a criminal case, lack of money may mean not only loss of liberty but actual loss of life. Whether or not Walter X. Wilson had a good lawyer is in this light less material than whether or not he had adequate financial resources to assert his innocence. What emerges with startling clarity is that, but for the bounty of the National Institute of Mental Health,1 Walter X. Wilson would have gone to a penitentiary instead of to a mental hospital.

In a series of cases designed to assess the operation of the Durham rule, a project director of an undertaking financed by the National Institute employed numerous psychiatrists and psychologists to assist in the trial of various indigent defendants who relied upon the insanity defense as their only escape from a criminal dilemma. In the courts of the District of Columbia, such defendants thus became the beneficiaries of expertise not only well beyond the reach of the indigent but also well beyond the reach of defendants of modest income.

Walter X. Wilson's story is told in part as an illustration of the adage that regardless of applicable legal doctrine — and the M'Naghten rule would no more have affected the outcome of this case than Durham — "money talks." It is also told with a view to the statement of the

† B.A., 1946, University of Michigan; LL.B., 1948, LL.M., 1950, Yale University; Professor of Law, Catholic University of America.

1. The funds for the psychiatric and psychological examinations in that case as well as those for the completion of this study were made available under grant M-5009 of the National Institute of Health. A pseudonym has been substituted for the name of the defendant. The number of the case has been omitted. The defendant in turn has granted his consent to this publication.

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principle that the adversary system of American criminal litigation depends upon more than good intentions, that is, it calls for a balancing of resources between criminal defense and prosecution which even the most advanced and up-to-date legislation has as yet failed to provide. Finally, it is told with a view to presenting a clearer identification of the problems faced by counsel in the preparation of the insanity defense, for again — regardless of the prevailing rule of exculpatory mental illness in a particular jurisdiction — counsel will generally face substantially identical attitudes within the hierarchy of the state mental institution and experience much the same type of pitfall in communication with the experts of his own selection which were encountered in the case of United States v. Wilson.

A detailed recital of the preliminary events followed by the approximation of a trial diary, admittedly affected by the perspective of the partisanship of defense counsel, was believed best suited for these purposes.

2. There is little reason to share the sanguine view of former Attorney General Robert Kennedy as to the effect of the new Criminal Justice Act. As expressed by him: the bill establishes an adequate defense standard under which representation in a criminal case is recognized as involving more than a lawyer alone. It requires making available to counsel those auxiliary investigative experts, and other services frequently essential to ascertaining the facts and making judgments upon which to prepare and present the defendant's case. The plan adopted in each district may provide for these services to be furnished either through salaried staff personnel, personnel retained specially in each case, or a combination of these means.


Under FED. R. CRIM. P. 17(b) money has been previously disbursed by the Department of Justice for expert witnesses. FED. R. CRIM. P. 28 has been administered with the aid of a $4000 budget for disbursement to experts. Judges decided when expert witnesses were needed. See United States Code Congressional and Administrative News, 88th Cong., 2d Sess. 1964.

Criminal Justice Act 88–455; 78 Stat. 552, designated as An Act to promote the cause of criminal justice by providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States has secured the following:

(a) Representation under each plan shall include counsel and investigator, expert, and other services necessary to an adequate defense.
(b) Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense in his case may request them in an ex parte application.

The compensation shall not exceed $300, exclusive of reimbursement for expenses reasonably incurred.

The Criminal Justice Act of 1964 has taken the place of Rule 17(b). A member of the budget department of the Supreme Court has declared that he has no idea as to what the annual appropriation will be — but that he thought it might approximate $400,000. There appears to be considerable controversy over how much is needed for the program. Some have said that $3,000,000 would be enough; others that $20,000,000 would not be. A staff member of the Justice Department has declared that under Rule 17, the amount allotted for all witnesses in appropriations for fiscal year 1965–66 was $2,800,000. This encompasses all witnesses including experts. There is absolutely no way to distinguish how much has been paid to psychiatrists in indigent criminal cases.
II.

Preliminary Events

At about 3:00 a.m. on Thursday, June 9, 1960, Precinct No. 8 of the Washington D.C. Police Department was informed that a stolen car had been seen passing through a red light on Missouri Avenue. A police patrol car was alerted and pursued a Chevrolet station wagon, which had been identified as the stolen car. As the police car pulled abreast of the station wagon, a police officer motioned it over to the curb. The station wagon, driven by 19 year old Walter X. Wilson, sped away.

The police officer sounded his siren and the chase began. Walter X. Wilson was driving his car at an estimated speed of 80 miles per hour and was weaving from side to side on the street. The blocking of the roadway by a police car in advance of Wilson’s careening vehicle as an alternative to pursuit was thought by an officer of the Accident Investigation Unit as “taking ... his own life in ... [his] hands and maybe anybody else's life who was with ... [him].”

The pursuit covered approximately three miles over a winding road, moving uphill and then down again. In the 3700 block of Military Road, Walter X. Wilson's station wagon collided head-on with a Chevrolet sedan coming from the opposite direction. It drove the Chevrolet back seventy-four feet into a third car, turned over in the air “and continued eighty-four feet, ending upright against a tree with the tailgate of the station wagon against the tree and the front end protruding ... in a westerly direction on Military Road.”

All four occupants of the Chevrolet were killed. Three were dead on arrival at a local hospital; one died within minutes of his hospitalization. Autopsy reports showed deaths attributable to hemorrhage, shock, crushed chests, multiple fractures and, in the case of two victims, a ruptured liver.

Walter X. Wilson was taken from the scene of the accident without apparent pulse beat. He was brought, unconscious and in critical condition, to the George Washington University Hospital for emer-

4. Id. at 9-14.
5. Id. at 42.
6. Id. at 19.
7. Id. at 10.
8. Id. at 11.
9. Id. at 4-6.
10. Id. at 45-46.
11. Id. at 11.
gency treatment, suffering from cerebral concussion, multiple lacerations and multiple fractures. After passing the critical stage Wilson was transferred to the D.C. General Hospital for further treatment.

His physical condition did not permit him to participate in the subsequent inquest until October 5, 1960. The Coroner’s jury found him responsible for the deaths of the four occupants of the sedan and ordered him held for action of the Grand Jury. The Grand Jury indicted him on four counts of manslaughter, which in the words of the indictment, was attributable to his driving a station wagon “feloniously, wantonly and with gross negligence. . . .”

He was, subsequent to his indictment, transferred to the District of Columbia jail where he was placed within the prison hospital.

The first lawyer appointed to represent him received leave to withdraw from the case. Apparently the boy had refused to cooperate. The same thing happened in the case of the second appointed lawyer. A third, who turned out to be the project director, was appointed.

Walter was brought from the jail hospital into the rotunda to be interviewed by his new counsel. The prisoner was painfully limping about on his crutches and seated himself with some difficulty at the table reserved for conferences with counsel.

Counsel introduced himself, and after some inconsequential preliminary discussion asked his client if he would like to tell his lawyer about the accident. Wilson's monosyllabic response was: “No.”

Counsel did not press him to engage in a discussion which he was clearly bent upon avoiding and proceeded instead to inquire as to his physical condition and the way in which he was being treated by the jail authorities. He relaxed slightly in response to these questions and provided some inconsequential information.

About this time, counsel received a telephone call from his counterpart in the United States Attorney's office informing him that the prosecution would move for a mental examination of the boy on the ground that he had been previously hospitalized as a psychiatric patient, and inquiring if the defense had no objection. Counsel replied that he would join in the motion of the government.

Neither the defense nor the prosecuting counsel knew, at that time, that while the boy had indeed been a psychiatric patient at the D.C. General and St. Elizabeth's Hospitals in 1956, a sharp split of opinion had existed between the two hospitals during that period of time as to his mental state. The D.C. General Hospital had certified the patient as psychotic and in need of hospitalization; St. Elizabeth's Hospital had certified him as free from mental disorder and had recommended his discharge.

12. United States v. Wilson, Grand Jury No. X.
The commitment for mental observation, in this case upon motion of the government joined in by the defendant’s counsel, was to St. Elizabeth’s Hospital.

III.
Pre-Trial Tactics

A. Investigation

The defense investigation of this case consisted of a study of all available court and hospital records, interviews with friends, relatives, and employers, further interviews with the boy, who became increasingly cooperative but did not completely shed his distrust of his counsel, and independent psychiatric examinations of the boy undertaken with the use of funds made available by the National Institute of Mental Health for this purpose, as well as psychiatric examinations on court order at the D.C. General Hospital after the conclusion of the St. Elizabeth’s examination.

In aid of this investigation counsel moved for, and obtained, a court order directing St. Elizabeth’s Hospital and the D.C. General Hospital to furnish him with photostatic copies of all records of Walter Wilson at the expense of the United States.

Photostatic copies of the D.C. General Hospital records of Walter’s hospitalization in 1956 were promptly and courteously forwarded to the defense. Unfortunately St. Elizabeth’s Hospital did not follow suit.

The boy’s history, as gleaned from a lawyer’s investigation, can be summarized in chronological order.

The boy’s parents were married in their teens. His father who himself had had numerous brushes with the law, including a conviction for impersonating a federal officer, was an alcoholic. His mother had held down menial jobs throughout most of her life because she had received no financial support from her husband. When Walter was eight years old his mother, at that time expecting her fourth child, left her husband and went to live with her mother. It was clear — even upon cursory interviewing — that she was a person of low average intelligence with extreme hostility toward the boy. An example of this hostility was her statement to her son’s attorney: “And be sure to tell me when the trial is to be held because I want to be there to see Walter convicted.”

During the first year of Walter’s life his mother became the breadwinner of the family while the father remained at home to mind the baby. Apparently, he minded the bottle rather than the baby, with the result that the child was discovered dirty and usually unfed upon
the mother's return at night. It was during the first year of Walter's life that he began hitting his head against the wall for hours on end. He would usually not stop, even though his head was bleeding. He had also developed numerous dietary difficulties. One was his refusal to swallow food. During the next few years he began "rocking and rolling himself to sleep" in a rhythmic fashion which he subsequently exhibited with dramatic results in the courtroom before startled judge and jury. His mother reported that he had intense sleeping difficulties beginning with the first years of his life and that by the time he had reached adolescence he was rarely able to sleep more than four hours a night. Early in his childhood he was witness to violent quarrels between his mother and father.

His difficulties with authority figures, already pronounced at home, manifested themselves in his school environment. He was sent to a Catholic parochial school, from which he was expelled for breaking into a church poorbox. Later he claimed that all of his subsequent troubles were attributable to the harsh discipline imposed upon him by the Sisters.

His experience with the public school system was no more satisfactory than with the parochial school. He would arrive at school dirty, unkempt and fatigued from apparent lack of sleep. He did poorly in his studies except for some drawing activity which appeared to interest him. About this time he developed the fear of people ganging up on him.

The accused related that at school he was the object of some sort of conspiracy. By this time he had also developed an acute fear of the police officers of Precinct No. 8 who, he believed, were plotting to "nail him to the door." He was involved in various acts of delinquency and spent some time at the National Training School for Boys. At the age of fifteen he approached a girl at school with a knife, explaining that he had to get her before she got him.

Because of this incident, Juvenile Court sent him to the D.C. General Hospital for psychiatric observation. This hospital kept him for four months and a diagnostic staff conference concluded that he was psychotic, needing hospitalization. A certification to this effect was transmitted to the Juvenile Court, which accepted it and committed the boy to St. Elizabeth's Hospital where he was kept for a little over three weeks. The hospital records covering that period show little diagnostic contact beyond some psychological testing. Although the results of the psychological testing were reported in the hospital record as indicating a very precariously balanced individual, "desperately" in need of psychotherapy, the hospital reported him to be suffering from nothing more serious than a minor adolescent disturbance.
After being released from the hospital, he led a generally nomadic life until his indictment in the case under discussion. Several years before his automobile collision he had been expelled from his home by his mother and had since led a hand-to-mouth existence, shifting from job to job, and frequently living in alleyways, garages and public parks.

It became apparent as a result of interviews with neighbors that he had developed a bizarre liking for dog food. When offered a sandwich by a neighbor, he would refuse it but steal dog food when he thought the neighbor was not looking. His last reported job was in a veterinary hospital, where he became addicted to dog tranquilizers. He was at that time expressing the fear that he was under constant surveillance by the police and complaining about being shadowed by a police spy, whom he identified. He turned out to be an innocuous, retired old man who was in fact sunning himself outside the veterinary hospital.

The immediate events preceding the accident are not wholly clear but this much can be claimed with some degree of reliability:

There was an increase in the intake of alcohol and dog tranquilizers.

The boy made some attempt to join the Army, to be told that he was not eligible because of his police record.

He looked more than usually depressed.

On the day of the accident he was accosted in a bar by a homosexual. He had just taken five dog tranquilizers and had had approximately nine glasses of beer in addition. It was not clear as to precisely what transpired between him and the homosexual beyond the fact that some overture was made to him. It was clear that he had entered the homosexual’s car and then threw the latter out. Then he proceeded to drive the car away for the purpose, as he put it of ‘splattering myself all over the sidewalk so the police would have a mess to clean up.’

The coroner’s transcript revealed that the police had been notified of a stolen car and had pulled abreast of one matching its description. The auto, driven by Walter X. Wilson, had, until that time, been proceeding at normal speed. When the police car pulled abreast of him, Walter cast one look in its direction and stepped upon his accelerator. The car reached the speed of 80 miles per hour and weaved erratically from lane to lane until it collided with one approaching from the opposite direction, killing four people and inflicting nearly fatal injuries upon Walter himself.
While hospitalized for these injuries he accumulated something like ten sleeping pills. He consumed all of these on one night. His stomach was pumped and the notation included in his record by an intern that he seemed to require psychiatric supervision. Shortly before this abortive suicidal attempt, he had informed a nurse that he had a knife and was going to "get her" with it. The nurse summoned the intern on duty to conduct a search of the room, but no knife was found.

B. Examination

1. Positive Approach

At this time counsel secured the services of Dr. Leon Salzman, of the Washington School of Psychiatry, and Dr. Edward Sachar, a psychiatrist on the staff of the Walter Reed Hospital.

Dr. Sachar interviewed the boy for several hours while he was still at the District jail, and diagnosed him as an aggressive and impulsive psychopath. While he was prepared to state that he regarded his action as the product of a mental illness, he described his patient in such uncomplimentary language that counsel preferred to forego his testimony.

Dr. Salzman interviewed the patient more briefly at St. Elizabeth's Hospital, and stated without hesitation that he diagnosed the defendant as suffering from schizophrenia, paranoid type.

