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THE BRIGGS LAW OF MASSACHUSETTS: A REVIEW AND AN APPRAISAL¹

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A widespread interest in the application of psychiatry to the criminal law, not only among lawyers and psychiatrists, but among the general public, is no new thing. Of recent years, however, this interest has been intensified considerably, in part by journalistic activities, but more so by the appearance of a large number of books and pamphlets dealing with various topics relating to crime. Headlines have blazoned forth the details of psychiatric testimony adduced by the prosecution and defense in certain notorious trials, apparently unmindful of the fact that the psychiatric expert in criminal cases is one of the least offenders among the experts. and nearly every writer on crime has treated the subject of expert testimony, pointing out the disadvantages of the generally prevailing system. So insistent has the criticism of existing practices become that a number of States have enacted new laws with the aim of remedying defects, but some of these laws have been declared unconstitutional or if sustained have failed to fulfill entirely their purpose.

¹Presented before the Section on Forensic Psychiatry, American Psychiatric Association, New York City, May 28, 1934.

For other articles on this subject see: D. A. Thom, "Medico-Legal Provision in the State of Massachusetts Relative to the Mental Condition of Certain Persons Held for Trial," *Amer. Jour. Psychiatry*, III, 219-224. S. S. Glueck: "State Legislation Providing for the Mental Examination of Persons Accused of Crime," *Bulletin Mass. Dept. of Mental Diseases*, VII, 16-26. "Psychiatric Examination of Persons Accused of Crime," 36 *Yale Law Journal*, pp. 632-648, March, 1927. Reprinted in *Mental Hygiene*, XI, 287-305. L. V. Briggs: "Conditions and Events Leading to the Passage of the Massachusetts Law Commonly Called the 'Briggs Law,'" *Bulletin Mass. Department of Mental Diseases*, XII, Nos. 1 and 2, pp. 2-5. W. Overholser, "Psychiatric Examination of Prisoners in Massachusetts," *Boston Medical and Surgical Journal*, Vol. 195, 1065-1067. "Psychiatry and the Courts in Massachusetts," *Jour. American Institute of Criminal Law and Criminology*, XIX, 76-83. "Practical Operation of the Mass. Law Requiring the Psychiatric Examination of Certain Persons Accused of Crime," *Mass. Law Quarterly*, XIII, 35-49. (Reprinted from *Bulletin Mass. Dept. Mental Diseases*, XII, Nos. 1 and 2, October, 1928.) "Psychiatry and the Massachusetts Courts as Now Related," *Social Forces*, VIII, No. 1, pp. 77-87, Sept., 1929. W. Overholser, "Two Years Experience With the Briggs Law of Mass.," *Jour. of Crim. Law and Criminology*, Vol. XXIII, No. 3, pp. 415-425, Sept.-Oct., 1932. Sheldon Glueck, "Mental Disorder and the Criminal Law," pp. 55-56, 58-72, 474-476, Boston, 1925, Little Brown & Co.

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Broader than an interest in curing defects in the method of presenting expert testimony is a growing recognition by students of the law that the mental element has not hitherto received adequate recognition in dealing with the criminal, and that the defendant's mental condition must be considered if he is to be dealt with effectively, constructively and justly. A notable indication of this trend is the creation in 1927 of a Committee on Psychiatric Jurisprudence of the Section on Criminal Law and Criminology of the American Bar Association, which has cooperated consistently with a like-named Committee of the American Medical Association and with the Committee on the Legal Aspects of Psychiatry of the American Psychiatric Association. Further indications are, for example, the work of the Sub-Committee on the Medical Aspects of Crime of the National Crime Commission, the treatment of this topic by the Illinois Crime Survey and by several State Crime Commissions, and the recent establishment in several law schools of courses in psychiatry.

A discussion of the rise of psychiatry as an aid to criminal procedure would furnish a topic for a paper in itself, but would exceed the scope of the writer's present intention. The purpose of this paper is to offer an exposition of the practical operation of a statute which has been hailed by legal writers as "one of the greatest steps in the introduction of medical thought into the law," and which is still unique. For this purpose, the historical development of the statute will be sketched, together with the development of its functioning, pertinent decisions relating thereto, and a consideration of its advantages and defects.

The statute which provides the theme of this essay is Section 100 A, of Chapter 123, General Laws of Massachusetts (Tercentenary Edition), better known as the "Briggs Law," and so referred to in the index volume of the General Laws. It was originally drafted by Dr. L. Vernon Briggs of Boston, a pioneer in psychiatric progress and a former President of the Massachusetts Psychiatric Society, who desired urgently to remedy the defects of expert testimony in criminal cases as he had observed them, and was passed in 1921 (ch. 415) as a direct result of his efforts. Perfecting amendments were enacted in 1923 (ch. 331), 1925 (ch. 169), 1927 (ch. 59), and 1929 (ch. 105). The law now reads as follows:

"Whenever a person is indicted by a grand jury for a capital offense or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony, is indicted by a grand jury or bound over for trial in the superior court,

the clerk of the court in which the indictment is returned, or the clerk of the district court or the trial justice, as the case may be, shall give notice to the department of mental diseases, and the department shall cause such person to be examined with a view to determine his mental condition and the existence of any mental disease or defect which would affect his criminal responsibility. Whenever the probation officer of such court has in his possession or whenever the inquiry which he is required to make by section eight-five of chapter two hundred and seventy-six discloses facts which if known to the clerk would require notice as aforesaid, such probation officer shall forthwith communicate the same to the clerk who shall thereupon give such notice unless already given. The department shall file a report of its investigation with the clerk of the court in which the trial is to be held and the report shall be accessible to the court, the probation officer thereof, the district attorney and to the attorney for the accused. In the event of failure by the clerk of a district court or the trial justice to give notice to the department as aforesaid the same shall be given by the clerk of the superior court after entry of the case in said court. Upon giving the notice required by this section the clerk of a court or the trial justice shall so certify on the papers. The physician making such examination shall, upon certification by the department, receive the same fees and traveling expenses as provided in section seventy-three for the examination of persons committed to institutions and such fees and expenses shall be paid in the same manner as provided in section seventy-four for the payment of commitment expenses. Any clerk of court or trial justice who wilfully neglects to perform any duty imposed upon him by this section shall be punished by a fine of not more than fifty dollars."

The first amendment provided for the payment of a small fee (\$4.00 plus mileage); the second struck out the original provision for admissibility of the report as evidence and established a penalty for failure of the clerk to report the case for examination; the third made it the function of the probation officer to report to the clerk the record of prior convictions and indictments where such record rendered the defendant examinable; and the fourth made the report accessible to the probation officer, whose duty it is to make recommendations to the court regarding disposition. A fifth amendment, extending the scope of the law to apply to those defendants indicted for an offense punishable by life imprisonment, was proposed in 1930 by the Department of Mental Diseases but was not enacted by the General Court (the legal name of the Massachusetts Legislature).

