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NEW YORK SMASHES THE LUNACY COMMISSION "RACKET"

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New York State has smashed the lunacy commission patronage "racket." A long, arduous struggle to abolish these commissions ended in a decisive victory when the 1939 legislature passed and the Governor signed the bill[2] I sponsored to (a) eliminate lunacy commissions; (b) provide for sanity examinations by psychiatrists in public hospitals; (c) restrict psychiatric examination to determination of sanity at time of trial; and (d) restate completely and make flexible provisions regarding sanity examination procedure in the minor courts.

A well known principle of law provides that an insane person is not capable of crime, and should not be subjected to the criminal process. Statutes seeking to insure the efficacy of this principle evolved from the common law procedure under which the court could call a jury or employ "other discreet and proper methods in the discretion of the court," as modified by the statutory method of inquiry which appeared in New York State laws as early as 1842.[3]

Prior to 1936, judges were authorized to appoint lunacy commissions consisting of "three disinterested persons." Despite objections of the New York State Law Revision Commission,[4] the state legislature in 1936 required that at least one of the three lunacy commissioners be a qualified psychiatrist and at least one a lawyer.

However, careful inquiry revealed that scandalous political abuses, unnecessary waste of taxpayers money, and unreliable sanity examinations continued.[5]

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[1] New York State Senator; Chairman, New York State Senate Committee on Affairs of Cities.

[2] Senate Print No. 2736, now Chapter 861, Laws of 1939; became effective September 1, 1939.

[3] For a discussion of the early history of New York State statutes dealing with this subject see People v. Rhinelander, 2 N. Y. Cr. Rep. 335 (1884); also, People v. McElvaine, 125 N. Y. 596 (1891).

[4] See Report of the Law Revision Commission, Legislative Document No. 60 (1935), pp. 633-681.

[5] A good analysis of the lunacy commission system is contained in the Report by New York City Commissioner of Accounts and Investigation Paul Blanchard to Mayor Fiorello H. LaGuardia on Lunacy Commissions, December 14, 1937.

Defying public opinion, judges appointed their relatives, political district leaders and followers to lucrative positions on these commissions. Appointments to lunacy commissions were party patronage.

Extravagance was another evil associated with lunacy commissions. Judges went out of their way to order examinations. One Brooklyn judge alone appointed, from 1930-1938 inclusive, 1,212 lunacy commissioners. From 1930-1938 inclusive, New York City spent $1,734,899 on 7,031 lunacy commission appointments, as shown by the following table:

TABLE I

Lunacy Commission Expenditures and Appointments in New York City from 1930-1938 inclusive.

County	*Expenditures*	*Members*
Kings	$1,093,900	4,264
New York	456,339	2,038
Bronx	182,580	721
Richmond	2,100	8
Queens	....	....

No appointments were made in Queens during this period because prisoners there were sensibly sent by judges to the psychiatric division of Bellevue Hospital for a ruling on their mental state.

New York City spent approximately $200,000 a year for lunacy commissions. Under the new Desmond law, the cost will be about $50,000, a saving of $150,000 a year.

Out-numbered by non-medical men, psychiatrists on these lunacy commissions labored under difficult conditions. Laymen ignorant of fundamental scientific facts regarding insanity and lawyers whose legalistic jargon frequently confused rather than clarified, were more harmful than helpful in establishing accurately whether a defendant was sane or insane. As a result, the determination of lunacy commissions were in many cases repudiated by the courts that appointed them. Political appointments to the commissions inevitably brought rumors that decisions of the commissions could be bought. Murderers and other criminals successfully faked insanity before lunacy commissions, and thereby escaped punishment.

The presence of laymen and lawyers on lunacy commissions was a clear example of the tendency of legislation to lag behind scientific developments.

Problems in Remedying Admitted Evils

The defects of the lunacy commission system were clearly and widely known.[6] The problem then arose as to how existing evils should be remedied. First, some standard was needed to judge proposed solutions. We took as our standard the following principle: any legislation designed to eliminate the evils associated with the lunacy commission system should assure a scientifically accurate examination of sanity in the most expeditious manner at the least cost to the taxpayer.

