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admissible under the test established in *Van Gaasbeck*. They require a proper foundation, establishing that the testimony sought would pertain only to a particular, relevant trait. Also properly excluded, on the grounds that it pertained not to reputation but sought evidence as to prior acts which could only be admissible if offered to show defendant's state of mind at the time of the alleged crime, was "Have you had any trouble with the defendant?"[32] Also excluded was the question, "Did you know defendant's reputation for soberness, is it good or bad?" While the question may have been improper in form, since it is necessary to establish knowledge of reputation before an opinion can be elicited as to its nature, it probably should have been admitted along with "Do you know his reputation for peacefulness?" It is clear that these questions would have been admitted if they were in the form of "Did you hear of" or "Have you heard."[33]

It is clear, however, that evidence as to reputation of the defendant's relevant character traits should be admitted and that its exclusion may constitute reversible error. Therefore, it is submitted that when questions pertaining to character and reputation are excluded, it would be good practice for the trial judge to indicate exactly where the objection lies so that the pertinent evidence may be admitted.

R. E. N.

EXPERT NEED NOT TESTIFY AS TO THE REASONS FOR HIS OPINION

The question presented in *People v. Crossland*[34] is whether an expert witness is required to state the reasons for his opinion on direct examination in a prosecution for possession of policy slips. The Court of Appeals, unanimously reversing the Appellate Division,[35] held that a police officer, testifying as an expert, is not required to explain the technical basis of his opinion as part of the People's case.

The State produced one witness, a police officer, who testified that he had observed defendant Crossland on a certain day receive a slip of paper and money from defendant Davis, and that he had been able to retrieve the slip of paper from the defendants. The slip of paper was introduced into evidence. The officer, a qualified expert on policy slips, "then testified that in his opinion the writings on the slip of paper represented 17 'plays' on mutuel race horse policy." This constituted the People's case, and defendant Crossland was convicted for possession of policy slips.

The Appellate Division reversed this conviction on the basis of *People v. Pierson*,[36] *People v. Oak*,[37] and *People v. Harris*.[38] In these cases convictions

32. See Dallas R. & T. Co. v. Farnsworth, 148 Tex. 584, 227 S.W.2d 1071 (1950).
33. Michelson v. United States, 335 U.S. 469 (1948).
34. 9 N.Y.2d 464, 214 N.Y.S.2d 728 (1961).
35. 12 A.D.2d 467, 208 N.Y.S.2d 902 (1st Dep't 1960).
36. 279 App. Div. 509, 111 N.Y.S.2d 39 (1st Dep't 1952).
37. 283 App. Div. 1018, 131 N.Y.S.2d 339 (1st Dep't 1954).
38. 1 A.D.2d 821, 150 N.Y.S.2d 151 (1st Dep't 1956).

were reversed and new trials ordered because the police officer as an expert witness merely gave on direct examination his opinion on the nature of the transactions and did not explain the reasons for this opinion; namely, what mutuel policy involves and the nature of the wagering involved. The rationale for these holdings was, as explained in *People v. Pierson*, to enable a trial court and a reviewing court to determine whether or not the defendant was guilty of the specific crime with which he was charged. "The courts should be advised not only of the facts upon which an expert bases his conclusions, but also an explanation of those facts in order to determine whether or not such conclusions are well-founded."[39]

The Court of Appeals specifically overruled the three aforementioned Appellate Division cases and rejected their rationale. The Court adhered to the proposition that an expert opinion may not be based upon facts which were not properly admitted into evidence.[40] However, the Court pointed out that in the instant case the facts were properly in evidence; therefore, an expert opinion based upon those facts was proper. However, the Court rejected the thesis advanced by the Appellate Division, that the prosecution must, as part of the People's case, have the expert explain why he reaches his conclusions from the facts in evidence. The State may, if it so desires, inquire into the reasons for the expert's opinion, but there is no compulsion to do so.[41] Furthermore, defense counsel is free on cross-examination to probe the technical basis of the expert's opinion and to use any other methods generally available to impeach the expert witness. Therefore, the expert's opinion need not go untested.

Thus on direct examination, an unexplained expert opinion based on the expert's personal observation or on facts properly in evidence is all that is required. It is not necessary to explain why the facts lead to the ultimate conclusion or opinion. This is the general rule regarding expert testimony, and there is no apparent reason why an exception should be made in those cases dealing with policy convictions. It is true that an opinion, reinforced with the reasons for reaching that opinion, may carry greater probative force than the mere assertion of an opinion without further explanation; however, this tactical consideration and the risk of non-persuasion is properly in the control of the party producing the expert witness. Similarly, the opposing party may challenge the validity of the opinion by cross-examining the expert as to his reasons for reaching the opinion. Thus, the burden of revealing whether the expert's opinion is well-founded rests with the parties to the litigation rather than in a rule of law.

P. A. L.

39. People v. Pierson, supra note 36 at 513, 111 N.Y.S.2d at 44.

40. People v. Samuels, 302 N.Y. 163, 96 N.E.2d 757 (1951); People v. Strait, 148 N.Y. 566, 42 N.E. 1045 (1896).

41. Johnson Service Co. v. MacLernon, 142 App. Div. 677, 127 N.Y. Supp. 431 (1st Dep't 1911).