The significant and unusual features of the law are three in number: (1) The examination is conducted by neutral, impartial experts; (2) these experts are selected by a professional department of the administrative branch of government, namely, the Department of Mental Diseases of the Commonwealth; (3) the examination is

applicable to *all* defendants falling within certain clearly-defined legal categories, and is not dependent upon the supposed "recognition" of mental disease by the judge, defense attorney, or some other non-psychiatric participant in the proceedings.

The desirability of securing examination by non-partisan experts has been widely, though not universally, recognized. Illinois and Michigan, for example, have denied the right of courts to appoint experts, taking the historically unsound view that the presentation of evidence should be left solely to the prosecutor and defense. The preponderance of statutory and judicial authority is in favor of this right, which was exercised in the English courts centuries ago. In Colorado² the court *must* commit the defendant to a state hospital for thirty days if insanity is pleaded as a defense, and in most states may employ experts or commit for observation. Louisiana,³ indeed, went so far as to make a mental commission's findings as to sanity conclusive, but the law was declared unconstitutional, as must any law which prevents the defendant from summoning witnesses in his own behalf. Mississippi⁴ tried to abolish the entire defense of insanity, but that attempt likewise was declared unconstitutional. One weakness of such methods is clear, namely, that no assurance can be given that insanity will be alleged as to the right defendant. In certain cases there will be features suggestive of mental disease or defect which are obvious to the attorney, jail official, or judge, to be sure. The defendant, however, may not, though definitely psychotic, conform to the lay idea of a "drivelling idiot" or a "raving maniac," with the result that he may have to undergo trial and punishment in spite of his mental disability, an event that the criminal law certainly does not contemplate. On the other hand, the defense may set up a claim of "insanity" as the last resort of desperation, without having a serious doubt of the defendant's sanity. Cases of this type will occur to everyone who reads these words. One very clear case of the unrecognized group came to the writer's attention a few years ago: a man, whose history and symptoms showed him to have been suffering from dementia praecox of the paranoid type for several years, shot and killed two police officers as a direct outgrowth of his delusions, yet mental disease had not occurred to his attorney as a defense or explanation until the Briggs Law report came to his at-

²Chapter 90, Acts of 1927 (Colorado).

³*State v. Lange*, 168 La. 958, invalidating Act No. 17, Extra Session of 1928.

⁴*Sinclair v. State*, 132 So. Rep. 581, declaring unconstitutional Secs. 1 and 2, ch. 75, Acts of 1928.

tention! This man, completely irresponsible, might well have been convicted and executed had not the routine examination been made.

The advantages of providing impartial testimony have been frequently pointed out. On occasion experts employed by prosecution or defense have been prone to look upon themselves as advocates, and to act as such in giving testimony. This is not the rule, but it must be recognized that the circumstances certainly predispose to a tendency to bias; in any event, what is more to the point, the expert retained by either side is credited by the jury with a certain amount of bias, and his evidence is discounted accordingly. To quote, for example, only one decision among many of like tenor: "He comes on the stand to swear in favor of the party calling him, and it may be said he always justifies by his works the faith that has been placed in him."⁵ In any event, of course, the rules of evidence and the questions asked on examination and cross-examination may safely be relied upon to accentuate any shades of difference of opinion which may exist among the experts, even though they be slight.

It has been already indicated that the right of the court to appoint experts is widely recognized.⁶ Judges have not shown a unanimous enthusiasm, however, in availing themselves of this right. Objection has been made that the judge is not the best-fitted person to appraise the ability and integrity of an expert, and the experience in some jurisdictions, especially where elective judges are found, has been that the appointment of experts and commissions offered a tempting field for the exercise of patronage and the resultant submergence of high standards. For this reason the delegation of the selection of expert advisers to a non-political body of experts, as is the case under the Briggs Law, serves the purpose of relieving the courts of a burden which might prove unwelcome, while at the same time assuring the assignment of competent psychiatrists.

The third feature, namely, the automatic reference, has been touched upon above. The law operates alike upon *all* defendants who fall within certain legal categories, *viz.*, those indicted for a capital offense and those indicted or bound over for the grand jury who have previously been convicted of a felony or who have been indicted previously more than once. The categories may be pre-

⁵*Roberts v. N. Y. Elev. Ry. Co.*, 128 N. Y. 455, at 474 (1891).

⁶Wigmore on Evidence (2nd ed.), Sec. 1917, pp. 100-109. For cases favorable to right to appoint, see *Meek v. Wheeler, et al.* 251 Pac. Rep. 184 (Kans.) and *Jessner v. State*, 231 N. W. 634 (Wis.); unfavorable, *Peo. v. Dickerson*, 129 N. W. 199 (Mich.), *Peo. v. Scott*, 326 Ill. 327. For objections to court appointment see Vol. 3, Trans. Mass. Medico Legal Soc., p. 25 (J. C. Irish) and p. 311 (F. W. Anthony).

sumed to include the more "serious" offenders, at least from the legal point of view. Those defendants not included within the definitions set out concerning whose mental state the court may entertain doubt may, of course, be examined under other provisions of law. As to those upon whom the law operates, no initiative in the nature of a special plea or motion is needed to cause the examination to be made; it may, indeed, upon receipt of report from the clerk of court, have been made before the defendant has decided whether to secure counsel.

The report, it should be noted, is not admissible as evidence, but is informative, and is accessible to the directly interested participants in the case (aside from the defendant), namely, the court, district attorney, counsel for the defense, and probation officer. It is thus fair to both parties, and the information contained therein may be made available as evidence by summoning the examiners; needless to say, either side may secure their testimony by compulsory process. No limitation is set by law upon the right of the defendant or prosecution to introduce other experts, either in addition to the neutral examiners or in place of them. As we shall see later, however, this practice is almost entirely non-existent.

In previous reports, by Professor Sheldon Glueck of the Harvard Law School and by the writer,⁷ detailed data relative to the results of the Briggs Law have been presented, the latest published article covering the two year period ending October 15, 1930. Similar data are now available for the three-year period ending October 15, 1933, and are herewith set forth. In addition, for convenience of reference, a resumé of the figures since 1921 (the date of passage of the law) is added. At this point I desire to express my acknowledgements to Professor Glueck, whose presentation of the principles of the Briggs Law in his masterly volume, "Mental Disorder and the Criminal Law," in 1925 first called the attention of the legal world to its advantages, and whose review of the statistics in 1926 has been extremely helpful to the writer in preparing this and previous reports.

In Table 1 is presented a summary showing the number of cases reported and examined, together with the principal classes of diagnoses made in those cases not reported as having "no mental disease or defect," for the years 1921 to 1934.

⁷See references given in footnote 1.