In his contacts with Dr. Salzman counsel indicated his particular interest in the psychoanalytically-oriented development of the study of Walter X. Wilson, which would be acceptable to a lay jury. At the doctor's request, counsel furnished him with an excerpt from the Carter case, to the specific effect that "the chief value of an expert's testimony in this field . . . rests upon the material from which his opinion is fashioned . . . ; in the explanation of the disease and its dynamics, that is, how it arose, developed and affected the mental and emotional process of the defendant." 13

Dr. Salzman was not unfamiliar with this approach, having previously furnished an affidavit in another case stating that a particular series of examinations undertaken by him was "designed to provide a view in depth of the defendant's condition, whatever its character, at the time of the alleged crime, i.e., how it arose, developed and affected the defendant's mental and emotional processes" and expressing his "professional opinion that such examinations in depth . . . [could] be adequately conducted only by intensive psychoanalytic techniques." 14

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Dr. Salzman examined the defendant on two further occasions after his return from St. Elizabeth's Hospital to the District jail prior to the trial.

Counsel also contacted Dr. John D. Schultz, the Medical Director of the D.C. General Hospital, who had conducted the initial psychiatric examination in 1956. Dr. Schultz stated that it was highly unlikely that the boy's mental condition would have cleared up without treatment, and, upon hearing the description of the events leading to the boy's arrest, declared it probable that the boy's illness had taken a turn for the worse. He offered to co-operate with any doctors in charge of the mental examination.

Acting without objection from the United States Attorney's office, the defense thereupon moved for a court order directing Dr. John D. Schultz to examine Walter Wilson with a view to updating his initial findings.

Counsel for the defense also proceeded as follows:

1. He informed several of St. Elizabeth's physicians that he had a fairly elaborate social history on the boy which he would be happy to submit to them upon request.

2. He further informed them that Doctors Salzman and Schultz would gladly confer with them in aid of their diagnostic evaluation.

3. Toward the end of Walter's three month period of hospitalization at St. Elizabeth's, he requested the complete record of Walter's hospitalization in 1956 and also the new hospital record upon completion of their study.

The three month period of hospitalization at St. Elizabeth's had a few days more to run. There had been no response from St. Elizabeth's to this request for data, nor had the 1956 hospitalization record been received.

A letter was therefore sent by defense counsel to the superintendent of St. Elizabeth's Hospital renewing the request for complete hospital records and stressing the urgency of the situation.

Approximately five days before the trial date, Dr. Mauris Platkin of St. Elizabeth's Hospital telephoned defendant's counsel and informed him that the hospital had found Walter Wilson to be without mental disorder, and that copies of the hospital records would be sent "in due course."

In a telephone conversation with Dr. Platkin two hours later, counsel again urged the importance of his receiving the records immediately so that his experts would have an opportunity for study and independent evaluation a few days before the trial. Dr. Platkin refused. He declared that nothing could be done to speed up normal hospital
procedures. Counsel responded by saying that he would be constrained to bring contempt proceedings if the records were not delivered within the next two days. Within two days the records were delivered to counsel by special messenger.

When finally received the photostatic copies were incomplete. The results of psychological testing were missing. Counsel called St. Elizabeth’s to inquire about the missing report and was told that no such test had been made. Counsel pressed the issue because his client told him that the test had in fact been made, and two hours later he received a photostatic copy of the psychological report.15

The psychological report concluded that Walter Wilson was a schizophrenic. The balance of the hospital record showed two psychiatric interviews of undetermined duration, notwithstanding the certification to the court that the defendant had been studied intensively since his admission date.

The concluding portion of the report of the medical staff conference in the Wilson case read as follows:

> During the entire examination the patient shows no abnormal mental content, continuously expresses his undying hatred toward others in general, and the 8th Precinct police officers, in particular. He admits having difficulty in adjusting but attributes it mainly to the absence of his father and his desire for a paternal figure in the home. During hospitalization the patient has made a satisfactory adjustment, has received Equanil since being hospitalized because of tension and anxiety.

> It is the consensus of opinion of the physicians present at the medical staff conference that this patient does not deviate sufficiently from normal to warrant a diagnosis of mental disease, and therefore, he is being given the diagnosis of Without Mental Disorder.

Within two days of counsel’s telephone conversation with Dr. Platkin, St. Elizabeth’s Hospital transmitted its official certification to the court that Walter Wilson was without mental disorder. The relevant portion of the St. Elizabeth’s certification read as follows:

> . . . Mr. [Wilson’s] case has been studied intensively since the date of his admission to Saint Elizabeth’s Hospital and he has

15. The difficulties encountered in securing medical records to which defense counsel was legally entitled were in no way unique. Dr. Morton Birnbaum, testifying before the Senate Subcommittee on Constitutional Rights, related a comparable experience which he encountered in seeking the release (through a habeas corpus proceeding) of his indigent client from Creedmore Hospital in New York State. Dr. Birnbaum requested the hospital records of his client in July, 1960. After three months of delay by the hospital and the lawyers from the Attorney General’s office, he was finally allowed to inspect his client’s hospital records. *Hearings before the Subcommittee on Constitutional Rights of the Committee of the Judiciary, United States Senate*, 87th Cong., 1st Sess., at 298, 299 (1961).
been examined by several qualified psychiatrists attached to the medical staff of Saint Elizabeth’s Hospital as to his mental condition. On February 15, 1961, Mr. [Walter X. Wilson] was examined and the case reviewed in detail at a medical staff conference. We conclude, as a result of our examination and observation, that Mr. [Walter X. Wilson] is mentally competent to understand the nature of the proceedings against him and to consult properly with counsel in his own defense. We find no evidence of mental disease existing at the present time nor on or about June 8, 1960. He is not suffering from mental deficiency.

A day after that certification, and after the defendant had been removed to the D.C. jail and the trial had continued, Dr. Platkin contacted Dr. Salzman. A memorandum by Dr. Leon Salzman on his conversation with Dr. Platkin on February 16, 1961, read as follows:

4:30 p.m. Dr. Platkin called to ask if I had seen Mr. [Wilson] and whether I had some data that might be useful to them. . . . Since they already held their staff conference I suggested that the data could not serve the same purpose as if it were given before the conference. He said they would change their minds if new data were supplied. . . .

When Dr. Salzman contacted counsel about this conversation, counsel asked him directly whether he thought that Dr. Platkin and the others at St. Elizabeth’s had an open mind or whether they were merely trying to fortify their conclusion that there was no mental disorder by saying that they had taken every relevant medical view into account. Since Dr. Salzman replied that he did not think the St. Elizabeth’s people had an open mind on the case, counsel instructed him not to transmit any information to them.

2. Negative Approach

It was clear at this stage that St. Elizabeth’s Hospital would furnish articulate and court-experienced psychiatrists to testify that the defendant was without mental disorder. The impact of such testimony would be overwhelming in the absence of flagrant and overtly detectable symptoms of psychotic psychopathology, particularly in view of the claim which would be made that the St. Elizabeth’s opinion was based upon intensive studies carried out during ninety days of observation and examination in a hospital setting immediately preceding the trial — a claim which would clearly not be matched by the available defense psychiatrists.
A re-examination of the defendant by the staff of the D.C. General Hospital’s Psychiatric Division would balance the scales more favorably to the interests of the defendant.

As counsel surveyed the possible grounds for a motion for re-examination, he realized that, as a practical matter a presumption of regularity attached to the completion of a mental examination at St. Elizabeth’s Hospital and that, barring a showing of extraordinary cause, he could not hope for re-examination in a new hospital setting.

However, he had available to him the opinion of Dr. Schultz that a hospital setting was needed to complete the examination of the defendant to his own professional satisfaction. Another helpful factor developed from the photostatic copies of the hospital records forwarded from St. Elizabeth’s Hospital was the fact that there had been no electroencephalogram. Sympathy for brain damage — if not for psychological harm — was widespread within the District Court so that failure to check upon the possible existence of brain damage as a consequence of the brain concussion suffered by the defendant struck counsel as very persuasive for a new mental examination.

In an unopposed motion for Walter’s commitment to the D.C. General Hospital Psychiatric Division, his counsel asserted as follows:

1. Defendant’s counsel has been informed by Dr. John D. Schultz, the medical director of the D.C. General Hospital who has seen the defendant pursuant to an order of this court, that complete reliability of the examination conducted by Dr. Schultz of the defendant requires further observation of the defendant in the controlled setting of the D.C. General Hospital Psychiatric Division for a week or at least three days.

2. Defendant’s counsel has been further advised by Dr. Schultz that a letter to this court has been sent by him to this general effect.

3. A perusal of the photostatic copies of the hospital records of St. Elizabeth’s Hospital in this case shows serious internal contradictions and a failure to accord defendant, a victim of a cerebral concussion . . . an electroencephalogram to rule out the possibility of brain damage.

4. There appears to have been a consistent disagreement between the authorities of St. Elizabeth’s Hospital and the D.C. General Hospital as to the mental status of the defendant. When examined by the D.C. General Hospital psychiatrists in 1956, the defendant was reported to be psychotic and in need of treatment in a hospital situation. The St. Elizabeth’s authorities disagreed with the evaluation at that time. This disagreement appears to have been maintained as the result of the examinations conducted in the instant case.
5. It is submitted that the defendant is entitled to have the full weight and benefit of the medical opinions in his favor in this case. It is believed that this can be accorded to him only if the request of Dr. John D. Schultz for a few days of hospitalization at the D.C. General Hospital is complied with.

On February 27, 1961, the District Court directed the transfer of the defendant to the D.C. General Hospital Psychiatric Division for a period of four days. As a consequence of that transfer, the defendant gained the additional support of the following prospective witnesses: Dr. John D. Schultz, formerly the Chief Psychiatrist and at the time of the trial, the Medical Director of the D.C. General Hospital, who in 1956 had diagnosed the boy as psychotic and who now brought his findings up to date; and Dr. Bernard Levy, the Chief Psychologist of the D.C. General Hospital.

Counsel had hoped that the transfer of the accused to the D.C. General Hospital would result in recruitment of more than these two witnesses. However, under the court order the commitment was for only four days and the Chief Psychiatrist of the D.C. General Hospital stated that she could not make any further staff members available for the case in that brief time span. Counsel's main concern was not solely that of gathering further testimonial support, but he was particularly hopeful of obtaining a solid institutional front of D.C. General psychiatrists for this case. It was critical to his cause to have one government hospital completely committed to the insanity defense since he was opposed by another government hospital. Counsel therefore utilized available National Institute of Mental Health funds to retain Dr. James A. Ryan, Assistant Chief Psychiatrist at D.C. General Hospital. His "recruitment" did not take place until the boy's transfer from the D.C. General Hospital to the District of Columbia jail. Dr. Ryan, of course, utilized the available D.C. General Hospital records in aid of his diagnostic evaluation since his diagnostic contacts with the boy were restricted to examinations conducted at the jail before and during the trial.16

16. In general, the observation of a criminal made during the fatal hours preceding the trial, reveals to a psychoanalyst a great deal about the unconscious of the man; at times even more is revealed than in the course of many empty weeks of a difficult analysis of a psychoneurotic. The dramatically concentrated expressions of the man's unconscious, just before and during the trial, are more convincing at times and much deeper than the protracted epic presentation which the unconscious uses in free association.


As a layman I cannot, of course, make any valid generalizations concerning the significance of Dr. Ryan's locus of examination in this case beyond setting forth the view quoted above.

I can state that apparently more experienced psychiatrists with identical opportunities for observation in the prison setting failed to match the intuitive and intellectual understanding displayed by Dr. Ryan in this case.
Another staff member of the D.C. General Hospital "recruited" for the case was a psychologist who had initially tested the boy in 1956.

At about this time, two dissenters within the framework of the St. Elizabeth's hierarchy indicated willingness to testify for the defense. They were Dr. Brigitte Julian who believed the boy to be mentally ill but felt that she had not had an opportunity to make a more precise diagnosis; and Dr. Catherine Beardsley, the Chief of Training in Psychology at St. Elizabeth's, who believed the boy to be schizophrenic.

Counsel further attempted to secure a psychiatrist who would be willing, perhaps even without examining the defendant, to give the court his own objective evaluation of the adequacy of the diagnostic work-up at St. Elizabeth's Hospital, as reflected by its records. Approximately six reputable psychiatrists in the District of Columbia were approached on this subject but all refused to consider it. One well-known local psychiatrist expressed outright shock and amazement at the mere thought that a lawyer would consider a maneuver by which a psychiatric witness could be called upon to criticize the adequacy of the diagnostic work-up at St. Elizabeth's Hospital.

Therefore, counsel contacted two New York psychiatrists. Dr. David Abrahamsen appeared willing to conduct such a study. However, quite inadvertently, counsel secured the services of Dr. Charles Goshen, at that time an Assistant Professor of Psychiatry at George Washington University medical school and a former administrator in the hierarchy of the American Psychiatric Association. Dr. Goshen agreed to review the St. Elizabeth's Hospital records but insisted also upon examining the defendant himself. His conclusion was that the accused was clearly schizophrenic and that the records reflected an inadequate diagnostic work-up, although such data as was available to St. Elizabeth's pointed to the presence of a schizophrenic illness.

A word or two about the defense counsel's contacts with the defense experts in advance of trial is in order at this point.

Defense counsel saw Dr. Schultz in an interview that lasted approximately fifteen minutes. Dr. Schultz stated without any ambiguity that he regarded the patient as schizophrenic and suggested that the failure of St. Elizabeth's Hospital to recognize the schizophrenic process might be attributable to an excessive preoccupation with a quest for "secondary" as distinct from "primary" symptoms of schizophrenia. Since Walter Wilson often did not seem to manifest the secondary symptoms, namely hallucinatory experiences, it was possible that hurried examination or examination by inadequately trained or inexperienced psychiatrists might fail to turn up the proper diagnostic data. He added that psychiatrists no longer required a
finding of secondary symptoms for a diagnosis of schizophrenia and that the diagnosis of schizophrenia upon the basis of primary symptoms was a subject of frequent questioning on examinations conducted by the American Board of Psychiatry and Neurology.\textsuperscript{17}

Counsel saw Dr. Salzman about this case on approximately three occasions for approximately half an hour at each meeting. Dr. Salzman furnished the defense with three written reports on his examinations. He initially described his patient as "... a rather tight-lipped, unfriendly and anxious person, who cooperated in the interview but used the occasion largely to defend and justify his situation."\textsuperscript{18}

\textsuperscript{17} Bleuler's classic treatment of the schizophrenic process provides the following information in this field.

We can only understand a psychically determined psychosis if we distinguish the symptoms stemming directly from the disease process itself from those secondary symptoms which only begin to operate when the sick psyche reacts to some internal or external processes. BLEULER, DEMENTIA PRÆCox OR THE GROUP OF SCHIZOPHRENIA 348 (1950).

The primary symptoms are the necessary partial phenomena of a disease; the secondary symptoms may be absent, at least potentially, or they may change without the disease process having to change at the same time.