In addition to wiping out the defects of the lunacy commission system, it was necessary to eliminate the confusion and grammatical barbarisms in the existing statutes. The New York County Lawyers' Association stated the problem accurately when it reported, in part: "The existing law is poorly organized and difficult to understand. It has overlapping provisions by which different procedures are set up to cover identical circumstances. Thoroughgoing revision of the law seems unquestionably desirable."[7]

Some persons thought that we should not only wipe out the evils connected with lunacy commissions, but also revise the ancient definition of insanity in the light of medical progress. We decided to avoid this controversial subject, lest its inclusion in the bill prevent adopton of lunacy commission reform. For years, doctors and lawyers in New York State have urged that the legal concept of insanity be modernized. However, over a long period of years no agreement on a new definition has been attained. We also determined not to attempt to solve in the proposed new law any of the numerous complex problems relating to psychiatry and criminal law, except those directly related to the elimination of abuses associated with lunacy commissions.

Having thus narrowed our field of legislation, we were then faced with the problem as to whether or not we should eliminate lunacy commissions or merely modify the lunacy commission system. Some few persons suggested that two psychiatrists and a lawyer be appointed by judges, eliminating the layman. This we felt did not offer a proper solution. Others urged creation of a rotating panel of qualified psychiatrists, lawyers and laymen from which judges would be required to make appointments. All in all,

[6] Exposés by metropolitan newspapers concerning the lunacy commission "racket" aroused public opinion against the commission system.

[7] Report of the Committee on the Criminal Courts, New York County Lawyers' Association, Report No. 455, March 29, 1939.

a multitude of plans were discussed with prominent psychiatrists, lawyers and representatives of civic organizations.

Substitutes Examinations by Psychiatrists

We decided that the lunacy commission system should be entirely abolished.[8] In its place the new Desmond law establishes a scientifically sound procedure whereby the medical question of the sanity of a defendant at time of trial is determined solely by qualified psychiatrists.[9]

The new statute provides that when it appears to the court that there is reasonable ground for believing a person indicted for a felony or misdemeanor is in such state of idiocy, imbecility or insanity that he is incapable of understanding the proceedings or of making his defense, or if the defendant pleads insanity, the court may order the defendant to be examined to determine his sanity.

In New York City, upon request of the court, the director of the division of psychiatry in the City Department of Hospitals is required to cause an examination to be made by two qualified psychiatrists, designated from the staff of the division. The director may be one of these psychiatrists.

Outside of New York City, because staff psychiatrists are unavailable in many parts of the state, the procedure is slightly different. Upstate, the superintendent of a hospital supported by the state or a public subdivision thereof, having a psychiatric service certified by the state commissioner of mental hygiene as having adequate facilities, is required to have the examination made. The superintendent must select from the hospital staff two qualified psychiatrists, of whom he may be one, to make the examination. If such qualified staff psychiatrists are not available, the superintendent is authorized to designate any qualified psychiatrists in the state.

By abolishing lunacy commissions, the evils associated with them are eliminated. By transferring the functions of these com-

[8] Particularly deserving of recognition for their assistance in drafting the new law are Miss Elsie M. Bond, Assistant Secretary to the State Charities Aid Association, and Mr. Lawrence Veiller, President of the Citizens' Crime Commission of New York.

[9] In a telegram to me, Mayor Fiorello LaGuardia on March 28, 1939, stated, in part: "Am heartily in favor of proposal to abolish lunacy commissions and turn over task of making sanity examinations to New York City hospitals. The administration of justice would undoubtedly be improved. The psychiatric departments of city hospitals can absorb the service incompetently performed by lunacy commission."

missions to psychiatrists in public hospitals, public expenses for sanity examinations is reduced. By turning over the work to men best qualified to make such examinations, the reliability of the examinations is improved.