TABLE 1.

<i>Year (Ending Oct. 15)</i>	<i>Cases Reported</i>	<i>Cases Examined</i>	<i>Percent Not Ex- amined</i>	<i>In- sane</i>	<i>Obser- vation Ad- vised</i>	<i>Men- tally De- fective</i>	<i>Other Mental Abnor- malities</i>	<i>Per- centage Re- ported Abnormal</i>
1921-1926 (5 yrs.)	367 (av. 73.2 yearly)	295 (av. 59 yearly)	19.6	26	7	25	11	23.4
1927	138	87	37.	5	1	9	1	18.3
1928	239	179	25.1	6	6	21	13	25.7
1929	370	283	23.5	3	16	27	11	20.1
1930	654	521	20.3	4	23	44	10	15.7
1931	766	703	8.2	8	21	87	10	17.9
1932	909	817	10.1	6	26	68	19	14.5
1933	818	725	11.3	3	23	55	15	13.2
1934	911	782	14.1	5	20	52	6	10.6
Total	5,172	4,392		66	143	388	96	

Not examined 780, or 15.1%
of all cases reported.

Total, all classes, 693, or
15.8% of all cases examined.

Several facts stand out upon a study of this table. In the first place, the growth in the number of cases reported annually is startling, beginning with a yearly average of 73.2, and reaching a peak in 1932 of 909, an increase of 1140%! This increase commenced in 1927, the year when the amendment was passed directing the probation officer to report records of previous indictments and felony conviction to the clerk. Up to that time the clerk had frequently had no means of knowing the previous record of the defendant, with the result that up to October, 1926, of 367 defendants reported, 173, or 47 per cent, were indicted for a capital offense, the one type of offense in which previous record is disregarded for the purposes of the law. By contrast, in 1933 only forty indictments for a capital offense were reported in the case of 818 defendants, or 4.9%. The greatly increased efficiency of reporting, then, is clearly due to the amendment of 1927 which made use of the knowledge of the probation officer as to previous record. For the first time, a decrease in the number reported and examined was observed in 1933, the decrease in the number reported being 10%. In this connection, it is interesting to note that during the year ending June 30, 1934, only 5203 indictments were returned in the entire Commonwealth as against 6090 in the preceding year, a fall of 4.5%. Although these figures are not necessarily comparable, they serve to suggest that some diminution in the volume of criminal business in the Superior Court may be a factor in the lessened number of defendants reported. It might, too, be inferred that the reporting has now reached such a degree of efficiency that practically all cases reach the atten-

tion of the Department which fall within the scope of the law. Study of the statistics over a longer period, of course, is necessary to justify any valid conclusions on this point.

The next feature in order is the greater proportion of defendants examined. The percentage of missed cases was in 1927 as high as 37, but for the past three years has fallen markedly, so that the average for the 12-year period is 15.2%. As we shall see, a certain almost irreducible number of cases are not examined because they are out on bail; previously a considerable number were sentenced before examination. During the past three years it has apparently been a definite policy of the justices of the Superior Court to postpone disposition in cases known to come under the Briggs Law until such time as the examination can be completed; such a policy seems to be clearly following the intent of the law, even though it has been held that non-compliance with the statute does not invalidate the trial.

A tabulation of the reasons for non-examination for the three-year period ending October 15, 1933, follows:

TABLE 2.

	1931	1932	1933	1934
Total Reported	766	909	818	911
On bail	29	71	77	75
Disposed of before examination	15	3	4	19
Refused	5	3	3	12
Other reasons	14	15	9	23
Total not examined	63 (8.2%)	92 (10.1%)	93 (11.3%)	129 (14.1%)

The chief point of interest here is the marked diminution, for the three years to 1934, of cases disposed of before examination. In the preceding two year period (1929-1930), of 87 cases missed, 19 were disposed of without the examination. It should be added that in the 87 were included 18 cases which technically were not examinable under the law, whereas in the present tabulation only those cases have been counted in which the law applies. A certain number are reported which are found not to have been previously convicted of a felony or indicated more than once, and are therefore not examinable; these cases are disregarded. The proportion of cases missed is slightly larger for the past two years than for the year preceding, but is still well under the twelve-year average of 15.2%. The chief difficulty with the bailed defendants seems to lie in inducing them to make the trip to the physicians' office for the sake of undergoing an examination, the purpose of which they do not understand, al-

though a moderate number report when requested to do so. In some cases, when a bailed defendant comes into court for trial or to plead, the justice delays disposition in order that an examination (hurried, frequently, and far from satisfactory) may be made. This is not always practical, however, and in view of the doubt which exists as to the right to compel examination, it seems likely that a moderate number of the cases will, largely by reason of being on bail, not be examined.

The offenses charged against those defendants examined are of some little interest. For purposes of comparison, the data for the twelve years are presented below. (In some cases multiple indictments were found, so that the number of complaints or indictments exceeds the number of defendants. On the other hand not all multiple indictments were reported to the Department.)

TABLE 3.

	<i>De- fend- ants Exam- ined</i>	<i>Mur- der 1st De- gree</i>	<i>Man- slaughter & 2nd Degree Mur- der</i>	<i>Lar- ceny</i>	<i>Breaking and En- tering (Bur- glary)</i>	<i>Rob- bery</i>	<i>Feloni- ous As- sault</i>	<i>Sex Of- fenses</i>	<i>Others</i>
1921-1928 (7 yrs.)	561	231	6	128	148	47	29	39	54
1929-1930 (2 yrs.)	804	45	20	352	316	84	73	84	203
1931	703	32	5	179	258	119	34	32	104
1932	817	34	5	151	359	112	51	26	109
1933	725	40	2	167	330	104	54	30	144
1934	782	47	5	146	324	114	60	30	97

Aside from the marked increase in the proportion of non-capital offenses reported, as previously noted, the table appears to indicate a considerable jump in the number of defendants indicted for robbery and breaking and entering (essentially the equivalent of what is elsewhere referred to as "burglary"), and a slight increase in those charged with assault with intent to rob, rape, or kill (referred to for convenience as felonious assault).

Of primary interest to the psychiatrist are the diagnoses reported as a result of the examinations made. These have already been reported summarily in Table 1, but call for some comment. In the first place, in view of the loosely-uttered charge that psychiatrists, if given a free hand, "would find all criminals insane," it is worthy of note that over a period of twelve years, when a free hand has been given to competent and impartial experts, only 16.9% of the prisoners have been reported as either suggestively or clearly abnormal mentally, and that furthermore the percentage so reported each year has shown

a definite downward tendency! As to the reason for this tendency the author is not prepared to dogmatize. The psychiatrists making the examinations have been largely the same group and at least reasonably conservative, so the personal factor can be largely eliminated. It may be that the considerable increase in number of examinations, with a fairly frequent demand by the judge for quick report, has resulted in overlooking unusual conditions which might otherwise be discovered. Again, it may be that, as a result of the depression, a new class of offenders has been recruited by the operation of economic pressure, so that a larger proportion of the defendants are really essentially "normal." Whatever be the reason, it is certainly a fact that proportionately fewer defendants are reported as mentally abnormal than formerly. Observation in a mental hospital can readily be ordered by a criminal court without jury trial, and it has been the practice to advise this procedure in cases in which suggestive symptoms of mental disorder were found. The advantages of such observation are, of course, obvious where the facts warrant it. The reasons for such advice are stated in the report, and in at least a fair proportion of the cases the advice is followed by the court.