Almost the totality of the heretofore described symptomatology of dementia praecox is a secondary, in a certain sense, an accidental one. Therefore the disease may remain symptomless for a long time. Whether a particular chronic schizophrenic is able to work peacefully today or wanders about and quarrels with everyone, whether he is neat and clean or smears himself — that is the nature of the symptom — depends mainly on past or present events, and not directly on the disease. Some affectively charged experience releases a hallucinatory agitated state. A transfer to another hospital may bring about the disappearance of the same hallucinations. Affects, which may have been entirely absent for years at a time, may suddenly begin to function normally again on certain occasions.


Dr. Salzman's findings were highlighted in his report in these words:

There is a clear atmosphere of intense hostility radiating to everyone, but particularly the police. This is strong enough and embracing enough to justify being called a paranoid system. He insists that the three detectives from No. 8 Precinct had it in for him and hated him and threatened frequently to kill him. While he could not explain why they hated him, and he recognized that he was in much trouble before meeting them, he insists that they are responsible for all his trouble, since they provoked and tormented him. There appears to be no hallucination at the time, but there is a rather elaborate delusional system, with the accompanying intense hatred that could easily be fanned into homicide.

His attitude is arrogant and contemptuous and while he appears to have no remorse for the fatal accident, he is tense and anxious to a point of exaggerated
Dr. Salzman did, at counsel's request, briefly confer with two of the lay witnesses who had known the defendant. He appeared to show no interest in the defendant's intake of dog tranquilizers and nine glasses of beer.

Counsel suggested to Dr. Salzman that he describe the boy to the jury as though he were talking about him to a group of mildly interested but unsophisticated relatives concerned about how they could help.

Dr. Ryan conferred with counsel at great length, both in personal conferences and over the telephone. He took the initiative in contacting people who had known the defendant and telephoned the Edgemoor Animal Hospital to determine the content of the tranquilizers taken by the boy. Prior to his testimony in the courtroom, Dr. Ryan asked to see the boy within the cell block. He conferred with counsel frequently in the courtroom corridor about the boy's problems and his views of the case. He appeared to be the only physician, in addition to Dr. Charles Goshen, to manifest a definite concern over the boy's ability to cope with the continuing stress of the trial.

In preparing to meet the psychiatric evidence of the prosecution, which would, of course, conform with St. Elizabeth's Hospital's findings of "no mental disorder," the defense planned to show: a lack of a psychiatric examination in depth at St. Elizabeth's, as well as a lack of a psychoanalytically trained psychiatrist to conduct such an examination (Dr. Salzman could testify as to the requirements of an examination in depth which would provide more than a descriptive label); and also the refusal of St. Elizabeth's to avail itself of the substantial data concerning the defendant's life history gathered by the defense investigation.

IV.

THE FIRST DAY OF THE TRIAL

Counsel had decided upon the following seating arrangement. He was sitting at the head of the counsel table. Two law students assisting him in the case were seated to his right. The defendant, Walter control which periodically breaks down, when he becomes angry, threatening and insulting.

Id. at 862-63.

A subsequent report by Dr. Salzman provided little historical explanation of the defendant's mental state but confirmed the impression of psychotic psychopathology. Thus the patient was described as follows on March 5, 1961:

On this occasion he was sullen, flattened in affect and quite withdrawn. He said No. 8 Precinct was planning to shoot him and nail him to a door. He has had no rest from the police and if he had the opportunity he would kill them all. He says he has also killed lots of people mentally. He trusts nobody. The paranoid ideas are more firmly clarified on this occasion, with some suggestion of hallucinations regarding his father. He again expresses his excessive fury at homosexuality.

Id. at 864.
Wilson, was the next man on the right. Sitting behind him was the marshal who was assigned to guard him. Flanking Walter upon the extreme right hand corner was defense counsel's associate.

The decision as to seating was prompted by the feeling that any closer proximity between counsel and client would result in needlessly distracting pleas for information from the latter. Counsel also felt strongly that conferences between counsel and client at counsel table were regarded by the average jury as evidence of rational participation inconsistent with an insanity defense. Accordingly, counsel instructed his associate and the two student assistants not to initiate any conversation with Walter but to jot down any request that he might make during the trial and pass it on to him.

The opening note, struck by the introductory remarks of prosecuting counsel to the prospective jury members, was casual and relaxed.

Walter, who had initially been fixing his eyes on the floor, subsequently allowed himself to slump over the counsel table, burying his head in his arms. A marshal approached counsel at that stage and whispered that the judge wanted the defendant to sit up. Counsel so instructed Walter. Walter followed directions but later lapsed into his earlier position. Thereafter his position at the counsel table could be best described in the words of a visiting psychologist:

While sitting in his straight chair, the defendant rocked rhythmically back and forth, his entire trunk and head moving to and fro in a steady, mechanical motion.

The court permitted counsel to engage in what counsel regarded as an adequate examination of the prospective jurors on voir dire to determine their willingness to accept a case of psychopathology not displaying flagrant symptoms of psychosis and even a case of non-psychotic psychopathology as entitled to an insanity acquittal.

Counsel inquired at one point whether or not the prospective jurors might be "adversely affected against the defendant in the evaluation of an insanity defense if there should be evidence, as well there might be, that the defendant...[had] been involved in acts of juvenile delinquency as a child."21

The court interrupted to inquire how counsel intended to bring that out. Counsel replied that some of the psychiatrists would base their final diagnostic opinion in part upon a history of protracted maladjustment, including juvenile delinquency and that this delinquency

would be considered only as one of a large number of symptoms all of which, viewed in their totality, impelled a given doctor to a particular conclusion.22

Counsel inquired at another point whether the prospective jurors would be prepared to return a verdict of not guilty by reason of insanity even if the defendant did not resemble a wild beast.

There was silence.

Counsel responded that he gathered from the silence of the prospective jurors to this question that they would indeed “be prepared to acquit on the basis of a reasonable doubt as to mental illness and its connection with the crime, even though the defendant . . . [was] not shown to be a wild beast or bereft of reason in any way.”23

The jury as finally composed consisted of a program analyst, an unemployed clerk typist, a contact representative, three housewives, a male room attendant, a press man, an analyst, a scientific instructor, an economist and a retired gentleman. Negroes and whites were represented about equally on the jury.

The factual transaction was promptly stipulated by the defense and the prosecution. The full nature of the stipulation presented by the prosecution deserves being set forth in extenso:

It is stipulated between counsel that in the early morning hours of June 9, 1960, I believe at about 2:40 a.m., the evidence will establish that one Julian Thompson was driving his automobile in an easterly direction in the 3700 block of Military Road, Northwest, in the District of Columbia;

That . . . in the front seat of the automobile was one Constantine Poulos; in the rear left side behind the driver was one John W. Norris;

In the middle, in the back, was Charles Williams;

And on the right side was Edward F. Johanek.

The evidence will establish that when they had arrived at that point and traveling in an orderly manner and within the speed limit, . . . there was an oncoming car which had been observed at Missouri Avenue in the District of Columbia going in a westerly direction;

That this automobile began picking up speed when it had come under the observation of members of the Police Department in a squad car.

The evidence will establish that it proceeded along Military Road, Northwest, going in a westerly direction; that it had weaved

22. Id. at 9-10.
23. Id. at 8.
to the right and to the left; that it had arrived at speeds in excess of 60 miles an hour.

The evidence will establish, or it is stipulated, that when it arrived, these cars came together at 2701 Military Road, Northwest, in the District of Columbia, there was a head-on collision.

The point of impact in this collision would show that the automobile going in a westerly direction was a couple feet south of the center line which would put it in line of the oncoming car that was going in the easterly direction in which the aforementioned deceased mentioned in the indictments were traveling.

The point of impact would also show that the car going in the easterly direction in which the deceased was, was slightly over the center line.

The evidence further stipulated—

(The Court) Which car was over the center line?

(Prosecution) Both of them.

(The Court) Both of them were over the center line?

(Prosecution) Yes, sir.

(The Court) Very well.

(Prosecution) The evidence further showed that from the point of impact the automobile in which the four deceased were, along with this John W. Norris, was forced back approximately 78 feet.

The evidence would show that at the time of the collision that this automobile being driven by the defendant Walter X. Wilson going at a highly excessive rate of speed and that just prior to the collision it had weaved to the right and to the left excessively.

The evidence will further be, or is, that the officers on arriving at the scene did see the defendant in the striking vehicle which had been going in the westerly direction;

That he was taken from that automobile and taken to the hospital for treatment.

The facts are and the evidence is that ... [the four occupants of the other vehicle were all pronounced dead on arrival at nearby hospitals within one hour of the collision].

The evidence will show further to the effect that ... the next morning Dr. Welton, Deputy Coroner in and for the District of Columbia, made an autopsy of the remains of the four deceased described in the indictment, and which I have already told you were taken from the automobile;
That this autopsy was that the injuries that these aforementioned sustained did cause their death and that these injuries were sustained in this automobile accident on the morning of June 9, 1960.24

Following a conference at the bench, it was further stipulated that the defendant had begun to speed and weave from one lane to another only after a police car had approached him and that this approach was justified in view of the stolen car report. In addition, the injuries sustained by the defendant, as indicated by certain hospital records, were agreed upon.

In his opening statement to the jury, defense counsel declared:

[T]here were warning signs . . . of mental illness [in the case of Walter X. Wilson]. These warning signs were ignored....

In 1956, the boy, after numerous episodes of bizarre, acute, and dramatic maladjustment, was sent to the D.C. General Hospital Psychiatric Division, where he spent four months and received the intensive . . . attention of the doctors, headed by Dr. John D. Schultz, who will testify before you.

And it was at that time, in 1956, when the boy was only fifteen . . . that Dr. Schultz reported . . . that the boy was . . . psychotic . . . and that society's interest demanded that he be confined in a hospital where treatment was available, and where he could be cured of his illness . . .

Dr. Schultz's warning fell on deaf ears.

The boy was released from St. Elizabeth's. . . .25

Dr. Schultz turned out to be the first witness for the defense and was called immediately following a recess.26 His testimony was couched essentially in conclusory terms and depended for its persuasiveness essentially upon his authoritative and self-assured air and presentation.

Dr. Schultz observed that he had diagnosed the defendant as schizophrenic in 1956 and that his present opinion was substantially the same. It was his further opinion that the defendant's crimes, if any, were the products of his mental illness.

24. Id. at 17-23.
25. Id. at 26-28.
26. Once the stipulation had been made in open court, the government's case as to the facts of the manslaughter charge was established. It then became incumbent on the defense to introduce "some evidence" of mental disorder in the accused, which the government in turn had to disprove beyond a reasonable doubt if it were to secure a guilty verdict. Tatum v. United States, 190 F.2d 612, 615 (D.C. Cir. 1951). This explains the topsy-turvy sequence of witnesses in this case, with the defense calling the first witness and the prosecution following with its evidence as to the accused's sanity.
As concluded by Dr. Schultz, the defendant was "of unsound mind." 27

Dr. Schultz had difficulty recalling aspects of the case at certain times and struggled with his recollection of details. 28 This deficiency became particularly apparent upon redirect examination. The following is illustrative:

By the Defense:

Q. Aside from the diagnosis of any other doctor, Dr. Schultz, is there anything within the hospital record during the period indicated, June to September, 1960, suggestive of mental disturbance? And I refer to what the defendant is reported to have done, rather than anything that may have been said about his condition on psychiatric study.

A. I can't answer that. I would have to restudy it. I don't recall that there is and I don't recall that there is not.

Q. Dr. Schultz, is it not a fact that the hospital record between June and September, 1960, reflects an attempted suicide by the defendant [Walter X. Wilson]?

A. There is a note to that effect in the record; that is correct.

Recross Examination

By the Prosecution:

Q. Does that have some significance for you, Doctor?

A. No, sir.

Redirect Examination

By the Defense:

Q. Dr. Schultz, you do not consider suicidal attempts to be evidence of mental health, do you sir?

(Prosecution) I object to that — this suicidal attempt, in this case.

(Defense) Very well, in this case.

(The Witness) Evidence of emotional disturbance, yes, but this can occur in any diagnostic setting. That is why I said it had no special diagnostic significance. 29

Upon the resumption of the trial that afternoon following a luncheon recess, Dr. Salzman took the stand. Counsel for the defense

28. Id. at 67-91.
29. Id. at 95-96.
established his qualifications, including a teaching position at St. Elizabeth's Hospital which allowed him to assert that the staff members of the John Howard Pavilion were generally present or former students of his "because they come through . . . [his] seminar." 80

A lack of rapport between Dr. Salzman and counsel appeared evident almost immediately. The following colloquy is illustrative:

Q. Do you have an opinion, Dr. Salzman, to a reasonable medical certainty, as to whether the accident described in the indictment, was a product of the mental illness which you have diagnosed?

A. It so seems to me.

Q. Do you have an opinion to a reasonable medical certainty?

A. I have. I think that the accident was due to — was caused by the illness under which Mr. [Wilson] was at that time involved in. 81

Dr. Salzman's testimony was obviously given in terms less conclusory than those of Dr. Schultz. However, it became clear, as Dr. Salzman talked, that his knowledge of the defendant's recent past was haphazard and that his presentation often lacked organization and simplicity. His presentation, moreover, appeared marred both by his haste and his occasional staccato quality.

One of the first questions defense counsel put to him was as follows:

Dr. Salzman, would you tell the court and jury about the mental illness of the defendant, how it arose, developed, and affected his mental and emotional processes, specifically on June 9, 1960?

The response he received was this:

Well, I could perhaps start with June 9th and then try to build up to this as best I can, and as briefly as I can:

I believe that on June 9th, the situation which arose was the end result of a series of both delusional and what we call paranoid, meaning overwhelmingly frightened, attitudes that Mr. [Wilson] was undergoing, and when he was stopped and spoken to by one of the patrolmen, he got extremely frightened and sped off.

Now, the reason I say this is because there is a great deal of data with regard to his having had an abnormal pathological, delusional fear of policemen; he has been engaged in this particular kind of delusion for at least three years that I know, or maybe more, where he feels and felt that the policemen, particularly in No. 8 Precinct, were against him, were engaged in some plot to destroy him, to pin him up against the wall, as he puts it—. 82
The following interplay between court, counsel and witness then occurred:

(The Court) Are you getting all this from him?

(The Witness) Yes. Not all of it, most of this from him, some from a friend, a Mr. Rocca, who was a neighbor, information from his mother with regard to the expression of these ideas, and some from the social worker report, in which there is an abnormal exaggerated preoccupation, intense preoccupation with this whole problem of being the subject of abuse by policemen.

