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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

John E. Reid

### Expert Testimony—Physician's Incidental Observation as to the Defendant's Mental Status

In a recent Texas case, *Reese v. State*, 151 S. W. (2d) 828, involving a murder prosecution, the defendant pleaded insanity. A physician testified as an expert that he observed the defendant at the trial (on the witness stand) and gave his opinion as to the sanity of the defendant.

The Court of Criminal Appeals of Texas affirmed the decision of the trial court and ruled the physician's testimony regarding his observations of the defendant's peculiarities and non-peculiarities was a proper subject for expert testimony. (*Ed. note*: There is nothing in the case report that would indicate the physician as a specialist in the field of psychiatry.)

### Legality of the Trial Court to Determine the Conditions Under Which a Plea of Insanity May Be Entered

In the recent New York case (January, 1942) of *People v. Esposito, et al*, 39 N. E. (2d) 925, the defendants were convicted of first degree murder upon the undisputed facts that while they were participating in a daring daylight robbery, a payroll custodian was shot and killed. One of the defendants was apprehended in his flight, and the other was shot down. The injured defendant concealed a revolver on his person and later shot a police officer, who was guarding him, and an innocent bystander.

The defendants pleaded insanity at the time of the crime and at the time of arraignment and trial. They moved for the granting of an order permitting the employment of two psychiatrists to formally examine them and testify on their behalf. The trial court pointed out, however, that under the code of criminal procedure it was essential for the defendants to submit some evidence showing the necessity for such appointment. The court therefore ordered a preliminary examination whereby the defendants were committed to a hospital for a reasonable period for treatment, observation, examination, and report. The examiners reported the defendants to be sane, but were malingering. The defendants claimed that they were entitled to representation, to call witnesses upon the examination and observation ordered, and to contest the report thereon. They further contested the court's freedom in selecting this method of determining whether the defendants were sane at the time of arraignment and trial.

The Court of Appeals of New York affirmed the decision of the trial court, stating that the defense was not precluded, because of the preliminary examination, from introducing testimony of psychiatrists at the trial in their own behalf. The Court of Appeals further stated that "it is the plain duty of a court, when the subject is brought to its attention by responsible parties, to itself make a sufficient inspection and examination to determine whether the application is made in good faith and upon plausible grounds, and the apparent facts thus discovered are made the condition of the right of the Court to institute the statutory inquisition (formal examination.) We think the motion rested in the discretion of the Court, and it was justified in denying it."

Another question presented is the assertion of the defendants that their constitutional immunity from self-incrimination had been violated, during the hospital examination, when they were injected with narcotic and paralyzing drugs (metrazol and sodium amytal). They also believe their constitutional rights were violated when the psychiatrist gave testimony at the trial regarding observations he made during the time the defendants were under the influence of such drugs.

The Appellate Court held that since the defendants claimed they were not legally responsible for their acts, because of mental defects, they were subject to the use of methods set up objectively by the medical profession for the proper determination of such claims. The Court, in addition, stated that testimony given by the examining physician as to his observations were not in violation of the defendants' constitutional rights because neither confession of guilt or admissions evidencing guilt were elicited.

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**Expert Testimony—It Is Necessary for a Psychiatrist as an Expert Witness to State Facts Supporting His Conclusions of Sanity**

The Supreme Court of Louisiana reviewed the case of *State v. Snowden*, 5 Southern (2d) 355 (1941), in which the accused claimed insanity as a defense to the charge of shooting his wife. A "lunacy commission," appointed by the trial court, reported the defendant sane both at the time the crime was committed and at the time the report was made.

Error was claimed by the defendant when the court refused to read the report of the "lunacy commission" to the jury because the code of criminal procedure requires that the facts upon which an expert bases his opinion be disclosed to the jury.

The Supreme Court held that since each of the members of the commission testified individually as to the facts upon which they based their opinion it was not necessary to read the report to the jury.