A statement of the types of mental peculiarity included under the title "other mental abnormalities" in Table 1 is given below for the sake of completeness:

TABLE 4.

	1931	1932	1933	1934
Borderline or low intelligence	4	6	10	4
"Psychopathic" or "abnormal personality" ...	2	2	1	0
Epilepsy	2	8	2	0
Drug addiction	0	1	1	1
Organic nervous disease	1	1	0	0
Alcoholism	1	0	0	1
Neurosis	0	1	0	0
"Limited responsibility; not insane"	0	0	1	0
Total	10	19	15	6

Some of these diagnoses, notably epilepsy and psychopathic personality, are dependent to a considerable extent upon a thorough history; it is not improbable that they would be made in other cases as well if time always permitted fuller investigation. I refrain from further comment upon the discrepant criteria of "psychopathic personality!"

Before discussing the disposition made of the defendants reported as mentally abnormal, a brief presentation of the facilities available

in Massachusetts is in order.⁸ First of all, wide power is given to the criminal courts with respect to the commitment of defendants to mental hospitals. The court may commit for observation (for a period of 35 days) or as insane for an indefinite period, the defendant to be returned to court when recovered. Such commitment may be made on the court's own motion or upon application, and does not require medical reports. The indictment is placed on file, nol prossed, or quashed. A defendant found not guilty of homicide by reason of insanity must be committed for his natural life; he may be released by the Governor and Council upon report by the Department of Mental Diseases that he may be released "without danger to others." A defendant accused of an offense not punishable by death or by life imprisonment may, if found to be mentally defective, be committed to a special institution for defective delinquents. Massachusetts had the first such law in the country, although the New York institution for Defective Delinquents was opened before that of Massachusetts. This commitment is indefinite, but the defendant may be paroled. The criminal courts have no power to commit to the State Schools for mental defectives. The conventional correctional institutions, such as State Prison, Reformatory, Houses of Correction, and juvenile institutions, as well as probation, are of course available. The Houses of Correction correspond to the county jails of other States; the maximum sentence to those institutions is longer than in most States, being $2\frac{1}{2}$ years.

What, now, was done with the defendants reported to the courts to be mentally abnormal? First, during the three-year period ending October 15, 1934, all the seventeen defendants reported to be "insane" were committed to a mental hospital. This is, of course, as it should be, but it indicates that in those cases at least the court not only waited for the report, but acted upon it. The record of the cases in which observation was advised is not quite so satisfactory; in 1931, 13 out of 21 recommended were committed for observation; in 1932, 16 out of 26; in 1933, 16 out of 23; and in 1934, 14 out of 20 (one other died). In at least a few instances the disposition was made before the report was received, and it may have been in a few others that sufficiently convincing reasons were not set forth in the report to satisfy the judge of the desirability of hospital observation. The disposition of the non-committed was scattering—penal institutions, probation, no bill, not guilty, nol prossed, or filed.

As casting some possible light on the soundness of the diagnoses

⁸Sec Chapter 123, General Laws, Tercent. Ed., Sections 100-105, 113-124.

of mental disease and of the recommendations for observation commitment, a check as of February 1, 1934, was made of these groups for the year ending October 15, 1932. Of the six reported as "insane," four were still in hospitals, one had died, and one had been discharged as recovered. Of the twenty-six for whom commitment for observation was advised, the advice was followed in sixteen cases. Of these sixteen, three were still in the hospital, one had been deported still unrecovered; six were discharged as not psychotic but suffering from some associated condition, such as alcoholism or mental deficiency; six were discharged as without psychosis or associated condition. In other words, of the sixteen defendants, ten had a definite mental abnormality, as recognized by the examiners; the others, although showing suggestive symptoms, were not formally classifiable from the psychiatric point of view. Of the ten defendants not committed, one (on probation) was committed subsequently to a mental hospital, whence he was discharged with a diagnosis of Alcoholism without psychosis; the other probationer was surrendered from probation, but without admission to a mental hospital; one other, sentenced to State Prison, has been diagnosed there as mentally defective. It would appear, from these data, that the recommendations for observation commitment are in general conservative and well based on psychiatric findings.

The situation with regard to the defendants reported as "feeble-minded" or "mentally defective" (equivalent terms) is somewhat different. There is, to be sure, a Department for Defective Delinquents⁹ (both male and female), located at Bridgewater, to which suitable mentally defective defendants may be committed. These departments have, however, long been overcrowded, with the result that many judges have hesitated to send any but the most urgent cases there; other judges, of course, have looked upon commitment for an indeterminate sentence as an unduly severe disposition for so-called "less serious" offenses—a relic of the "classical" theory of penology. It is clear that a not inconsiderable number of mentally defective defendants are suitable candidates for probation or fine; a fair number have drifted or been led into criminal activity, and may respond favorably to mild measures. In other instances, however, a disposition by sentence to a penal institution cannot be looked upon as other than short-sighted and ineffectual. The day has seemingly not yet arrived when the individual defendant's needs and society's rights are generally taken into consideration as superior in importance to

⁹See Sections 113-124, cited in preceding note.

the name and supposed "seriousness" of the crime charged. The dispositions of the mentally defective defendants during the three-year period ending October 15, 1933, follow:

TABLE 5.

	<i>Mental Hosp.</i>	<i>Dept. Def. Delinquents</i>	<i>State Prison</i>	<i>House of Correction</i>	<i>Ref. or Juv. Correctional Institution</i>	<i>Probation</i>	<i>Filed, not guilty, not pressed or no bill</i>	<i>Total</i>
1931	2	11	9	11	27	15	12	87
1932	0	10	9	7	19	8	15	68
1933	0	3 ¹	8	10	19	4	11 (2 pending)	55
1934	0	2	4	14	18	6	7	52
Total	2	26	30	42	83	33	45 (plus 1 to state farm)	262

¹¹ also committed after observation in a mental hospital.

It appears, then, that of the 210 defendants reported as mentally defective 24, or 11.4%, were committed as defective delinquents, whereas 119, or 56.6%, were committed to the conventional correctional or penal institutions, and 27 or 12.8%, were placed on probation. A check of the records indicates that a not inconsiderable proportion of the latter group were "successes" while on probation. One cannot, unfortunately, be quite so optimistic about the 56.6% who were given the doubtful benefit of a sentence to the Reformatory or other institution of that type!