By the Defense:

Q. Was there any real basis to this fear, Dr. Salzman?

A. Well, apparently not, because I was told by Mr. Rocca and by some of the No. 8 Precinct,\(^3\) that actually some of them liked him; and I have raised this question on each interview with the prisoner, Mr. \(\text{[Wilson]}\), and cannot shake this notion at all. The fact is that there was not a clearcut antagonism towards him; that there were some people at No. 8 who actually thought he was a fairly nice kid, as they put it.

So far as I can see, and as far as one can understand, there was no reasonable basis for these extreme feelings.

Q. Now, would you tell the court and the jury, Dr. Salzman, how—

A. Incidentally, I only wanted to mention one other incident which brought this out, and I did not mention:

That when he worked at the veterinarian's — and this was reported by the people on the staff there — he would see policemen across the street, people who were dressed in plainclothes, who he said were policemen, who he thought were watching him, were scrutinizing him, and while working at the veterinarian's he felt that his activities were watched. [A]nd shortly before June 9th he put his suits in various tailor's establishments, a rather peculiar business because he assumed that he was being trailed and he wanted to make sure that all his suits were not picked up, so he had his suits cleaned at three different establishments, and I never could understand why, except that, as he explains it, it was a way of fooling the cops who were trailing him.

It just came to my mind.

Q. Could you explain to the court and the jury, Dr. Salzman, how these abnormal fears and fantasies originated?

\(^3\) Dr. Salzman had at no time talked to any member at the No. 8 Precinct as he subsequently admitted. He interpreted his testimony as signifying only that he had been informed about the views of the No. 8 Precinct.
A. Well, [to] the best of our knowledge, on the information that I have, most concerned itself with the early years of his life. I could only give you a sketch of the later years. But in the early years there was an extremely disrupted family situation.

There was an extreme amount of neglect in the home. The mother worked, the father presumably took care of the child. He was a heavy drinker, and there was a great deal of evidence that he rarely changed or even fed the child. This was translated into a great many pathological items of behavior then; head-banging, bed-rocking, sleepless activities, dietary problems, and so forth, and particularly in the first year—

Q. Dr. Salzman, if I may interrupt, would you describe to the court and the jury just what took place during that one year in more detail? You refer to head-banging and bed-rocking. What do you mean by these particular remarks and what is their significance in the first year of a child's development?

A. Well, the first year of the child's development is characterized by a total dependence upon the parents. The infant cannot take care of its needs in any regard and requires the good will of the parents.

When this is lacking, or if it is indifferent or even deliberately neglectful, you get various responses in the child towards this:

Some children may not survive it but when they do they develop a variety of symptoms which are indicative of abnormal situations. One of them is the head-banging in which the infant — the reasons why the infant does it are not very clear, but they are a response to a distressful situation inside — bangs its head against the side of the crib, floor, wherever it is, rather extensive banging, so that you get black and blue marks.

There are exaggerated movements — physical movements — in what is known as rocking, in which the infant will bounce back and forth in its crib. It's an expression of excited neurological symptomatology. There are some dietary problems which are rather common and understandable, and the bed-wetting, which was not present then but which came later, which extended to the eighth year, was another sort of auxiliary fact about the extreme situation that this infant was undergoing.3 4

When asked to describe “the personality of this boy,” Dr. Salzman replied:

I see this young man as somebody who is extremely sullen, overwhelmed with anger and resentments, a person who presents a picture of a frightened sort of animal-like individual who feels

[the] pressure of an unfriendly world, with antagonisms all around him, with inability to trust anybody, to feel close, and to feel that anyone is safe to be with, and underneath this, interestingly enough, when you do get to know him, in some ways he is rather a warm boy.

This does not seem contradictory if you get to know him a little better, of a frightened little boy, rather than someone who is angry as he appears on the surface.

Now, the picture of him essentially is someone who is being hounded, tormented, trailed and constantly endangered.

The direct examination of Dr. Salzman was concluded by asking whether the St. Elizabeth's Hospital records which he had studied reflected "an attempt at psychodynamic investigation. . . ."

His answer was: "No, not the records."

Defense counsel was forced to inquire: "What does?"

Dr. Salzman replied: "The records do not."36

Since it seemed clear that the case of the defendant would be gravely damaged by the testimony of the St. Elizabeth's Hospital physicians representing the official view of that hospital and one based upon essentially descriptive psychiatric thinking, the defendant's counsel attempted to stress the theme of a lack of evidence of psychodynamic examination at St. Elizabeth's upon redirect by asking Dr. Salzman if it were "... possible for a psychiatrist to determine the origin of the illness, how it arose, developed, and affected the mental and emotional processes of the defendant, without significant training in psychoanalysis?" He received this answer from Dr. Salzman:

Well, that's a different question and I think there we have a matter of definition because the area is confused. The training of psychiatrists today includes such a background in what we call psychoanalytic techniques and methodology [so] that it is hard to separate what is psychiatric and what is psychoanalytic, and I am not sure that that is particularly profitable.

What is significant is that the skill in exploration that comes from these techniques in doing psychodynamic investigations, are what we call psychoanalytic. That is where they came from.

Counsel asked the witness if he knew of a single fully-qualified psychoanalyst on the staff of the John Howard Pavilion of St. Elizabeth's Hospital, to which Dr. Salzman replied that he did not know the

35. Id. at 110–11.

36. Id. at 121. I have added the emphasis as the word records was stressed by the witness in his enunciation.
entire staff. Counsel then asked him if the records of St. Elizabeth's reflected an attempt at psychoanalytic investigation. Before the witness could reply, the court stated: "I don't think you have to have a psychoanalytic investigation to determine a man's sanity and I think the Doctor agrees with that."\textsuperscript{37} This, in essence, was Dr. Salzman's position.

The concluding part of Dr. Salzman's testimony seriously undermined the basic position of the defense — which was, that no adequate psychodynamic investigation had taken place at St. Elizabeth's Hospital. The need for sur-rebuttal witnesses at the end of the prosecution's case seemed imperative.

V.

THE SECOND DAY OF THE TRIAL

Dr. James A. Ryan was the first expert witness for the defense upon the resumption of the trial. He was the youngest of the defense doctors; he had not yet been certified as a specialist by the American Board of Psychiatry and Neurology; nor had he, unlike the two witnesses who preceded him, completed his psychoanalytic training at the time of his testimony. And yet — one does not hesitate to say — he was the most effective psychiatric witness to testify for the defendant.

The doctor had examined the defendant on two separate occasions prior to the trial. Significantly, he took the initiative in seeking out the defendant again on the day of his testimony and interviewing him briefly that morning.\textsuperscript{38}

He had, of course, studied the records which counsel had made available to him and had "talked with . . . [the defendant's] mother on the telephone for a period of about a half an hour . . . [and] with one of his neighbors, Mr. Rocca, for a period of about five minutes."\textsuperscript{39}

His handling of legally critical questions was, unlike that of the preceding witnesses, articulate, grammatical and direct. The transcript speaks for itself:

Q. Based upon your examination and study of this case, Doctor Ryan, do you have an opinion to a reasonable medical certainty as to whether the defendant, Walter X. Wilson, was suffering from a mental disease on June 9, 1960?

A. Yes, I do.

Q. And would you tell the court and jury what that opinion is, please?

\textsuperscript{37} Id. at 143-45.
\textsuperscript{38} Id. at 155.
\textsuperscript{39} Ibid.
A. In my opinion he was then suffering from a major mental disease, one which profoundly affected his judgment and his ability to moderate and guide his own behavior.

Q. Doctor Ryan, did you also form an opinion to a reasonable medical certainty as to whether the events charged in the indictment were the products of the mental illness in question?

A. Yes, I did.

Q. And what is your opinion, sir?

A. In my opinion the events prior to [those with] which Mr. [Wilson] has been charged were the direct product of a major mental illness.

Q. And what is the name of the major mental illness, Dr. Ryan?

A. At the time of the crimes with which he is charged, I believe he was suffering from an acute episode of paranoid schizophrenia. Perhaps a name that would designate it a little more accurately would be a schizophrenic panic reaction. 40

At all times, moreover, Dr. Ryan maintained easy rapport with the courtroom audience, sensing the points most likely to prove of interest to his lay listeners and setting them forth with appropriate clarity in his portraiture of his patient.

Asked as to how long the basic schizophrenic process had existed within the patient, Dr. Ryan provided the following account, interrupted by an occasional question:

A. I believe that it has existed for at least five years going back to the time of his prior admission to the D.C. General Hospital, and I believe that it is still existing even at the present time.

Q. Would you tell us something about that disease process and how it manifests itself?

A. This is describing the more chronic disease condition which I found which I would call a chronic state of paranoid schizophrenia in distinction from the condition at the time of the crime, acute panic reaction: the more chronic illness was manifested to me at the time of my examination by basically two findings; one was that there was evidence of delusions of persecution. These involved largely people in the police department who were, he felt, out to get him.

I might say that in arriving at a conclusion that he had such delusions, I had to make a distinction, which we often have to make, between a person who would be a 'cop hater' — we many

40. Id. at 156–57.
times have to examine a patient who has a rather fixed resentment about the police — but because of the very extensive nature of Mr. [Wilson's] fears about the police, I have concluded that he has delusions of persecution even at the present time.

If I might, while discussing the presence of delusions of persecution, there were other evidences of this type of delusion. For example, in my examination of Mr. [Wilson] on Friday, after the trial had been on for one day, he spontaneously began the interview by saying that he was going to get a certain individual, he was going to strangle him, if this individual came in court again he might jump up and try to choke him.

I asked him to tell me more about this, and he said it was that person, he used an epithet, called him an 'S.O.B.,' that man was against him; and I asked him who the man was, and he said it was a man — at this point he explained that they had asked before picking the jury if any of the jury had any reason of prejudice, and reason not to be on the jury, and that this one person had said yes, he did have a reason not to be on the jury and that this man was prejudiced against him, and if he could get hold of this one individual who admitted in court he was prejudiced, he would kill him.

By way of pointing up how there is a delusion involved here, I then explained to him that this is a procedure which is designed to protect him. Persons who might have any reasons to be against him are screened out in this way at court, and that this person apparently had some reason not to be on the jury and that actually then this person was someone who was acting in his best interests.

At this point he said, 'Well, I still want to get him, but it's those other people who are on the jury. He is the only one who admitted it. The others are all there to get me, and they were put there by the Number 8 Police Department.'

This actually came out a little later about the Number 8 Police Department, so his feeling was that the whole jury was rigged and this one individual who he wanted to kill was another person who was in a plot against him, so in this way his idea about getting back at a person who seemed to be acting in his best interests becomes logical in a morbid way; becomes logical because he felt that this person was just part of a whole plot of people to hurt him.

Q. Is it possible, Doctor Ryan, that these unusual statements on the part of the defendant may be the product of an inherently bad person rather than a sick person?

A. I would say that this type of thinking is an indication of a profound mental disorder.41

41. Id. at 157–60.
Nor did Dr. Ryan, unlike the doctors who preceded him, lose sight of the appearance of his patient at the counsel table as he provided a narrative account of the dynamics of his patient’s mental illness. Asked as to whether there were any “overt symptoms which . . . [were] easily noticeable about the defendant and which . . . [exemplified] his illness at this time,” Dr. Ryan replied as follows:

Yes, there are.

As a matter of fact, at this time — even at the present time — I believe the defendant is exhibiting a symptom of rocking which I had occasion to observe in the jail. This is not in itself a symptom of psychosis, but it is a symptom which has a long past history in his case. 42

As the witness made these remarks, judge and jury turned in the direction of Walter Wilson, who was rocking back and forth in his chair without interruption. Only after the judge and the jury had had an adequate opportunity to absorb this sight did Dr. Ryan resume his testimony. Dr. Ryan did not appear to be in any way striving for any dramatic effect. Walter’s rocking back and forth in his chair at that specific moment was in fact all-absorbing both to the doctor, and, at that stage, to the judge and jury.

As Dr. Ryan went on with his testimony, he explained:

Actually, he has a past history of head banging. Up until he was about two years old he would bang his head against the side of the crib. This type of symptom, when it goes on for some period of time, in itself usually indicates a profound emotional turmoil on the part of a young child.

Nowadays we see this particular symptom as a reason for a psychiatric referral even in a year old youngster.

Following the period in which he had the symptom of head banging he developed a symptom of rolling or rocking which is another very profound indication of emotional unrest in a youngster. He developed this symptom at age three and it has continued on up until the present time.

Now, this is a symptom in which a person adopts a rocking motion. Basically, they may use it at bedtime; most commonly they use it at bedtime to get to sleep at night. Psychologically we believe that it is based on the rocking motion of a cradle. There is something in the general rocking motion that may help a severely disturbed person to get to sleep.

Now, during the course of my examination at the jail this symptom became a sign, that is, it became something objective

42. Id. at 160.
which I was able to observe, and it came on about midway through my first interview with Mr. [Wilson] at a time when we were talking about his mother, when he spontaneously began to rock back and forth.

I suggested that perhaps this sign may be present right now. I would say that this is just a little bit of what I actually observed in the way of rocking at jail. At the jail the rocking was quite profound, involved his whole body, actually, rocking back and forth without an apparent awareness on his part that he was rocking. It continued for perhaps twenty minutes or so while we were talking about matters that he was then distressed about.

Q. Can you tell us about any of the other symptoms of his illness?

A. Yes.

There was one other indication, major indication, of illness.

There is one other classical manifestation of this disease which we speak of as flatness, or flattening of the mood.

Now, flattening of the mood is something which a psychiatrist is specially trained to observe. In order to explain how I saw this symptom I would have to explain what we mean by the mood.

You know normally people show variations in their mood. You know that you may meet a person and say that person is a very warm individual, or you may speak of someone as being very spontaneous or full of life or vibrant personality. These are laymen's comments on the mood of another person. Similarly, you might meet an individual and say, 'Well, that person is a cold fish, he hardly cracked a smile all the time I was with him.' These both are comments on a person's mood.

Now, the normal variations in mood can be very subtle and a psychiatrist is specially trained to see subtle variations in the mood.

The mood actually reflects a person's interest in his surroundings, in response to things that are happening in — for example, in a discussion with a doctor a patient's mood normally varies up and down, may become a little angry, or may become warm hearted, may feel good, may show pleasure in the course of a discussion with the doctor, and these are normal mood variations.

Now, in Mr. [Wilson's] case throughout the first twenty minutes in which I saw him I would say that he showed a flattening of the mood, that is, he was talking about himself, he was responding to questions, but with no variation whatsoever in his mood. A little bit of variation began to come in after he developed the rocking motion. Then after that there was an indication of very hostile mood, and then, finally, at the close of my
talk with him there was a little evidence of warmth, a reaching out to me for some kind of interest in him. This only came at the end of an hour and fifteen minute discussion with him. So that at the start there was a sustained period in which he displayed flattening of the mood, and flattening of the mood does indicate a person who has it has withdrawn his interests from his surroundings and pulled into himself in a very serious way, something which is only seen in the presence of a major mental illness such as schizophrenia.  

