

duce any retraction of Dr. Gilbert's testimony that the "period of insanity would have embraced the date July 13, 1951." And though the prosecution sought unsuccessfully in its cross- and recross-examination of Dr. Gilbert to establish that Durham was a malingerer who feigned insanity whenever he was trapped for his misdeeds, it failed to present any expert testimony to support this theory. In addition to Dr. Gilbert's testimony, there was testimony by Durham's mother to the effect that in the interval between his discharge from St. Elizabeths in May 1951, and the crime "he seemed afraid of people" and had urged her to put steel bars on his bedroom windows.

Apparently the trial judge regarded this psychiatric testimony as "no testimony" on two grounds: (1) it did not adequately cover Durham's condition on July 13, 1951, the date of the offense; and (2) it was not directed to Durham's capacity to distinguish between right and wrong. We are unable to agree that for either of these reasons the psychiat-

ric testimony could properly be considered "no testimony."

(1) Following Dr. Gilbert's testimony that the condition in which he found Durham on September 3, 1951 was progressive and did not "arrive overnight," Dr. Gilbert responded to a series of questions by the court:

"Q. [Court]. Then is it reasonable to assume that it is not possible to determine *how far* this state of unsound mind had progressed by July 13th? Isn't that so? A. [Dr. Gilbert]. As to the seriousness of the symptoms as compared with them and the time I observed him, that's true, except that his travels were based, according to his statement to me, on certain of the symptoms and his leaving Washington, his giving up his job and work and leaving the work that he had tried to do.

"Q. But you can't tell, can you, *how far* those symptoms had progressed and become worse by the

attention specifically to July 13, 1951, will you give us your opinion as to the mental condition of the defendant at that time? A. From my previous testimony and previous opinion, to repeat, it was my opinion that he had been of unsound mind from sometime not long after a previous release from Saint Elizabeths Hospital [*i. e.*, May 14, 1951]."

(3) "Q. [Mr. Ahern]. In any event, Doctor, is it your opinion that that period of insanity would have embraced the date July 13, 1951? A. Yes. My examination would antedate that; that is, the symptoms obtained, according to my examinations, included that—the symptoms of the mental disorder.

"Q. Can you tell us what symptoms you found, Doctor? A. Well, he was trying to work for a while, he stated, and while he was working at one of these People's Drug Stores he began to hear false voices and suffer from hallucinations and believed that the other employees and others in the store talked about him, watched him, and the neighbors did the same, watching him from their windows, talking about him, and those symptoms continued and were present through the time that I examined him in September and October.

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"Q. [Mr. McLaughlin]. You were asked the specific question, Doctor, whether or not in your opinion on July 13, 1951, this defendant was of unsound mind and didn't know the difference between right and wrong. Can you express an opinion as to that? A. Yes. It is my opinion he was of unsound mind."

(4) "Q. [Mr. McLaughlin]. Can you tell us—this is for my own information, I would like to know this—you say that this defendant, at the time you examined him in 1951 was of unsound mind and had been of unsound mind sometime prior to that; is that your statement? A. Yes, sir.

"Q. Can you tell us how long prior to that time he was of unsound mind? A. Well, while he was working in People's Drug Store the symptoms were present, and how long before that, I didn't get the date of that.

"Q. When was he working in People's Drug Store?

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"A. Sometime after his discharge from Saint Elizabeths Hospital.

"Q. In 1947? A. Oh, no; 1951."