Mention has already been made of the fact that a large proportion of the mentally defective defendants are sentenced for fixed terms (or practically so, since release from "indeterminate" sentences is practically a matter of routine). In this connection, a case may be cited which is of interest as showing how a feeble-minded person may continue for a long period to inflict himself upon society, in spite of the existence of facilities for his indeterminate segregation. In 1927 he had been examined while serving sentence under the provisions of an act establishing in the Department of Mental Diseases a Division for the Examination of Prisoners,¹⁰ and in 1929 had been examined under the Briggs Law, both times being reported as mentally defective.

7/10/19 Larceny. Continued.

5/22/20 Larceny. \$20 fine.

1/28/21 Larceny. Dismissed.

¹⁰Ch. 309, Acts of 1924. This Division, the only one ever established for the purpose of making mental examinations (on a state wide scale) of convicted prisoners in county jails, was abolished for reasons of economy in 1933 (Ch. 77, Sec. 4).

9/19/21 Breaking and Entering. Probation.
 10/20/21 Larceny, Filed—returned to Superior Court.
 10/20/21 Surrendered from probation. 2 mos. House of Correction.
 10/16/22 Assault and Battery. Probation.
 10/25/22 Drunkenness. Filed.
 2/28/23 Surrendered. Probation.
 11/27/23 Non-support. 3 mos. House of Correction—suspended sentence.
 3/20/24 Violation of probation. 3 mos. H. of C.
 8/28/24 Non-support. Discharged.
 8/28/24 Assault and Battery on wife. Dismissed.
 3/14/25 Larceny. 9 mos. H. of C. Appealed.
 4/22/25 Same charge (Superior Court). 5 mos. H. of C.
 5/19/26 Larceny. 6 mos. H. of C.
 2/ 6/27 Drunkenness. Released by Probation Officer.
 3/ 8/27 Drunkenness. Released by Probation Officer.
 4/ 6/27 Breaking and Entering. 1 year H. of C.
 7/ 2/28 Breaking and Entering. 10 mos. H. of C.
 8/ 6/29 Breaking and Entering. 2 mos. H. of C.
 5/16/30 Exposing and keeping liquor. 1 mo. H. of C.
 7/ 2/30 Assault and Battery. 6 mos. H. C.
 11/13/31 Exposing and keeping liquor. 1 mo. H. of C. and \$200 fine.
 His whereabouts since 1931 are unknown, but it is hardly likely, wherever he may be, that he has suddenly reformed!

The statistics relative to the examinations having been presented in considerable detail, let us turn to the practical operation of the Briggs Law in the individual case. Except in a capital case, in which indictment is a prerequisite, the report may come from either a district or superior court. The general practice in Massachusetts is to initiate a criminal case by complaint, and arraignment in the District Court. If the judge finds "probable cause," he "binds over" the defendant to the Grand Jury, which later on may find a true bill. A relatively small number of cases are begun by indictment, usually a secret one. With the excellent system of state-wide criminal statistics maintained by the Board of Probation, it is a simple matter for any probation officer (there being one in every court) to ascertain promptly the details of a defendant's previous record, if any. There is no reason, therefore, why the probation officer in the district court should be unaware of previous convictions or indictments of a defendant bound over for the Grand Jury; if he possesses such information, it is his duty, to inform the clerk. The Administrative Committee of the District Courts has repeatedly called to the attention of the courts the desirability of reporting upon the finding of probable cause instead of letting the clerk of the superior court wait for the indictment. In spite of the cooperation of the Administrative

Committee and their urgent advice to the courts, only about 15% of the reports received come from the district courts. The result is that all too frequently an indictment is found late in one week, with disposition by plea or conviction due to be made within a few days. Either, then the examination must be a hurried one, made perhaps in the detention room of the court-house while the judge waits for the results, or else the examination must result in delay or be waived entirely. A case such as I cite is not the rule, of course, but is more common than would be the case if the district courts performed the duty which the law clearly intended that they should. To be sure, a hasty glance by a psychiatrist is more likely to reveal salient disorders or defects than the cursory and untrained one of the probation officer, court officer, or judge; nevertheless, enough time should be allowed to permit more than a "snap judgment." In the case of defendants charged with a capital offense, that marked speed of trial which is sometimes confused with justice is not so noticeable, with the result that the examiners are usually able to procure adequate social histories, psychometric tests, and so on.

The report, aside from certain brief historical data, presents the "psychiatric findings" and finally a statement of opinion as to the presence or absence of mental disease or defect. Formerly a tendency was observed on the part of some of the examiners to wander a bit afield in this portion of the report. For example:

"In our opinion, the prisoner is definitely feeble-minded, but he has not sufficient defect to affect his criminal responsibility."

"He is not suffering from any mental disease which would affect his criminal responsibility, despite the fact that he is mentally defective. C. A. 22, M. A. 9^o, I. Q. 14 year basis .70. M. A. Perf. 10."

"He is feeble-minded, of the moron type, but in our opinion this does not affect his criminal responsibility."

This tendency has not been observable during the past few years. The examiners have been encouraged to confine themselves to statements of psychiatric opinion without indulging in speculations on the exceedingly tenuous and metaphysical topic of "responsibility." As a result, the reports have probably been clearer than some of them were before, with corresponding benefit to the psychiatric education of bench and bar! This educational factor cannot well be shown by the statistics already cited, or by any others, but that the process is being carried on cannot well be denied. An additional feature introduced within the past two years has consisted in the sending of a

letter to the district attorney, calling his attention to each case in which mental abnormality is reported. This practice is undoubtedly a factor in increasing the proportion of cases in which psychiatric advice is considered in making disposition.

In those cases in which mental disease is reported, the district attorney almost invariably takes steps looking to the defendant's commitment or (in some instances) acquittal "by reason of insanity." When the latter procedure has been followed, the verdict has been a merely formal one, following upon the briefest of uncontroverted testimony, and consuming an hour or less instead of possibly days of wrangling and of expensive and perhaps conflicting evidence. The saving in time and expense,¹¹ and the obviously greater fairness to the defendant, need not be argued. Whatever the procedure, the prolonged segregation of the defendant is certain—either he is returned to court if recovered or (in the event of acquittal) is released by the Governor and Council only upon written recommendation of the Department of Mental Diseases. If observation in a mental hospital is recommended, steps are usually taken by the district attorney to have the defendant committed for a period of observation limited to thirty-five days; if found not psychotic he is returned to court; if suffering from mental disease, the court authorizes his detention "until restored to sanity." These procedures, except the acquittal by reason of insanity, are relatively informal, and require no jury, nor, indeed, sworn medical testimony. That the proportion of cases in which these procedures have been followed when indicated by the reports has shown a steady increase indicates the growing understanding and coöperation on the part of the judges and district attorneys.