We have evidence that the illness existed five years ago, I would say very clear evidence in the records of D.C. General Hospital in reports of doctors who at that time found flatness of affect. Two of my colleagues on the staff, Doctor Schultz and Doctor Costa, at that time made the same observation about the mood which I had occasion to make last week. Also the thinking disorder is indicated in the record at that time so that it is an illness that was present as far back as five years ago.

Now, how an illness like this actually gets started is a matter of . . . [dispute]. For example, there are schools of psychiatry that would say this illness has a chemical origin, and there are other schools of psychiatry that say no, it has a psychological origin. I believe that the predominant psychiatric theory about an illness like this would say that there are undoubtedly psychological factors even though there may be chemical influences.

Now, the kind of psychological factors that would appear to be involved in the origin of this illness were obtained in the history which I got from Mrs. [Wilson]. She related that . . . very early in his life it was necessary for her to turn her attention from her son to work, that even before he was born she was having serious trouble with her husband, that her husband had been an alcoholic for a number of years, that he beat her up, and in characteristic fashion of a person who would have a serious drinking problem her husband had extra trouble in tolerating her pregnancy with [Walter]. So that she herself had a considerable background of reasons to have worry about having her son in the first place, worrying about giving birth to him.

And then shortly after birth she continued to have trouble by way of fights with her husband. He actually moved out, I believe, shortly after the time of [Walter's] birth, and he came and went for a period of several years. Now, his coming and going again was marked at all time by episodes of violence between Mr. and Mrs. [Wilson].

This kind of violence can't exist in the life of a youngster without raising the possibility of having a serious illness. Now, I am not saying that every youngster who is exposed to violence has a serious illness. Many of them have ways of compensating

43. Id. at 160-63.
so that the illness does not develop, but when we see this history
and the coming and going, the insecurity created by absence of the
father from the home, the insecurity created by violence which
the youngster experiences, then we see at least a strong, early sort
of fertilizing process that may make a way for major mental illness.

Now, I have already touched on the indications of serious
emotional turmoil early in life; the symptom of head banging
which existed for, I believe, about a year and a half, just roughly
age two to three and a half, is a very serious symptom, one for
which we would always at this time advise psychiatric evalua-
tion, again, not necessarily an indication that schizophrenia is
then present, but an indication of serious emotional turmoil.

The subsequent symptoms of rocking before going to bed at
night is a very profound pathological sign, and then there is further
history of this child being different. Often we believe the origins
of the illness do go well back into childhood, and they are de-
scribed by parents as a difficult child, one that didn't get along
with other children, one that kept to himself more. 44

There is indication that the illness may have been present in
the period . . . . when [Walter] was about eight and had acquired a
collection of knives and had threatened to use one of the knives
on his father if his father ever came back. This would suggest,
even at that time, a very deep feeling of insecurity and a tendency
to have homicidal impulses, a youngster who would carry a knife
at that age and speak of using a knife on his father, so that it is
difficult to say when the illness actually arose. It appears to have
been present five years ago. There are indications that there was
a severe degree of emotional unrest going back to age one and
a half or two.

Q. Now, Doctor Ryan, do you have an opinion as to the
mental and emotional processes of the defendant, [Walter X.
Wilson], on June 9, 1960, and the effect of those mental and emo-
tional processes upon the events of that day?

A. Yes, I do.

Q. And would you give us the benefit of your opinion, please?

A. I believe that on that day Mr. [Wilson], who was then
chronically ill, [with the] same illness I have described, suffered
a worsening of his illness. As far as I can see there were two
things involved, two factors involved in the worsening of his illness.

For one thing, from a psychological point of view, there had
been a worsening because he had hoped to get into the service
and he had talked with Mr. Rocca, his neighbor, about his dis-

44. The words in the official trial transcript are “different child.” It is obvious
that this is one of the stenographical or typographical errors which marks many a page
of an average transcript. I have taken the liberty of recapturing what I believe to
be the true meaning by substituting the obvious.
appointments in actually trying to get into the service, but two other factors appeared to bring on an acute worsening on the evening of June 9.

One of these factors was that Mr. [Wilson] had taken five tranquilizing pills at approximately nine o'clock in the evening and the other one was that about two hours after that—

(The Court) How do you know?

(The Witness) This is the history, Your Honor. I don't know for a certainty.

(The Court) Who told you that?

(The Witness) This is history that I obtained from Mr. [Wilson].

(The Court) He told you that he took five tranquilizing pills?

(The Witness) Yes, Your Honor.

(The Court) What kind?

(The Witness) These tranquilizing pills were dog tranquilizers which he said he obtained from — I believe it is the Edgemoor Animal Hospital where he had been employed some months before.

(The Court) They give tranquilizers to dogs?

(The Witness) Yes, Your Honor, they do.

(The Court) Even a dog is nervous and has to have tranquilizers? What do they give them?

(The Witness) This particular tranquilizer is made up of about four different ingredients.

(The Court) Does it have a name?

(The Witness) I don't know the trade name, Your Honor.

(The Court) Well, is it similar to Equanil, Miltown, or Thorazine, or something like that?

(The Witness) Yes, it is similar to them. It has actually the same ingredients used in human tranquilizers. This one has some Phenobarbital in it and it has one of the newer tranquilizers Mephenesin in it, and I believe it has Bromide in it as well. I am not sure what the fourth ingredient is.

(The Court) He took five of these on the date in question at about what time?

(The Witness) At about nine o'clock, Your Honor.

(The Court) How strong are these?
(The Witness) This would be difficult to actually know because it is not a preparation used in regular medical practice, but from the amount of ingredients that were present, the recognizable ingredients that are in the tranquilizers, I would say five of them plus a later history of drinking nine beers would create a good possibility for a toxic reaction, a drug state.45

Dr. Ryan then proceeded to discuss another symptom of the defendant's illness.

One element in his illness has been an enormous fear of being attacked or being hurt, and mixed together with the fear of being attacked is a fear of being approached by another man for a — what we would call a homosexual situation. These are two fears, and two separate fears which are very strong in the background of the patient. They would be so great that at the time of my last interview the patient brought out that he couldn't stand having a marshal sit behind him; he wondered, 'why can't that man sit in front of me where I can see him.' So this is a burden that he carries with him, I would say, at all times, his fear of another man attacking him; and then side by side with that is fear of another man approaching him and trying to have some form of sexual play with him.

Now, these two fears are ... present. I have to point them up because they are so vital to the understanding [of] the disturbed state in which I felt he entered on this evening.

These fears are so great that he has frequent dreams of men chasing him, he has had dreams of men approaching him, has dreams in which he murders men who approach him, he has had dreams in which his father is one of the men who approaches him and tries to engage him in activity, and sometimes the outcome of the dreams is that he falls down a cliff or falls over a steep building. These dreams have been regularly present for a very long time.46

Both the witness and defense counsel were side-tracked at this particular stage from pursuing the theme of the panic reaction brought about by the approach of a homosexual to the defendant as a result of a skeptical and digressive series of judicial questions as to the significance of dream interpretation in psychiatric diagnosis. However, Dr. Ryan picked up the threads of his testimony on direct examination with these remarks:

I might mention one further observation about the fear which would go into this, which would be another element, in my mind, regarding his fear of attack. [I]t came out in my second interview on Friday, something which I suspected after my first inter-

46. Id. at 174-76.
view, this patient has been having auditory hallucinations of a threatening nature. He has been hearing voices which tell him that someone is going to attack him, also voices which call him bad names. He has been hearing these for about five years.

I say that I suspected it after my first interview because — I might say, there is an art to learning that a patient has this degree of illness, that they have a hallucination, and there is a proper time for bringing the question in. Many patients are ashamed of the fact that they hear voices that threaten them and they won’t tell you.

In my first examination when it came to a point where I did ask a question about hearing voices the patient dodged the question, he didn’t answer it, but he went off and began to talk about dreams which he had had.

This is something that often happens in a patient who has hallucinations. A patient who is not having hallucinations will answer the question very quickly and very directly that they are not hearing voices.

In the second interview with him at a point later in the interview he finally confessed to me, as it were, that he had been hearing voices in the evening, which is a characteristic time for hearing them, at the end of the day just before going to bed or while in bed when it was quiet, when his interest from his surroundings was fully withdrawn, that he had been hearing voices, and he felt very ashamed about hearing them, he felt bad because the voices called him very bad names, and also he had always been worried because these voices threatened him.47

Dr. Ryan then added that Walter Wilson needed treatment in a maximum security ward of a mental hospital for a long period of time and that at the present time he was both homicidal and suicidal.

Cross-examination largely confirmed the strength of Dr. Ryan’s direct testimony. As a matter of fact it actually enhanced it. The following are some of Dr. Ryan’s answers to questioning upon cross-examination:

Q. This stress that you spoke of in direct examination, wasn’t that in reference to the police car coming up on the defendant, and things of that sort?

A. In my analysis of the case I see actually two stresses; the initial stress would have to do with the feeling on the defendant’s part that he had — that he was being approached by another man for an immoral act.48

47. Id. at 178–79.
48. Id. at 191.
Q. The acute reaction you speak of is a reaction to the homosexual advance, be it real or imaginary?

A. Yes, that's correct.

Q. How is that associated with the police coming upon the scene?

A. Again, behind this fear is a fear of attack, and there is evidence that he has had a long standing fear of attack, that I would believe to be a delusional fear of attack from police.

Q. How about the delusional fear of attacks from homosexuals?

A. Yes, this has also been present.

Q. But actually if there was an approach by a homosexual it would not have been a delusion.

A. No. Again the approach may not have been a delusion, but the persistent feeling that people around him were trying to engage him in immoral acts, this is the delusion; this is present still.

Q. That is as regards these other people, but we are saying that the acute reaction was this one homosexual approaching him on that night; isn't that correct?

A. Yes, in this particular instance.

Q. And he had some fear of that individual homosexual; right?

A. Well, again, whether he had a real fear of the individual or whether he had a misperceived fear of the individual, he still had a chronic delusion that men would try to engage him in homosexual behavior.

Q. Well, the chronic delusion, did that exist on June 8?

A. Yes, I would say that it did.

Q. How did this condition on June 8 vary from that on June 9?

A. I would say that the delusion has been present for many years and is still present.49

Fortunately, at this point, the line of cross-examination pursued by prosecuting counsel picked up the theme of the panic reaction brought about by the approach of the homosexual to the defendant on the day of the accident and permitted Dr. Ryan to put it in clear perspective in his testimony.

49. Id. at 200–01.
Q. How about the acute reaction; was there an acute reaction on June 8?

A. On the day of the—

Q. The day before.

A. The day before.

Again, the predisposition to an acute reaction was undoubtedly there, but he needed something to set it off.

Q. What set it off on June 9?

A. Again, I would say that it was either a real approach or it was the mere circumstance of being in the car along with another man.

Q. You know that he was in the car with another man?

A. Again, this is a history as I have obtained it from Mr. [Wilson].

Q. Did you determine who the owner of the car was on that particular night?

A. No, I don't know the owner's identity.

Q. And what about the—immediately after this homosexual experience, be it real or imaginary, being an offer of actual fulfillment of the act, what was the defendant's reaction?

A. The immediate reaction is one of fear followed by a breakthrough of angry impulse which he described as 'seeing red,' and 'going to pieces,' followed by a panic and a need to get away.

Q. How did he manifest that panic and that fear to get away; what did he do?

A. Then he began to kick and thrash about in the car, punch at the other man who was in the car, finally kick him out of the car. He said at first, 'Maybe I drove over him, maybe I didn't; I had to get away.'

Q. And then did he drive away?

A. He then drove away.

Q. And then what happened?

A. After that, my impression is that his recollections are somewhat blurred, but there did come a time when he saw a flashing red light.

Q. What happened then?

A. Then there was further panic — further, I would say an increasing state of panic at the thought that the police were after
him, again based on a long standing fear of what police might do to him.\textsuperscript{60}

On redirect examination the defense counsel concluded his questioning of the witness by inquiring as to whether he believed Walter Wilson to be subject to commitment to a mental hospital even if he were to assume that no crime had been committed by him in this case. There was immediate objection by the government.

The emerging judicial attitude toward the question of Walter's mental health was then promptly portrayed in these responses:

(The Court) Overruled.

He has schizophrenia, hasn't he?

(The Witness) Yes, Your Honor.

Not every patient who has schizophrenia is committed to a mental institution. I would have to become more specific, if I may—

(The Court) What type is that?

(The Witness) Right at the present time it is paranoid schizophrenia.

(The Court) You say that if you are a paranoid schizophrenic you shouldn't be committed?

(The Witness) No. We do recognize such a thing as a chronic paranoid schizophrenic who, we may feel, is not dangerous to other people.

(The Court) I am not talking about other people; I am talking about this person. You said he was dangerous, didn't you?

(The Witness) Yes, Your Honor.

(The Court) The question now is, even if he hadn't committed this crime should he be committed to a mental hospital.

(The Witness) Yes, Your Honor. Based on my present examination I would say he should be committed to a mental institution.\textsuperscript{51}

On recross-examination, prosecuting counsel sought to inquire of Dr. Ryan as to what "stage" the defendant's illness had progressed. Once again the court intervened, clearly showing his belief in the defendant's mental illness. "You say that he has had it for five years... That wouldn't be an early stage, would it?"\textsuperscript{52}

\begin{flushright}
\textsuperscript{50} Id. at 201-03.  \\
\textsuperscript{51} Id. at 209-10.  \\
\textsuperscript{52} Id. at 211.
\end{flushright}
Dr. Ryan's testimony has been characterized by an informed observer who had studied it in transcript form as "psychiatric teaching at its best."

VI.

THE THIRD DAY OF THE TRIAL

Defense counsel assumed at this time that the jury had perhaps been deluged up to its capacity with psychiatric testimony and decided upon a change of pace.

Consequently, the next two witnesses were laymen who had known the defendant. The first was the night attendant at the Edgemoor Animal Hospital, at which the defendant had worked, who testified about Walter's suspicion and fear of being watched by the police.

The second lay witness testifying for the defendant was the manager of a barbershop who had lived next door to the defendant until the latter was thrown out by his mother. Approximately three months prior to the accident, this witness had made a point of befriending the defendant and had seen him at frequent intervals.

He reported that the defendant had given his clothes to different cleaners because of his fear that they would be taken away from him. He further reported that the defendant would refuse the food that was offered to him and recounted that he had "observed on one particular occasion after offering him food, that . . . he went downstairs, reached into a bag of dog food, which is a dry substance mixed with water, and he got himself a handful of it." This witness concluded his testimony on an unexpected and dramatic note. Counsel inquired: "Would you say . . . [that the defendant] was getting better or worse towards the end of your acquaintance?" The witness replied: "I would say worse, basing it on what transpired . . . he was getting worse, and I might add one thing: Walter's physical appearance at the present moment — he used to have jet black hair; it is no longer jet black."