Psychiatrists, under the new law, are given the power of subpoena and are authorized to examine witnesses and receive such other information as may aid them in reaching a determination. These powers, similar to those which were possessed by lunacy commissions, are essential to any adequate inquiry as to the mental state of a defendant. Before a psychiatrist can determine this fact adequately he must in many cases have information as to the defendant's previous medical history, sociological background, conditions in his family, his heredity, early environment, and many other facts.

Examinations may be made either in the jail or hospital. Psychiatrists designated are required to take the oath prescribed for referees.

As a compromise with lawyers both within and without the legislature, the new law provides that in New York City the psychiatrists "shall be aided by an assistant corporation counsel assigned for that purpose by the corporation counsel of such city." The assistant corporation counsel will not pass on the sanity of a defendant. He will provide such legal advice as the psychiatrists may require. This will entail merely an extension of the work which the New York City corporation counsel has been performing with regard to questions of sanity in non-criminal cases.

Upon completing the examination, the hospital superintendent, or, in New York City, the director of the division of psychiatry must give the court a full and complete report including the findings of the qualified psychiatrists who have conducted the examination to the effect that the defendant is or is not, at the time the examination was made, in such a mental state as to be incapable of understanding the proceedings or of making his defence. The report must include a recommendation as to the appropriate institution to which the defendant should be sent, if committed.

If the psychiatrists find the defendant able to understand the proceedings, and the court concurs, the action against the defendant is resumed as if no examination had been ordered. However, if the court does not concur with the findings of the psychiatrists, or if the two psychiatrists do not agree in their findings, either the

action against the defendant may be resumed or the court may request appointment of a third psychiatrist.

A helpful provision of the Desmond law requires that a duplicate copy of the psychiatrists' report must be transmitted by the court clerk to the superintendent of the institution to which the defendant is committed. This should prove of value in treatment of the defendant.

The report of the psychiatrists must not be received in evidence at the defendant's trial but must be filed by the court in the office of the court clerk where it will be subject to inspection only on order of the judge.

Should the psychiatrists certify that the defendant is unable to understand the proceedings, and the court concurs in the finding, it must suspend trial until the defendant becomes sane. Opportunity must first be given, however, to the District Attorney and the defendant's counsel to be heard, before the court makes its decision. Following suspension of the trial, the court must commit the defendant to a state hospital for the insane under the jurisdiction either of the state department of correction or of the department of mental hygiene.

The new law authorizes transfers of the defendant during the period of his commitment to any state hospital for the insane whether under control of the department of correction or department of mental hygiene, upon approval of the respective department heads.

As in the old law, a defendant thus committed must remain in the institution to which he is sent (or transferred) until the superintendent certifies to the court that he has recovered and is able to understand the proceedings and make his defense.

In New York City, psychiatrists will receive no fees, for the work will be performed by the regular staff of the city hospital. Outside New York City, psychiatrists are to be paid reasonable traveling expenses and a fee of not more than $50 in any case.

Requires Examination Only of Sanity at Time of Trial

The Desmond law purposely deals only with the medical question as to whether or not the defendant is able to stand trial. It does not require the psychiatrists to determine the mental condition of a defendant at time of commission of the crime.

The new law carries out my belief that the question of a defendant's ability to stand trial is a medical question which can

properly be decided by psychiatrists, but that the question of a defendant's responsibility for the crime which he committed is a legal question which must be decided by the jury on the basis of testimony and cross-examination of witnesses.

The well-known Macnaughton rule, promulgated in England in 1843 by outstanding judicial authorities, correctly set forth the considerations involved in this question when it stated that "a medical man under the circumstances supposed cannot in strictness be asked his opinion on this point because each of those questions involves the determination of the truth of the facts deposed to, which is for the jury to decide, and the questions are not questions upon a mere matter of science, in which case such evidence is admissible."

Psychiatrists should welcome this restriction which limits their determination to the question of the ability of the defendant to understand the proceedings and make his defense. This will not only reduce and simplify their work, but also tend to give their findings greater acceptance by the general public.