The procedure if the defendant is reported mentally deficient is, as we have seen, more likely to be unaffected by the reports. The probation officer may petition for his commitment as a defective delinquent, or may consider him a proper candidate for probation. In some cases the report, of mental deficiency or "borderline intelligence" has been used by the district attorney as basis for accepting a plea of guilty to a lesser offense than the one charged; in at least one instance, too, it has been successfully used as the basis of a plea to the Governor for commutation of sentence. It is unfortunate that the defective delinquent law, a valuable bit of legis-

¹¹It has been conservatively estimated that a jury session of the Criminal Court costs at least \$500 a day, not including the fees of experts. The great saving if only a few contests are avoided is obvious.

lation, is not used more than it is; it seems unbelievable that the desirability of indeterminate segregation of this group will not eventually be generally recognized.

The interest of the bar of the Commonwealth is attested by the extremely small number of cases in which the defendant or his attorney refused examination. No attorney, presumably, desires to put himself in the position of not desiring to know the mental status of his client when he has the opportunity to be informed reliably! The fact that almost never does the attorney refuse permission indicates, a general confidence in the fairness and competence of the examiners.

The report is essentially advisory in nature, and is not admissible as evidence. If evidence of its contents is desired, either side may summons the examining physicians and cause them to give their opinion of the mental state of the defendant; could this not be done, a primary purpose of the examination would be lost, namely, the discouragement of "battles of testimony." In a few cases the report has been impounded, but the general practice is to file it with the other papers in the case, these being usually open to inspection by the public. The purpose of the procedure has been outlined by the Supreme Judicial Court of the Commonwealth as follows:¹²

"The examination is required in order that no person so indicted may be put upon his trial unless his mental condition is thereby determined to be such as to render him responsible to trial and punishment for the crime charged against him, and that he has no mental disease or defect which interferes with such criminal responsibility. It is the duty imposed by the statute upon these doctors and others similarly assigned by the Department of Mental Diseases to say what is the mental condition of an accused and whether he has any mental disease or defect affecting his criminal responsibility. . . . It is a necessary deduction from all the circumstances that the defendant was put upon trial on the indictment because the report of the Department of Mental Diseases upheld his criminal responsibility. He would not have been brought to trial without evidence of his mental condition if that report had not been to the effect that he was of sufficient mental power to be criminally liable for his act and was not insane. . . . Doubtless the judge knew of this report at the trial. . . . He was justified in considering it in connection with the motion for a new trial in the circumstances here disclosed. . . . The judge had a right to examine the cause suggested in the motion for a new trial in the light of the contents of this report, in order to aid him in ascertaining whether justice required that there be a new trial."

In another part of the same decision the impartial nature of the report was emphasized as follows:

¹²*Comm. v. Devereaux*, 257 Mass. 391, at 396, 397 (1926).

"It is a matter of general knowledge that there are in the service of the Commonwealth under this department persons eminent for special scientific knowledge as to mental diseases. The examination under the statute, therefore, may fairly be assumed to have been made by competent persons, free from any disposition or bias and under every inducement to be impartial and to seek and ascertain the truth."

Judicial notice, then, is taken of the competence and impartiality of the examiners, and it is clearly indicated that the district attorney is not expected to bring to trial a defendant who is not pronounced to be sane and responsible. The figures already cited indicate that the district attorneys have of late, at least, followed the general lines laid down above. The expectation is further expressed that the trial judge was guided by the report.

In two fairly recent cases, those of *Vallarelli*¹³ and *Soaris*¹⁴ the Supreme Judicial Court of Massachusetts has passed upon certain phases of the Briggs Law.

Briefly, *Vallarelli* was one of four defendants convicted (of robbery) on March 8, 1929. Four days later the probation officer reported to the clerk that the defendants had previously been convicted of a felony, whereupon the Department was asked to examine and report. Reports were filed the following day, indicating that three of the four were not remarkable mentally, but that the fourth, one Polcarri, appeared to be hallucinated in the visual and auditory spheres, and that "he shows sufficient evidence of mental disease to require further observation under Section 100 at Bridgewater." All four were sentenced to the State Prison, and counsel then filed motions for a new trial on the grounds that they had been deprived of a fair trial, the three by being tried with a co-defendant whom they alleged to be of unsound mind, and Polcarri by reason of the Department's findings. The trial judge denied the motions, and the matter went up to the full bench for decision. The denial of the motions was upheld on the ground that the petitioners presumably (!) knew of their previous records, and therefore might have raised the issue at the trial. As to Polcarri, the court said: "The report of the Department of Mental Diseases concerning Polcarri falls far short of indicating that he was of unsound mind when the crime was alleged to have been committed, or when the trial took place, or even at any time thereafter. It simply indicates that several days after the termination of the trial he showed, in the opinion of two physicians, sufficient evidence of mental disease to require further observation—no presumption can be indulged in favor of irresponsibility for Polcarri for criminal conduct or of his insanity at the trial." (The reader should observe here that the report is literally construed.) The most significant statements as to the purpose and scope of the law follows: "——— It is plain that non-compliance with the provisions of said Section 100A as amended does not invalidate the trial as a matter of law. The terms of

¹³*Comm. v. Vallarelli*, 273 Mass. 240 (1930).

¹⁴*Comm. v. Soaris*, 275 Mass. 291 (1931).

that section contain no such intimation. It is an important statutory provision, but its design is to forward the administration of public justice not to put into the hands of those charged with crime a new weapon of defense. There is express finding by the judge to the effect that the probation officer and clerk were ignorant until after the verdict of facts which rendered said Section 100A applicable to any of the defendants." That this point of view is wise will probably be generally admitted. To interpret the examination as a *sine qua non* of due trial would place an unfair burden on the Department and would add one to the many still-existing means of reversal and delay. For practical purposes, the insistence by the judges that the report be at hand makes it an essential without the disadvantage which would arise from a statutory mandate.

On May 22, 1930, Soaris was convicted of murder in the first degree. The first exception submitted to the Supreme Court was based upon the contention that compliance with Section 100A is a condition precedent to placing the defendant on trial. It was further claimed that the report as filed failed to "determine his mental condition." As a matter of fact, Soaris had developed a depression following the killing, and the report stated that he was unfit to stand trial, adding that he should be sent to a hospital until his recovery. He was committed to Bridgewater State Hospital, recovered, and was tried. The court held that the reports of the Department's examiners and of the medical director of the Bridgewater State Hospital constituted a compliance with the statute, but did not expressly decide whether such compliance was a condition precedent. The decision, however, referred to the case of *Commonwealth v. Vallarelli*, thus by implication deciding the latter question in the negative.