This was the second time that a witness succeeded in directing all eyes upon Walter Wilson. As judge and jury turned to look at him, Walter was seen, his eyes fixed on the floor, rocking rhythmically in his chair. His hair was not jet black.

The next witness was Dr. Brigette Julian, of St. Elizabeth's Hospital, the only medical member of the St. Elizabeth's staff who had expressed a willingness to testify that the defendant was mentally ill. Dr. Julian had seen Walter Wilson at a diagnostic staff conference at

53. Id. at 228 and 233.
54. Id. at 237-38.
55. Id. at 240.
St. Elizabeth's and had reviewed the available information about him at that time.\textsuperscript{55}

She declared that the patient had not displayed any "flagrantly psychotic symptoms" at the conference.\textsuperscript{67} She expressed her opinion, nonetheless, that he was suffering from mental illness.\textsuperscript{58}

When asked by the court about the specific nature of the mental illness she diagnosed, she said that "the label . . . [she] would have put on it at that time would have been . . . an emotionally unstable personality."\textsuperscript{59}

When asked by the court whether anybody at the staff conference agreed with her, she replied: "I think they said he was partly sick but not sick enough to warrant diagnosis of mental illness — and I think this is where we disagreed."\textsuperscript{60}

She added, still under questioning by the court, that she thought "... that the majority of them felt that he was sick . . . They expressed it in terms of his being incapable of functioning in the society and his being very impulsive, incapable of sufficient controls in minor stress situations. . . ."\textsuperscript{61}

Nonetheless, she explained, in what appeared almost a paradoxical fashion, that the staff conference did not reach the conclusion that Walter Wilson was suffering from a mental disease or defect because "his deviation from the normal was not sufficient to warrant the diagnosis [of mental disorder]."\textsuperscript{62}

Dr. Julian expressed the opinion that the mental illness of the defendant had been in existence on June 9, 1960.\textsuperscript{63}

The court clearly had difficulty in accepting the assertion of the witness that not every mentally ill person need be psychotic. The court repeatedly inquired in such terms as these: "Not everybody that is mentally ill is psychotic. What are they?" Her answer was: "Mentally ill."\textsuperscript{64}

When asked by the court as to what she meant by the words "mentally ill," she replied:

I think mental illness takes many forms, and I do not know whether I am expert enough to give you now a summary of those symptoms which are common in all mental illness, but I think that mentally ill people have more difficulty than others to deal with

\textsuperscript{55} Id. at 243.
\textsuperscript{57} Id. at 244.
\textsuperscript{58} Id. at 244-45.
\textsuperscript{59} Id. at 245.
\textsuperscript{60} Id. at 246.
\textsuperscript{61} Id. at 246-47.
\textsuperscript{62} Id. at 247.
\textsuperscript{63} Id. at 254.
\textsuperscript{64} Id. at 254-55.
stress situations in life; they are usually inefficient, they can very easily be panicked. They might sometimes use ways of dealing with problems in their life which seem to be rather irrational; they don't seem to fit the purpose of what they try to achieve. They have a very short frustration tolerance. They might show physical symptoms of overt anxiety, of trembling, shaking, and blocking of speech; these are only to name a few.65

When the court pursued by inquiring as to what specific symptoms the defendant had, Dr. Julian replied:

The way I saw him in the conference was, as I said before, I felt that some of his answers to questions showed very bad judgment. I felt that he was preoccupied so that he could hardly tear himself away from his idea of hate, that he was very impulsive.66

Significantly, Dr. Julian declared in answer to defense counsel's question as to whether or not it was possible to rule out the existence of a psychotic episode on June 9, 1960 that it was not possible and "I don't think that anybody at St. Elizabeth's Hospital would say that."67

Cross-examination of Dr. Julian was essentially restricted to showing that she had not observed any flagrant psychotic symptomatology about her patient.

Defense counsel attempted to conclude his redirect examination of the witness with a question designed to shed light upon the psychiatric policy of the St. Elizabeth's staff which permitted it, as expressed by Dr. Julian, to find a given individual sick, but not sick enough, to be diagnosed as having a mental disorder.

The following transpired at that stage:

Q. You said the St. Elizabeth's doctors at the staff conference thought that he was sick, but not sick enough. How do people happen to talk that way? I find it as difficult to follow as the court.

A. This is my own, completely my own opinion. I have been in John Howard Pavilion dealing with patients—

(The Court) Answer the question. The question is very simple; there is nothing complicated about it. You said the staff

65. Id. at 255.
66. Id. at 255-56.
67. Id. at 269.
conference was of the opinion that the man was — did you say mentally sick?

(Defense) Sick, but not sick enough; yes, sir.
(The Court) — sick, but not sick enough; is that right?
(The Witness) Yes.
How is that possible, was that your question?

By the Defense:
Q. Yes, Dr. Julian. Could you explain that to us?
A. My opinion is that most psychiatrists — very many psychiatrists, and particularly my colleagues — do think that people who act out against society are sick, and—
(The Court) What is that again? Everybody that commits a crime is mentally sick?
(The Witness) Is sick, yes.
(The Court) Do you believe that?
(The Witness) Yes.
(The Court) You don’t believe in free will, then?
(The Witness) I don’t know what it is.
(The Court) You don’t know what free will is?
(The Witness) What do you mean by that?
(The Court) Don’t you understand what free will is? You are a psychiatrist and you don’t know what I mean when I say free will?
(The Witness) No, I don’t.
(The Court) Don’t I have a will of my own to do as I please?
(The Witness) Could you take a concrete example?
(The Court) Suppose I want to go up to a movie this afternoon, I could go, couldn’t I, if I chose to?
(The Witness) Yes.
(The Court) I could go up and buy a suit of clothes or a hat. I could go to a football game. I could do any number of things. I could exercise the free will to do what I want to do. You never heard of free will before?
(The Witness) This is what you call free will?
(The Court) What do you call it? Is there anything different? Isn’t it a person’s ability to make up his mind to do something?
(The Witness) I thought you wanted to know about a person's ability to make up their mind not to do something, which might be different.

(The Court) That is free will; you have a will to do it or not to do it, don't you?

(The Witness) I think not in all cases, no.

(The Court) When you said the staff conference concluded the man was sick, but wasn't sick enough, I assume that you meant by that that he was suffering from some mental deficiency.

(The Witness) From mental illness.

(The Court) That is the same thing, isn't it?

(The Witness) Yes.68

The court pursued its questioning of the witness with such zeal as to bring out the presence of the jury — in clear violation of a statutory prohibition — that the defendant had been found by St. Elizabeth's Hospital to be mentally competent to stand trial.69

An immediate motion for a mistrial, based upon the comment, was denied.70 However, the court instructed the jury to disregard that remark.

Walter Wilson had for once been following the proceedings with keen interest. Although rocking in his chair sporadically, he had fixed his eyes upon Dr. Julian whose testimony appeared all-absorbing to him. His restlessness, however, seemed to mount during this period.

When counsel saw him briefly in the cell block during a recess prior to the resumption of Dr. Julian's testimony, he was visibly agitated. He was pacing up and down, grasping the bars of the cell, and shouting, something like: "They lie. Why do they all lie?"

Counsel felt at that time that he could very readily succeed in reassuring the boy. On one or two previous occasions, a reassuring comment made by him within the cell block had resulted in his seeming visibly relaxed and more "normal" in appearance at the counsel table.

68. Id. at 270-72.

69. Id. at 272-73; Cf., Horton v. United States, 317 F.2d 595 (D.C. Cir. 1963); for the underlying statutory enactment barring the disclosure to the jury of an accused's competency to stand trial see 18 U.S.C. § 4244 (1949). The section provides inter alia:

A finding by the judge that the accused is mentally competent to stand trial shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

70. Transcript of Proceedings, United States v. Wilson, Criminal No. X, p. 274.
While the case appeared to have been going well it seemed clear that whatever points had been scored by the defense in the courtroom had been based primarily upon a showing of psychotic as distinct from non-psychotic psychopathology.

One remembers with ease in such a context the instances in which a skillful prosecutor had destroyed the claim of a psychotic illness by dwelling upon the defendant's appearance of "normalcy" at the counsel table, and ascribing even pronounced manifestations of anxiety to "normal" apprehension or a sense of guilt. 71

It was the judgment of the defense counsel at that time that the boy's rocking at the counsel table constituted in many ways evidence indispensable to the return of a verdict of not guilty by reason of insanity at the hands of an average jury, such as that in the instant case.

Counsel therefore deliberately desisted from providing any reassuring comments in response to the boy's increasing agitation.

Redirect examination was resumed subsequently and produced the following disclosures:

By the Defense:

Q. Doctor Julian, do you know whether or not the diagnostic procedures used upon the defendant at St. Elizabeth's would have been different had he been placed in, say, the Dix Pavilion rather than the John Howard Pavilion?

A. I don't think the procedures would have been different.

Q. What would have been different?

A. In what way and for what reason?

(The Prosecution) Your Honor, I object to this; it is immaterial.

(The Court) Well, I am interested in knowing why it would be different. You examine a patient — I don't care whether it is in a pavilion, Howard Hall, or where it is — if a psychiatrist reaches a conclusion — I am interested to hear the answer of this witness.

71. The following provides striking illustrative material. Mr. Hantman, Assistant U.S. Attorney, in his closing argument to the jury in United States v. Stewart, Crim. No. 633-53 (D.D.C. 1952), stated as follows:

There is one real, important factor in this case that has not been discussed. You weigh, ladies and gentlemen, everything that the defense psychiatrists have told you about the illness this defendant has, and its severity and its degree and stack it up against the defendant's demeanor all four weeks he has been here.

If he was as sick as these doctors have indicated, you should have seen the demonstrations here.

(The Witness) I think that it would be different because of the fact that most of the patients in John Howard Pavilion have criminal charges, and I think that psychiatrists cannot completely disregard what this implicates that they have from the charges, and also cannot discard their court experience; and it is just my opinion, but I feel that many psychiatrists feel that they are not used as informants in court, but they are used as tools to kill the Durham rule in the District, and they are often made fools of, and that they are in some way—

(The Court) What is this? Used as tools to kill the Durham rule; is that what you said?

(The Witness) This is my impression.

(The Court) What psychiatrists have been used to kill the Durham rule?

(The Witness) I think this is a deduction some have drawn from the way they have been used in their position as expert witnesses.

(The Court) Who?

(The Witness) Colleagues of mine.

(The Court) Who? What doctors, what psychiatrist has told you he is being used as a tool to kill the Durham rule?

(The Witness) I didn’t say they exactly said to me these words; this is my impression from talking to them about their court experience.

(The Court) Who did you talk to?

(The Witness) I have talked; for instance, have discussed cases like the one of [Walter Wilson] and others, where there was a dissenting opinion about whether the patient had or had not a mental disorder.

(The Court) I am not concerned with that. All I want to know is what psychiatrists you talked to that gave you the impression they were used as tools in court to kill the Durham rule?

(The Witness) I think the physicians in the conference.

(The Court) You got the impression after talking to Doctor Platkin and Doctor Read that they were being used as tools in court to kill the Durham rule; is that right?

(The Witness) Yes, but this is my formulation. They did not say that, I would like to state—

(The Court) What did they say from which you got the impression?
(The Witness) They have said to me that they feel they are not used in order to give objective information, but their testimony is used to some extent to help the court make the decision which—

(The Court) The court make the decision?

(The Witness) Let me say it this way: They feel that they are not basically used as informants. They say they are—

(The Court) They say that they are used as informants?

(The Witness) No, that they are not used to give expert information only.

(The Court) They are not used to give expert information. What are they used for?

(The Witness) I think that they think that their semantics and semantics here in court are very different.

(The Court) I don’t know what you’re talking about. You mean my semantics and the doctors’ are different?

(The Witness) Yes. And they feel that their information, that the questions they are asked are not asked in order so much to — it is not tried enough to understand what they are talking about.

(The Court) Do you know that is a very serious statement you are making?

Are Doctor Platkin and Doctor Read here?

(Prosecution) Not yet. Doctor Platkin is on call.

(The Court) And Doctor Read?

(Prosecution) I don’t have Doctor Read.

(The Court) Do you have him?

(Defense) No, Your Honor.

(The Court) I want him.

Now, in order to understand you correctly, you have had a conversation with Doctor Platkin and Doctor Read—

(The Witness) Yes.

(The Court) — from which you gather the impression, from what they told you, that they were being used in court as tools to kill the Durham rule; is that your testimony?
(The Witness) Yes, that was my impression.\textsuperscript{72}

Diagnostic practices at St. Elizabeth’s Hospital, as described by Dr. Julian, had not been unknown to knowledgeable members of the Bar. This, however, in no way detracted from the startling quality of her testimony which was visibly disturbing to the legal members of the audience for differing reasons.

The next witnesses that day were psychologists, drawn from St. Elizabeth’s and D.C. General Hospitals respectively.

Judge Curran had in the past repeatedly expressed the view that psychologists were not properly qualified to testify as to the existence or non-existence of mental illness. Counsel for defendant had therefore prepared a memorandum of law designed to show the acceptability of psychological testimony in such cases and had filed it with the court preliminary to the calling of the first psychologist.\textsuperscript{78}

The psychologists in this case furnished significant corroborative evidence of Walter Wilson’s psychopathology.\textsuperscript{74}

Dr. Catherine Beardsley, the first psychologist to testify, after setting forth specific tests she had administered, which included the Wechsler Memory Scale, the Benton Visual Retention Test, a test of concept formation, a test of visual motor coordination, the Bender-Gestalt, the Rorschach, the Projective Drawing Test and the Szondi, gave the following findings:

Personality tests revealed a severe state of anxiety, more than we saw in 1956. It was the kind of anxiety which we find, in this boy, associated with an actual fear that his feelings, particularly his less pleasant feelings, will burst out in action before he has a chance to control them. When a person is in this state of fear it is a kind of fear which we sometimes think of as almost panic.

I also saw in the test material an attempt to try to do something about his feeling of fear, and so much energy, that is, think-

\textsuperscript{72.} Transcript of Proceedings, United States v. Wilson, Crim. No. X, pp. 276, 281.

\textsuperscript{73.} This memorandum preceded the filing of the formal brief in support of the proposition that psychologists were entitled to testify as to the existence or non-existence of a mental illness in Jenkins v. United States, 307 F.2d 637 (D.C. Cir. 1962).