Lawyers may object to being eliminated from determination of the sanity of a defendant, but it must be remembered that the new Desmond law asks only for a determination of the medical question as to sanity at time of trial. This is not a matter for lawyers to decide, but for qualified psychiatrists. We insist that lawyers are no more needed to determine whether a defendant is sane at time of trial, than they are to determine whether a defendant has a broken back.

Clarifies and Makes Flexible Procedure in the Minor Courts

One of the features of the new Desmond law is that sanity examination procedure in the minor courts is made more flexible and is restated in language that even a layman can understand.

Let us suppose that a defendant is charged with an offense which is not a crime (generally some form of disorderly conduct) and the qualified psychiatrists who have examined him report that though he is in such a state of idiocy, imbecility or insanity as to be incapable of understanding the charge against him or of making his defense, they deem his discharge "not dangerous to the public peace and safety." In such a case, the court may in its discretion suspend proceedings and release the defendant on bail or parole him on such terms as in either case will provide for periodic receipt of information by the court as to the mental condition of the defendant.

When it appears to the court that the defendant is no longer in such mental state as to be incapable of understanding the charge against him or of making his defense, it must have the defendant brought into custody and proceedings against him must be resumed.

Should the psychiatrists, in cases of offenses which are not crimes, report that the defendant is incapable of understanding the charges against him or of making his defense and that they believe his discharge dangerous to public peace and safety, the court, instead of sending him to a state hospital for the insane, may direct that proceedings be taken to have him committed to a state hospital or a state school under jurisdiction of the department of where he must remain until he can understand the proceedings.

Numerous complexities of sentence-structure, and various overlapping procedures which patch-work amendments to the old law had produced are eliminated by the new statute.

Some Important Considerations

The new law will not eliminate "the battle of experts." Under our constitution and under our principles of jurisprudence, it could not do so. A defendant cannot be prevented from summoning in his behalf any witness—whether expert or otherwise. As long as this right continues, and we believe it should continue to exist, there will continue to be the so-called "battle of experts." Conflicting opinions between various experts is not limited to the field of psychiatry, but permeates our entire legal system, wherever expert testimony is employed.

The new statute does not usurp the functions of the courts. It does not deprive the courts of the power to appoint persons to determine the sanity of a defendant. However, the report of the psychiatrists is purely advisory. If the court does not agree with the conclusions of the psychiatrists, the proceedings resume, or the court may request appointment of a third psychiatrist.

Under the old lunacy commission system, a hearing conducted by the lunacy commissioners was held in the presence of a representative of the district attorney and the defendant's counsel. Under the new Desmond law, this will not be the case. Not only is the presence of these lawyers unnecessary in the determination of sanity at time of trial, but also their presence renders difficult, if not impossible, ascertainment of facts needed by psychiatrists in the type of examination contemplated by the new statute. The psychiatrists in an examination to determine sanity at time of trial do

not need assistance from the district attorney or defendant's counsel, nor are there any interests of the defendant which need protection by his counsel.

Psychiatrists who have served on lunacy commissions agree that the formal hearing which heretofore existed, with stenographers taking down every word, with the defendant's counsel urging his client not to answer certain questions, made it difficult to determine the defendant's state of mind. One of the chief purposes of the new law is to get away from such obstructions and to have a medical fact reported upon by medical authorities without unnecessary difficulties.

Conclusion

The new Desmond law marks a tremendous step forward in the administration of justice. It not only smashes the lunacy commission racket, removing a huge source of political patronage and cutting the cost of sanity examinations, but it also assures the accused a scientific procedure in determining his sanity and the public increased protection against faked insanity cases. The Bronx County Bar Association summarized the merits of the new legislation in the following words: "From all aspects, it seems that this bill will serve the true interest of the accused and the public and that it is an effective remedy of admitted evils.[10]

[10] Report of the Legislation Committee of the Bronx County Bar Association, April 29, 1939.