These decisions illustrate the well-nigh conclusive character attributed by the courts to the reports of the Department, and should serve to warn the examiners to make their reports accurate and based upon careful examination of the defendant.

Still another decision illustrating the dependence placed by the Supreme Court upon the Briggs Law reports is that in the case of *Commonwealth v. Belenski*,¹⁵ from which pertinent fragments of the lengthy decision are quoted herewith: "The trial began on November 17, 1930. On November 21, 1930, it was discovered by counsel for the defendant that the report of the department of mental diseases had not been filed with the clerk as provided in G. L. c. 123, Section 100A, as amended by St. 1929, c. 105, although notice to the department had been given by the clerk. When this was brought to the attention of the trial judge he declared a recess to await the filing of the report. The report was filed the same day. The defendant objected to the filing of the report after the trial had begun. . . .

"Apparently, according to the defendant's brief, his objection

¹⁵*Comm. v. Belenski*, 276 Mass. 35 (1931).

to the filing of the report of the department of mental diseases is on the ground that 'names and addresses of witnesses against him are thereby supplied to the Commonwealth and testimony provided against him.' This contention has no merit. Under the statute the report is to be filed with the clerk of the court, and is made accessible 'to the court, the probation officer thereof, the district attorney and to the attorney for the accused.' G. L. c. 123, Section 100A, as amended by St. 1929, c. 105. The defendant has not shown that he was in any way harmed by the filing of the report after the trial had begun. No objection had been made by him at the opening of the trial, although an examination of the records would have disclosed that no report had then been filed. Non-compliance with Section 100A of G. L. c. 123, as amended, does not invalidate the trial as matter of law. . . .

"The defendant contends that prior to the filing of the report of the department of mental diseases he filed a motion asking to be allowed a reasonable amount to defray the expenses of an expert on mental diseases to examine him. As we construe the record this motion was not denied until after the report had been filed. The denial of the motion was proper. The defendant had been examined by competent persons appointed by the department of mental diseases. There was nothing indicating that he was not sane. The report had been filed; presumably the judge was aware of its contents. . . .

"Having been examined by impartial experts the defendant was not entitled as of right to a further examination at the public expense."

The defendant was a Polish farm-hand who was convicted of murdering his employers, an elderly couple. The history of the defendant suggested epilepsy, and he was of inferior intelligence, but above the level of mental deficiency. One of the physicians who examined him under the Briggs Law was summonsed by the defense and testified; the presiding justice had previously refused to allow the defense funds to employ psychiatrists at the county's expense, and was sustained in this refusal. It should be added that although the Supreme Court indicated approval of the practice of considering the report final, the ruling of the trial justice in this case has not been generally followed by his fellow judges in doubtful cases. In any event, this decision illustrates again the care with which the psychiatrists appointed under the Briggs Law are expected to conduct their examinations and formulate their opinions.

The only other case in which the Briggs Law has been considered

by the Supreme Judicial Court is of no vital importance, and is mentioned here only for the sake of completeness. The court said (*Harding v. Commonwealth*¹⁶): "There is in the record a report to the Department of Mental Diseases to the effect that in 1922 and 1926 the prisoner was convicted of similar offenses. This report and its contents may [!] have been known to the trial judge."

No cases involving the law have so far been considered in the Federal courts.

The constitutionality of the Briggs Law has never been directly decided. There seems, however, to be no reason to question it. No compulsion is executed upon the defendant, and he may refuse if he will. He still has preserved to him his right to "have compulsory process for obtaining witnesses in his favor,"¹⁷ and may, if he so desires, produce as many experts as he can secure. Since the examination is made without objection by the defendant, there would seem to be no reason why these physicians may not testify to their opinion of his mental condition. This has been done in a number of cases, notably in the *Belenski* case cited above, and has never excited any criticism. Indeed if the examination is to have any effect whatever, some means must be provided of making it available as evidence in cases where the issue of insanity may be raised as by summoning the physicians who made it. Recently the suggestion has been offered that as the report is "confidential" the physicians should not be permitted to divulge their findings in court. The fault with this criticism is that there is no intimation in the law or in practice that the report is confidential! The accessibility is guaranteed to certain parties, but is *denied* to no one by the wording of the law. Being filed with the clerk, it is presumably a public record unless impounded by the judge. It is difficult to see on what grounds the statute can well be challenged. As a practical matter, this provision of law has the almost unanimous support of the bar as well as the official approval of the bench of the Commonwealth, and as has been observed above, it is almost never that an attorney declines to permit his client to be examined.

The coöperation and support given by the psychiatrists of the State at no little personal sacrifice is deserving of especial remark and commendation. Although before the passage of the Briggs Law conflicts of experts in criminal cases were far from unknown, they have been extremely rare, indeed almost non-existent, since. The

¹⁶*Harding v. Comm.*, 186 N. E. 557 (Mass. Adv. Sh. (1933) 1259).

¹⁷Sixth amendment; Const. of the U. S.

principle that the report of the Department's examiners should be accepted has been taken almost for granted. Not, indeed, until this year (1934) has a case arisen in which a battery of experts has been offered by the defense in an attempt to controvert the findings of the Department's examiners.**

Enough has already been said to indicate the functioning of the Briggs Law. What, if any, are its defects? As to the reports themselves, two may be offered. One of these has already been mentioned, namely, a tendency formerly much more noticeable than now, though never common, to discount the significance of deviations from the average standards of mental development as affecting the defendant's responsibility. This tendency has been open to objection because psychiatrically unsound and likewise as attempting to pass upon a legal question; it is not observable in recent reports. The examiners are being encouraged to indicate under "Psychiatric Findings" the essential results of the examination, and to present as their statement a clear-cut opinion of the existence or absence of mental abnormality. The law calls upon them to determine the defendant's "mental condition," as well as the "existence of any mental disease or defect which would affect his criminal responsibility;" the first requirement has in the past been to some extent overlooked, but is now generally followed. As psychiatrists, they should employ psychiatric terminology, but in such a manner as to be reasonably clear to the non-medical men who are to read the reports. They should furnish the means to enable the court and jury to pass upon the question of "responsibility," but to insist on a dogmatic statement from the psychiatrists on "responsibility" might be considered in legal quarters to be trenching upon the court's prerogatives! The other objection is that in those cases not examined very shortly after the crime alleged, it may be difficult to state what was the mental state of the defendant at the time of the act (responsibility), whereas the present condition (triability) may be readily stated. Even in such a case, if evidence is produced at the trial relative to the circumstances surrounding the act, the psychiatrists who have already examined the defendant have a better basis by reason of their examination for an answer to a question on his responsibility than experts introduced at

** (In this case, which was concluded after this paper was presented, several of the defense experts were brought in from outside the State, at the expense of the Commonwealth. The examiners under the Briggs Law testified to the results of their examination, namely, that they had found no evidence of mental disease or defect. The jury found in accordance with their evidence, and convicted the defendants.)

the last moment who may have seen the defendant hastily or not at all. In many instances of mental abnormality it is clear from the very nature of the findings that the defendant's mental condition cannot have changed materially since the act. It is only in exceptional cases, therefore, that this criticism has foundation.