\textsuperscript{74.} A psychologist observing the case for another N.I.H. project reported as follows:

The three psychologists who had tested the defendant in this particular case were all experienced and well-qualified clinical psychologists. Their test batteries overlapped considerably. Their test results and interpretations, when heard, were very similar. This agrees with a finding of a preliminary questionnaire given to psychologists who have testified in court. 'Either psychologists tend to testify on the same side of the bar or their findings are not that discrepant.' Scheflen, \textit{The Psychologist as a Witness}, supra note 20, at 333.

In my experience in the litigation of cases involving mental health I too have found the findings of psychologists in given instances to be markedly similar — in contrast to the findings of psychiatrists.
ing in all his waking hours, so much energy going into trying to protect himself against these fears that he had very little left for appropriate behavior and relationship to the outside world.

I also found a tendency in this boy to not be able to tolerate his own feelings or to be able to see in himself what he really was thinking and feeling and, hence, the necessity for finding the blame for what he did or what he might do on the outside world. This is what we call projection; that is the technical term for it.

One of the ways in which this person tried to cope with this fear of the outbreak of his emotions and his impulses was to run blindly away from an immediate situation. We have here a personality — may I interrupt a moment here to go back to the so-called average person, the functioning person. Ordinarily, our emotional life, our emotions and our intelligence work pretty well together in the personality. Sometimes we become a little disabled to too strong emotions or situations arising from strong emotions, but ordinarily the average person can manage to go along.

The thing which I found reflected in the tests of Mr. [Wilson] was a failure of emotions and intelligence to be integrated in the way in which we expect them to be personalitywise in a person who functions with the average range.15

The next witness called by the defense, Dr. Levy, had waited for at least two days within the witness room and courthouse corridor. Significantly, he displayed no irritation at his loss of time. As the trial continued he expressed concern over the effect of the continuing stress upon the boy. Taking the witness stand for the defense, Dr. Levy testified as follows in response to questioning:

Q. Now, would you report to the court and the jury first on the results of your clinical interview and tests and, second, upon your interpretation of those results.

A. I entered the meeting with the defendant expecting some amount of resistance from the defendant because this is fairly common. I was quite startled early in the interview when the defendant said something that made me pick up my ears. He said in a rather low and intense voice that he doesn't deserve all of this, and I decided at that moment to pursue that particular issue rather than something else, and he told me that he did not deserve the treatment, the good treatment he was receiving, the excellent lawyer he had, and the consideration that he has been receiving from many people at the hospital.

Following that he began to tell me that one of the reasons he felt that he didn't deserve the treatment he had received was because of a feeling that he had that he was responsible for a variety of deaths.

Now, at this point I couldn't quite understand the content of what the defendant had said. I think it would have taken several more interviews, but I had the impression that he felt some of his words and some of his deeds were unacceptable to family, and because of this they were feeling discouraged and negative about him, and that ultimately because of these feelings they would have to succumb in some fashion, but, as I say, I was quite puzzled about this aspect of the interview.

Following that he told me something about the accident that had taken place, and just prior to describing the accident he told me about his difficulties with the police, and he restricted it to the police in Precinct 8.

Now, he described this in a rather detailed fashion indicating to me that he felt the police were continually after him, that he was never safe, that anything that would occur in the area covered by Precinct 8 would be attributed to the defendant. He knew two officers in particular who were always reactive, always ready and willing to apprehend him independent of whether he had committed any crime.

He made one statement that I thought was very very interesting because he said to me, 'They have two cars. There is a green Hudson and a gold Hudson, and I would know these cars anywhere. If you were to put the green Hudson in with one hundred green Hudsons exactly the same there is something about this policeman's car that I would sense and I would be able to recognize it even though they were all identical.'

Q. What is the interpretation you attach to that statement, Doctor Levy?

A. This statement and the previous statement about the police made me feel that the defendant was describing a delusion he had about the police in that precinct.

Then he went on to indicate that he began to feel very uncomfortable, very tense, while he was in the car and didn't sense that there was anything he could do, and he began to speed and began to weave, and he had in mind finding a tree, and without any thought about his own safety he was eager to find that tree and then drive directly into it.

It was obvious from the way he described this that what must have taken place was a severe panic reaction, one in which he had virtually no control over his judgment or his impulses.
Q. Doctor Levy, did your tests in any way corroborate the conclusions that you drew from your clinical interview?

A. They did.

Q. Would you describe the tests, their results and your interpretations thereof?

A. The ink blot test — it is kind of unfortunate that it is called a test; it is not. It is a guided interview. The things that are used are ink blots and they are relatively standard and they are given to a subject or a patient, and the patient is asked to indicate what is seen on the ink blots.

The notion behind this is that the patient will see things on the ink blots and in the ink blots which are mirrored in the way he sees the world.76

The court excluded a statement by the witness as to his opinion concerning the defendant's state of mind on June 9, 1960. In the words of the court: "He is not qualified to give a medical opinion as to whether he has schizophrenia or not; not in this court."77

The line of questioning, therefore, followed a somewhat modified pattern, and defense counsel stressed the fact that he was calling for a psychological rather than any other kind of professional opinion from the witness.78

Q. Doctor Levy, would you explain to the court and the jury from your clinical interview and the test results that you obtained from this defendant the state of the defendant's personality as of the time of the examination in as much detail as you feel appropriate.

A. I think the most striking thing about the defendant's personality is the fact that it is covered over at the moment by a variety of psychological processes that keep it from coming into view. By analogy it is as though he were so terribly nervous that he couldn't express his essential self because there is something very very central in all of us that is ours and our uniqueness, and his essential uniqueness cannot come out because of the interfering processes. The major process that is interfering with the expression of himself is a very very gross disorder of thinking, that is, he cannot reason logically, his ideas are peculiar to himself and probably not shared by anybody else. They are a result of a whole set of feelings, seething and very intense feelings that early in life should have been controlled, but now, because of some con-

76. Id. at 289-90.
77. Id. at 309.
78. Id. at 310-11. Since the trial of this case, the Court of Appeals had explicitly ruled in Jenkins v. United States, 307 F.2d 637 (D.C. Cir., 1962), that appropriately qualified clinical psychologists were entitled to propound opinions as to the existence or non-existence of a mental illness and that the exclusion of such opinions constituted error, warranting reversal.
dition, he is unable to control, so that these feelings, very primitive feelings, of love and hate and aggression, and attempts to do violence, at least thoughts about this, violence to himself and to others, all of these things are seething and can't find expression easily because he hasn't gotten to the point in his life history to control these feelings.

In every instance this was apparent in the interview but made very dramatic in the ink blot test, where in every instance and in every ink blot he portrayed this kind of mixed up and confused idea of what the world is about.

Q. Now, do you have a psychological opinion, Doctor Levy, as to the length of time that this confused state of mind has existed within the defendant, [Walter X. Wilson]?

A. At the time that I worked with the defendant I had the opinion that this disease process, this psychological set of defects, was so intense, so severe, that it could have only developed over a long period of time.

Q. Is it fair to conclude then, Doctor Levy, it was in existence on June 9, 1960?

A. Yes.

Q. What would the effects of that state of mind have been on the mental and emotional processes of the defendant in specific terms?

A. For that period of time, at least, as he described it to me just prior to the accident, it would have robbed him of whatever reason and control he had, and would have enabled them all of the impulses that he has been coping with throughout his life to find access and to motivate his behavior. At that time I think he was a very primitive person, and a person without a shred of judgment. 79

When asked by the court about the specific responses of the patient to Rorschach Card No. 1, the witness replied:

'It looks like two bears. Two men got ahold of the bears, but they have got one hand free. The bears are trying to get away, but they can't because they are stuck to the men. It looks like the bears are bleeding because they are all torn up. French poodles are working on the bear; they got ahold of him, they are biting him.' 80

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79. My technique in this matter appears to have been observed with approval by a psychologist, observing the case for another N.I.H. project who reported that I "was often able to get a reply by prefixing . . . [my] question with, 'your psychological opinion' — or, 'in your opinion as a psychologist.'" Scheflen, The Psychologist as a Witness, supra note 20, at 331.

Defense counsel thereupon asked him to give the patient’s response to Card No. 2, and the witness replied:

'It looks like two rabbits. They are fighting, they are trying to mash the little butterfly. Two ducks up here are arguing who is going to win, who is going to do it. Two little needles are trying to stick one another. It looks like they are crying. They are arguing who is going to win."

The witness added upon further questioning:

In addition, there is a good deal of aggressiveness in these cards, ‘sticking’ and ‘bleeding’; a good deal of conflict among animals or objects indicating a lack of differentiation and an attribution of human characteristics — things like needles and things like animals — almost as though the patient couldn’t distinguish between the blot and what else there might have been.

Members of the jury visibly winced at this description.

Referring again to the Rorschach cards, Dr. Levy made this observation about Walter Wilson’s responses to them:

Most people approach these in a way which suggest they understand there is a blot and this is a task to do. The defendant didn’t do that. He got right into it. And all of this conflict and the piling together of all sorts of things and making one thing out of it all strongly suggest a severe disorder of thinking.

Defense counsel was impelled to inquire at this point:

Doctor Levy, would it be fair to conclude that you would not expect this kind of response to a Rorschach from [the prosecution], or me, or members of the jury, or the court?

Dr. Levy replied: “I would not.”

The last psychologist to testify during that trial day was Mrs. Florence Kirby, who had administered the initial battery of psychological tests at the D.C. General Hospital in 1956 and had then administered a fresh battery at defense counsel’s request in 1961. Mrs. Kirby was an elderly lady with a sense of mission about the role of the psychologist in mental examinations. Her testimony was marked by a tone of fervent conviction and occasional indignation at the frequent attempts at disparagement of her testimony by the judge as inferior to that of a medical expert.

81. Id. at 335–36.
82. Id. at 336.
83. Id. at 337.
She reported that at the time of her first psychological examination of Walter, which included the standard psychological tests, "Walter was showing the beginnings of a psychotic process or disorganization in his thinking. . . ." The balance of her testimony provided persuasive evidence of the fact that Walter had seriously deteriorated since that time.84

When the court inquired with some degree of skepticism as to whether it was in her power to "give a Rorschach test alone and nothing else and reach a conclusion as to a man's mental condition," her "Yes, sir" provided answer, affirmation and protest at the same time.85

Mrs. Kirby testified that she had spent a period of approximately three days testing Walter preliminary to the present trial in 1961.86

The forcefulness of her testimony and its easy acceptability to a lay audience, notwithstanding her occasional employment of technical terminology, was highlighted with the following questions and answers:

By the Defense:

Q. Would you tell the court and the jury about the results that you obtained from the Rorschach test?

A. Well, the Rorschach test showed that this boy was in a much worse condition than he was on the previous date, that his fantasy life had increased tremendously, and that it had taken on a much more assaultive, much more gruesome type of content, and a much more hostile content, and a desire for vengeance, a retaliation against society or the world at large.

Also that his ego strength, or that part of the personality which had determined what is right or wrong by social standards, had decreased considerably; it was only about half [what] it was the previous time.

Also, that his control of his emotions, which is also indicated by the strength ego, had decreased tremendously. He was no longer able to control or to show foresight and determine the consequences of his conduct nearly as well — in fact, it was almost nil at this time as compared to the earlier test.

And much of his hostility was — practically all of his hostility was directed outward against other people.

At this time, this last test, there was no evidence on any tests that showed this boy had any feelings of conscience or regret; he was completely swallowed up with thoughts of hostility, of venge-

84. See, e.g., Id. at 342, 344.
85. Id. at 342.
86. Id. at 343.
eance, of being captured, and escape, and electrocution, and all etcetera, associated with his present life.

Q. Mrs. Kirby, doesn't this make him as identifiable as easily as a bad boy as a sick boy?

A. No, because of the difference in the strength of the ego from the two dates shows that this boy has lost control, voluntary control of his behavior. Also that his intellect has been so warped by his fantasy that he no longer sees things as real, as they actually are; he no longer interprets reality as it actually is; he is, in a sense, obsessed with these fantasies to a degree that he cannot stop them nor control them. 87

Succeeding questions were designed to pinpoint the existence of the mental illness in traditional terms.

Q. Do you believe this boy had control over his actions on June 9, 1960?

A. No. I think not.

Q. Do you believe, Mrs. Kirby, this boy had an understanding of the nature and quality of his actions on June 9, 1960?

A. I do not. 88

Referring to the results of the Thematic Apperception Test, she pointed out that what was characteristic of the responses “was that each of these gave a short picture into this boy’s home life, and it seemed to be permeated with erratic punishment, with rather unstable ethics, a great deal of severe punishment, and a great deal of rejection, and the actual pushing the boy out of the home, a play for dominance among the members of the home, and the boy feeling that he was unloved and not wanted and actually being pushed out of the door and out on the street, which, to him, in the story is about as dramatic as walking a gang plank into the Atlantic Ocean.” 89 Those are the

87. Id. at 346-47.

88. Id. at 347-48. It appeared ironic that the court which barred testimony by psychologists as to the existence of a schizophrenic mental state permitted psychologists to testify that the defendant lacked control over his actions and understanding of their nature and quality.

The employment of traditional terms designed to pinpoint defects in the volitional and cognitive capacities of the defendant was helpful to the insanity defense insofar as it was based upon psychotic symptomatology.

Adoption of the Durham rule has not barred “all use of the older tests: testimony given in their terms may still be received if the expert witness feels able to give it, ... in resolving the ultimate issue ‘whether the accused acted because of a mental disorder.’ In aid of such a determination the court may permit the jury to consider whether or not the accused understood the nature of what he was doing...” Douglas v. United States, 239 F.2d 52, 58 (D.C. Cir. 1956).

conclusions. This test tells more about the inter-personal relations with
the patient and the people around him, particularly his family and those
close to him than any other test.

In point of fact it appeared to the defense counsel, as a layman,
that Mrs. Kirby’s interpretation of these results was in many ways
more revealing about the home life of the boy than much of the
available psychiatric testimony.

There was no cross-examination of Mrs. Kirby.

Looking back upon the testimony of the three psychologists at
this stage, it appeared that the value of this kind of testimony to the
trial lawyer was in many ways as high as the best psychiatric testimony
available. In some respects, moreover, it provided perspectives which
were not furnished by the psychiatrists. 90

At the end of that trial day, defense counsel received a report from
Dr. Charles Goshen, who had agreed to serve as a sur-rebuttal witness
for the defense, that the defendant had, in his opinion, become mentally
incompetent to participate in the proceedings as a result of the accum-
ulating stress.

VII.

THE FOURTH DAY OF THE TRIAL

Upon the resumption of the trial the defendant’s counsel informed
the court of Dr. Goshen’s findings at a bench conference. The court
was further informed at that time by the prosecution that the govern-
ment had doctors who would “look him over” in aid of a judicial
determination of competency to proceed in the case. 91

At the conclusion of this session, defense counsel requested both
Dr. Ryan and Dr. Salzman to make a further examination of the defen-
dant as to his competency to stand trial.

