

Psychiatric testimony of a doctor who has examined the defendant immediately after an offense is apt to be more persuasive than an examination of a doctor who did not see the defendant until months thereafter.

If the defendant is required to utilize the procedure provided for in this statute, it would only be after indictment, the appointment of counsel, the assertion of the intention to rely on the defense, that the examination would be made.

The Government in the meanwhile could have had him examined by a private psychiatrist at a much earlier date.

I don't think that discrepancy is desirable.

The sanction provided for by the statute in paragraph c(2) on page 3, also causes me some difficulty.

It is suggested that evidence would not be admissible at trial if the defendant failed to assert in advance of trial his intention to rely on this defense.

I respectfully suggest that if a trial judge refused to permit evidence that a defendant was insane at a criminal trial, the appellate courts would not have much trouble in finding out that the conviction ought to be reversed.

I invite the attention of the committee to a recent case in Colorado, *French v. The District Court*, which is still in the advance sheets.

Under Colorado procedure, the defendant is remanded to a State mental institution for psychiatric examination, where he is supposed to cooperate. This defendant did not cooperate. Because he did not cooperate, they refused to permit him to admit evidence of insanity at his trial.

The Supreme Court of Colorado in a unanimous opinion reversed, the case, saying that regardless of the desirability of his cooperation, they could not permit a judgment to be entered of guilty against a man who might be insane.

I suggest that the same result would follow if this particular statutory sanction was invoked.

The CHAIRMAN. The same problem that you present troubles the U.S. attorney as well.

He indicated if there was any sanction, it should probably be against the lawyer and not against the defendant.

I don't know whether you have any comments on that.

Mr. PYE. I am Chairman of the Judicial Conference of this Circuit's Committee on Federal Criminal Rules.

With reference to the alibi defense, we tentatively explored the possibility of providing a sanction against the attorney similar to the sanctions provided for in rule 11 of the Federal Civil Rules.

Now, this is the rule that requires or provides that the signature of an attorney constitutes verification of what is contained in the complaint and the answer, and that the court might exert disciplinary sanctions against an attorney who files a false complaint or false answer.

We are unable to find any cases in which this has ever been done, however, and I strongly suspect the result would be the same in the criminal area.

The CHAIRMAN. Thank you.