Professor Glueck in 1927¹⁸ offered certain criticisms which may be considered here. The first is that an arbitrary line between felony and misdemeanor in the "previous record" is not a valid basis for selection of cases. This is, of course, true, because it is well recognized that the "persistent petty offender" offers a fertile field for psychiatric study and is a serious social problem. As a practical matter, however, some basis had to be selected, since the facilities for an examination of all or most offenders before trial do not yet exist. The criticism, then, is valid, but cannot practically be met. The second criticism had to do with the failure to report many defendants with previous records, and the suggestion was made that the probation officer be called upon to inform the clerk of the significant data. This suggestion was followed the same year by amending the law. The third feature mentioned was the desirability of coordinating the disposition with the reports. The data already presented indicate that this coordination has improved, although much is still left to be desired. Too many judges still think that the House of Correction or State Prison, rather than the court, should assume the responsibility of proper classification, even though the psychiatric report clearly indicates the propriety of a special disposition. Time, more education of the judiciary along psychiatric lines, and the provisions of further special facilities will be needed before this criticism can be fully met.

Tulin¹⁹ recently (1932) has offered a further critique, preceding his suggestions by the statement that "the Briggs Law, in theory and practice, is far ahead of any other device dealing with the problem of mental disorder and the criminal law." His first criticism, that "the method of selection is purely capricious," has some basis, as we have seen, yet it is doubtful whether any more practical method can be suggested for the present. Certainly selection by the court cannot be depended upon, when it is borne in mind that in 1933 only 35 requests to examine persons coming before the court were received from all the courts of the Commonwealth!²⁰ The next two

¹⁸S. Glueck, "Psychiatric Exam. of Persons Accused of Crime," 36 Yale Law Jour. 632-648 (March, 1927).

¹⁹L. A. Tulin, "The Problem of Mental Disorder in Crime," 32 Columbia Law Review 933-963.

²⁰Under Sec. 99, Ch. 123, G. L. (ter. ed.) the judge of any court may ask the Department of Mental Diseases to assign a member of a state hosp. staff

criticisms relate to the small number of cases reported, and the large number missed. The first was based upon the statistics up to 1928; as we have seen, the increase since that date has been startling. The second objection has been met to a considerable extent through the coöperation of the judges; the missing of bailed cases could probably be prevented only by making examination a condition precedent to admitting to bail. It is extremely doubtful whether such a law could be enacted, desirable though it might be. After urging greater coöperation among the various court agencies, and the provision of further specialized facilities for treatment; both institutional and otherwise, Tulin concludes his critique as follows: "The Briggs Law provides that the experts shall determine the accused's mental condition 'and the existence of any mental disease or defect which would affect his criminal responsibility.' It has been stated by those familiar with the practical operation of the law that the reports of the experts leave much to be desired. In most cases the psychiatrists have satisfied themselves with a statement that the prisoner is or is not 'responsible,' without making any further description of, or comment upon, his mental condition. Further, the provision in the statute asking (in the conjunctive) for a determination of a question which is foreign to psychiatry. It is not surprising, consequently, if the psychiatrist's report is less than clear. Of course, a technical description of the mental condition of a person is, at best, hardly understandable to a layman. But the successful operation of the statute requires that psychiatrists couch their reports in terms as simple as possible, including wherever possible a statement as to what may be expected of the defendant in the future and what form of treatment would be most desirable." There is much justice in this criticism, although a persistent effort is being made by the examiners to make their reports clear and helpful to the Court.

The criticisms made by Weihofen²¹ in his valuable compilation, "Insanity as a Defense in Criminal Law," are in general the same as Tulin's.

A considerable number of writers on legal topics, in addition to Glueck and Tulin, whose suggestions have been presented above, have expressed interest in the Briggs Law and approval of its principles. Their statements are not here reproduced in detail, but ref-

to examine "any person coming before the court." This statute has been held to apply to civil as well as criminal cases. See *Sullivan v. Judges*, 271 Mass. 435, and *Mass. Law Quarterly*, Vol. XVI, No. 6, pp. 26-34 (May, 1931).

²¹H. Weihofen, "Insanity as a Defense in Criminal Law," pp. 401-407: New York, 1933: The Commonwealth Fund.

erence is made to them as an addition to the bibliography of the topic.²²

What now, in summary, may we safely say about the Briggs Law? By providing an impartial and competent mental examination of certain legal classes of persons accused of crime in advance of trial, it has furnished to court, prosecution and defense information as to the defendant's mental condition, and by so doing has avoided the expense of numerous costly trials; it has reduced to a negligible number the "battles of experts" which have in the past brought discredit upon psychiatric expert testimony; it has protected the rights of the psychotic or otherwise mentally incompetent accused who might without it have gone unrecognized; it has served in numerous cases to indicate a disposition which was more desirable socially and more in accord with justice and fairness to the defendant than would have been the routine and mechanically-determined one which would ordinarily have been meted out; finally, it has aided in the process of educating judges, prosecutors, and the bar generally to a realization of the value of psychiatry as an aid in the individualization of justice. No law is perfect, and no law is self-administering, but even with the few defects of functioning (most of them non-essential) which have already been pointed out, it is no exaggeration to say that the Briggs Law represents the most significant step yet taken toward a harmonious union of psychiatry with the criminal law.

²²30 *Harvard Law Rev.* 520 (Review by Prof. E. B. Sayre); 1 *Conn. Bar Journal* 265 (Thompson & Mailhouse, 1927); 8 *Tenn. Law Rev.* 26 (Kefauver, 1929); 9 *Oregon Law Rev.* 309 (Brand, 1930); 19 *Cal. Law Rev.* 174 (Note, 1931); C. T. Schulz, "Legal Medicine in the U. S.," pp. 19-20, 96-98, 109; *Bulletin* No. 87, Nat. Research Council, Washington, 1932; 23 *Journal Criminal Law* 736 (Schulz, 1933); E. F. Streit, "Conflicting Viewpoints of Psychiatry and the Law on the matter of Criminal Responsibility," *Notre Dame Lawyer*, Vol. VIII, No. 2, p. 146, Jan., 1933; Frances L. Roth, "Present Development of Psychiatric Technique in the Crim. Process," *N. E. Jour. Med.*, Vol. 208, No. 15, p. 785, April 13, 1933; *Illinois Crime Survey*, Chicago, 1929: *Ill. Assoc. for Criminal Justice*, pp. 772-5.