90. A psychologist observing the case for another N.I.H. project had these
comments:

The psychologists’s orientation in behavioral processes should lead him to
think of mental illness in terms that are relatively clear and understandable. In
addition, the specificity of his psychological tests offers a framework within which
objective facts and observations can be offered. Also, the relative recency of
psychology has forced those trained in this field to be prepared to defend the
validity of their findings. ...

... the psychologists in the case observed seemed to have done little previous
testifying in the courtroom. Although questioned at great length by both the
prosecuting attorney and the judge, they remained calm and definite in manner.
This was probably due to their training in the description of behavior, the fact
that their answers were anchored in the test material and to their knowledge of
the rebuttals to arguments concerning clinical psychological testing. The jury
was very attentive to all of their testimony and one had the feeling that their
testimony was accepted favorably.
Scheflen, The Psychologist as a Witness, supra note 20, at 331, 334.
Dr. Ryan telephoned defense counsel immediately after his examination to inform him of his opinion that the defendant was clearly incompetent to stand trial. He pointed to an unmistakable deterioration in the defendant's condition and added that he thought the defendant was suffering from the delusion that his counsel had undergone a total change in appearance which suggested to him that he could no longer trust him and that he was part of the plot which had "rigged" the trial against him. In the opinion of Dr. Ryan the defendant was no longer capable of assisting counsel or participating in the proceedings. In the course of a later discussion, Dr. Ryan told defense counsel that he strongly felt that something had occurred in the lawyer-client relationship in this case to help bring about this situation.

Dr. Salzman, in contrast, had no such feeling for the boy or the case. He telephoned at the conclusion of his examination to inquire as to what all the fuss was about, declared that he felt that the defendant was clearly competent to confer with counsel and assist in his own defense and reported the defendant as stating that he regarded Dr. Salzman and his counsel as the two best friends he had in the world.

VIII.

THE FIFTH DAY OF THE TRIAL

A conference preceded the opening of the fifth day of the trial. The judge informed prosecuting and defense counsel that he had received letters from Doctors Platkin and Cushard of St. Elizabeth's expressing their respective opinions that the defendant was competent to proceed in his defense.2

He further informed both counsel that he had received a letter from Dr. Ryan to the contrary and he added that he just did not know what to make of so sharp a conflict of opinion among reputable professional men. He inquired whether any further evidence was available upon the subject.

Defense counsel informed the judge and prosecuting counsel that Dr. Goshen was available to testify as to the defendant's lack of competency at this time, adding that Dr. Salzman had informed him that defendant was, in his opinion, competent.

Proceedings thereupon were resumed in open court. The court heard evidence outside the hearing of the jury. Dr. Goshen testified

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2. As was shown by the hospital records of St. Elizabeth's, obtained at a later date, the interview which led Drs. Platkin and Cushard to pronounce Walter Wilson competent to stand trial produced evidence that Walter Wilson expressed the delusion "that he had killed four boys, two of whom he knew, in Rock Creek Park and buried their bodies."
that in his opinion the defendant was at that stage "unable to understand the nature of the proceedings . . . and unable to rationally participate in his own defense. . . ." He added that "the trial itself as accompanied by incarceration in the jail . . . constitutes a great stress on him to the point where when I saw him . . . he was suicidal at that time." Cross-examination of Dr. Goshen followed traditional paths and did not produce answers favorable to the hypothesis of competence:

Q. He [the defendant] knows he was in an automobile collision on June 9, 1960, does he not?
A. Yes.

Q. He knows that four people lost their lives as a result of that collision, does he not?
A. That's right.

Q. He knows that he was going at an excessive rate of speed on this day, does he not?
A. That's right.

Q. He knows [defense counsel] is his attorney, does he not?
A. That's right.

Q. He has consulted with [defense counsel], to your knowledge, has he not?
A. That's right.

Q. He has exchanged information with [defense counsel], has he not?
A. To some extent. He has also withheld information.

Q. Is there something wrong with that exchange of information between he and [defense counsel]?
A. Yes, he has been usually uncooperative with his defense attorneys. Two previous attorneys have quit in the case after having been assigned by the court because of lack of cooperation, and the present attorney has gotten a very minimum degree of cooperation and has had to go pretty much on his own. Defense counsel concluded his redirect examination of Dr. Goshen by asking him to assume that the defendant was competent and then asking him whether he "or any other psychiatrist [could] give the

94. Id. at 363.
95. Id. at 366-67.
court a reasonable assurance that the defendant . . . [would] remain competent for the balance of the trial . . . ?"

This in turn resulted in the following colloquy:

A. No. I think the situation could change momentarily and I think his history has shown his wide fluctuation in behavior points where — to levels of behavior where sometimes he impresses people as being a very nice likeable young boy, which he is sometimes, and other times he is socially destructive, impulsive, reckless, undergoing seriously disturbed thinking, and this could happen within minutes — today, for example.

Q. Is it possible that he would have full awareness of the charges, the nature of the proceeding at this time and drift off into a dreamland of his own sometime during the day, or perhaps the next day?

A. That's right; within the same hour, even.96

The court thereupon declared as follows:

(The Court) It has been agreed that the court should consider the report of Doctor Cushard, Doctor Platkin, Doctor Ryan, and the testimony of Doctor Goshen.

Doctor Cushard has reported that he concludes that [Walter X. Wilson] is mentally competent to stand trial and understand the nature of the proceedings against him, and properly assist counsel in his own defense.

Doctor Platkin expresses an opinion that [Walter X. Wilson] is competent to stand trial and understand the nature of the proceedings against him, and properly assist counsel in his own defense.

Doctor Goshen has testified in his opinion he is not competent to stand trial, and Doctor Ryan reports that at the present time Mr. [Wilson] appears to be in a state of acute psychotic turmoil. This is dated March 31, 1961. And it is possible that he may erupt in violent behavior in court. He feels convinced that his lawyer has undergone a total change in appearance which suggests to him that he can no longer trust his attorney because he too is in a plot against him. He views the jury as constantly changing in makeup from almost all men to almost all women, or almost all colored to almost all white. He is also presently disoriented as to time whereas he was correctly oriented a week ago.

96. Id. at 370.
Throughout the examination he showed considerably more confusion and disorder in logical thinking than he did [two weeks ago]. It is thus my opinion that Mr. [Wilson] is not now competent to stand trial.

The picture presents itself as two psychiatrists expressing an opinion that he is competent to stand trial, and two psychiatrists expressing an opinion that he is not capable to stand trial. The condition of the record is such that I hold that he is not capable of standing trial and I will declare a mistrial.

Counsel for the Government will prepare the proper order.

He will be committed to St. Elizabeth's. 97

IX.

POST-TRIAL EVENTS

Some time after the defendant's commitment to St. Elizabeth's Hospital the defense filed a motion for the appointment, at government expense, of Doctors Schultz, Ryan, and Goshen for further mental examination of the defendant.

A motion filed with the court stated in substance as follows:

1. All three experts testified in the last trial of the defendant (which has resulted in the declaration of a mistrial) that the defendant was mentally ill; one of them testified that defendant had reached a stage of mental incompetence to participate in the proceedings, apparently under the stress of the trial itself, and another transmitted a certification to the court to that effect.

2. The defendant is now in the custody of St. Elizabeth's Hospital which, since 1956, has maintained a consistent disagreement with the medical authorities of the D.C. General Hospital as well as other doctors as to the mental state of the defendant.

3. The defendant is entitled to the full weight and benefit of all psychiatric expert evidence in his favor, brought up-to-date, both on the question of his competency as well as on the question of whether,

97. Id. at 370-72.
upon the date charged in the indictment, he was suffering from mental illness and whether such mental illness, if found to exist, was significantly related to the crimes charged in the instant case.

4. The defendant will be seriously handicapped in his trial if, while the St. Elizabeth's physicians whose testimony is likely to be adverse to defendant's claims are put in a position of fortifying their views and bringing them up-to-date as a result of an extra 90 days' examination, the physicians favoring the defendant's claim of mental illness are prevented from doing likewise by appropriate additional examinations and observations.

As defense counsel, in the course of oral argument, set forth the facts of the case underlying the motion, beginning with the initial diagnosis of mental illness in 1956 and the subsequent rejection of that diagnosis and discharge of the boy by St. Elizabeth's Hospital in the same year, the Judge said:

This is certainly a sad commentary on our handling of these psychiatric cases, where these psychiatrists are debating among themselves and as a result a man of this nature can go out and kill four innocent people. It isn't the first time it's happened. I am afraid it isn't going to be the last. It is, I think, one of the greatest blots on our system of justice that I know of. . . .

The defense secured another court order directing St. Elizabeth's to furnish it with photostatic copies of the new set of hospital records developed pursuant to the latest commitment.

When counsel visited Walter Wilson at St. Elizabeth's Hospital, he requested him to keep a chart showing specifically what doctor had seen him and for what length of time.

Upon his next visit Walter informed him that the chart had been taken from him by one of the attendants who had told him that if he persisted in such activities he would be asking for trouble. Counsel asked Walter to persist nonetheless. Toward the end of the ninety-day period, Walter's chart, which he had managed to keep this time, showed approximately five interviews with medical staff members of the hospital. Significantly, at the conclusion of the ninety-day period of observation, St. Elizabeth's Hospital reported that the patient was mentally

ill although competent to stand trial. The rationale for the finding of a schizophrenic mental disorder was provided in the hospital records in these terms:

Walter X. Wilson was readmitted to Saint Elizabeth's Hospital April 3, 1961, by order of the United States District Court for the District of Columbia for a period of not to exceed 90 days. . . . Opinions are requested as to the patient's present mental condition, mental competency for trial, mental condition on or about June 9, 1960 and causal connection between the mental disease or defect if present and the alleged criminal act: Manslaughter. . . .

The patient's account of the night of the alleged offense is essentially the same as that given in the Medical Staff Conference dated February 15, 1961, during the patient's second admission to the hospital and will therefore not be repeated here. The patient is considerably more emotionally disturbed now than during conference of February 15, 1961. Asked how he feels, the patient says, 'scared and don't know what I'm scared of.' He says that he sees no hope at all for the future. He says that half the people in Washington are against him and the [Wilson] family and would not even give them public assistance, as a result of which his mother had to go out and work instead of staying at home. Questioned closely as to whether he really believes that half the people in Washington are against him and his family he changes the statement and says that all the people in Washington are against them. He says that nobody in the world likes him and that he does not like anyone and does not get along with anyone. He has no desire to have anything to do with anyone either here in the hospital or outside. He says that while driving the car he wanted to kill himself and is sorry that he didn't. He says that there is no reason for him to continue living. It is the impression of several members of the conference that this patient's contact with reality is quite tenuous and has been so particularly at certain times. He is correctly oriented and his memory shows no significant impairment. He does not express delusions, hallucinations or other psychotic content. I should like to note at this time, however, that Dr. Platkin and the writer [Dr. Cushard] examined this patient at the D.C. Jail, on a court order, between his second and third admissions to this hospital and at that time he expressed the opinion that he had killed four boys, two of whom he knew, in Rock Creek Park and buried their bodies. He said that he was so convinced that he had done this that he went back to find the graves and was unable to do so. For some time during that examination he insisted that this had actually happened, but finally admitted that it might be an 'illusion.' Questioned about this today he again states that it was an 'illusion.' He says that he hates everyone so that if he continues to live he will hurt and kill people. During parts of the examination the patient seems more
absorbed in his own thoughts than in what is going on in the conference, but he does not become completely detached from reality.

Psychological testing showed the patient to have a full scale I.Q. of 77, verbal I.Q. of 82, and performance I.Q. of 73, and his probable maximum was estimated as at least average. He attained the full scale I.Q. of 77 on the Wechsler adult intelligence scale as compared with an I.Q. of 90 on the Stanford-Binet, when he was in the hospital in 1956. The psychological test results reflected conflict, extreme anxiety and panic over impulses for which the patient has inadequate controls. Emotions are lived out directly and immediately. The fear of loss of control is too great to be tolerated for long and under stress may be projected on the environment. So much inner energy is used in the struggle for mastery that very little is left for relating to the environment. Language is functional and at times marked by looseness of associations and autistic coloring. Such a person can eventually move into paranoid schizophrenia.

During his second admission to the hospital this patient was diagnosed as without mental disorder because it was not believed that he deviated sufficiently from normal to warrant a diagnosis of mental disorder. It is the consensus of opinion at this time in view of the patient's condition and subsequent examinations that he is so disturbed that he does suffer from a mental disorder. It is the consensus of opinion that simple schizophrenia is probably the most accurate diagnosis which can be made, although not entirely satisfactorily. It is also the consensus of opinion that the patient was suffering from mental disorder on June 9, 1960, but we are unable to arrive at a firm opinion as to whether or not there was causal connection between the alleged criminal act and the mental illness.

Diagnosis: 22.0 Schizophrenic Reaction Simple Type

Condition on Discharge: Unimproved

Recommendations: In our opinion:

1. He is mentally competent for trial.

2. He is suffering from a mental disorder and was in probability suffering from a mental disorder on or about June 9, 1960. We are unable to arrive at a valid opinion as to whether the criminal acts if committed by him were the products of a mental disorder.

Dr. Platkin appeared to be the sole dissenter from this viewpoint. His assertion continued to be that the boy was free of all manner of mental disorder.
Doctors Ryan and Goshen who had checked upon their patient at St. Elizabeth's Hospital, pursuant to court order toward the end of the ninety-day period, agreed that he was then again competent to stand trial although clearly schizophrenic.

The defense furnished the St. Elizabeth's photostats which it had obtained to the U.S. Attorney's office, and suggested that this was a case in which the government might not wish to contest the insanity defense. And, in fact, the U.S. Attorney's office decided not to contest it.

X.

The Second Trial

The second trial was, of course, anticlimactic. A jury was waived. The court received in evidence the transcript of testimony of the first trial. It also heard the testimony of Dr. Charles Goshen, who had re-examined the boy during his second sojourn at the hospital. There was no cross-examination. There were no opposing witnesses.

The court entered a judgment of acquittal by reason of insanity and committed Walter to St. Elizabeth's Hospital until such time as he could be certified as recovered and no longer dangerous to himself or others.

The proceedings in their entirety did not consume more than twenty minutes.

XI.

Conclusion

The emergent implications must be stated with reserve though without hesitation. Had Walter Wilson's lawyer lacked the funds to secure the psychiatric and psychological witnesses whose testimony has been described in this article, the case would clearly not have ended in acquittal, but in conviction.

If the war on poverty is to be extended into the domain of criminal defense it would seem that the skirmish of United States v. Wilson highlights the need for a greater investment in financial and human
resources — particularly in the field of psychiatric and psychological expertise — than it has received to date. The obstacles encountered in this type of case seem deserving of the same attention given the more publicized difficulties of modern criminal procedure.