Notes on Judicial Organization and Procedure

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The Activities and Results of Crime Surveys. This article aims to describe the activities and ascertain the legislative results of approximately twenty crime surveys in American cities and states during the last ten years. To a lesser extent, attention is devoted to concrete changes in administrative practice accomplished for the most part without legislative aid. Owing to the great diversity in the nature of the activities of these various agencies, it may be desirable to classify them in some manner, however arbitrary. From the standpoint of research pursued by qualified experts, the Cleveland Crime Survey, the Missouri Crime Survey, the work of the Illinois Association for Criminal Justice, and the publications of the New York Crime Commission are in a class by themselves. If immediate legislative results are to be the criterion, honors must again go to New York, adding California, Michigan, Ohio, and to a lesser extent Louisiana, Minnesota, Indiana, Pennsylvania, and Rhode Island. In Missouri, Tennessee, and Connecticut no legislative enactments seem to have resulted. The Cleveland Association for Criminal Justice, the Baltimore Criminal Justice Commission, and the Chicago Crime Commission are voluntary associations in constant touch with the crime situation. The Ohio and Indiana movements were fostered by state bar associations. Public commissions authorized by law made the preliminary investigations in New York, Michigan, California, Louisiana, Pennsylvania, and Rhode Island. Voluntary associations organized for the purpose and financed from private funds were responsible for the work in Illinois and Missouri. The American Institute of Criminal Law and Criminology fostered the Connecticut and Memphis studies and gave valuable aid in Illinois. The Cleveland Crime Survey was conducted under the auspices of the Cleveland Foundation.

No evaluation of the effect of resulting enactments or administrative changes on the general crime situation is attempted. The aim is merely to set forth the motivating forces and circumstances of each of the several movements, followed by brief summaries of the immediate
achievements in each separate jurisdiction. It is hoped that a future study, upon which the writer is now working, will be able to detect and segregate common threads of action and achievement running through all of these surveys and present some sort of judgment regarding their efficacy and successful achievement to date.

I. OUTSTANDING RESEARCH SURVEYS

Inasmuch as the crime situation can undoubtedly best be dealt with through scientifically acquired information resulting in scientifically applied conclusions, it has been deemed fitting to begin this study with a consideration of those surveys which have constituted or produced outstanding pieces of research. In this category are included the Crime Survey of the Cleveland Foundation, the Illinois Crime Survey, the Missouri Crime Survey, and the publications of the New York State Crime Commission.

*Cleveland. The Cleveland Foundation Survey of Criminal Justice,* published in 1921, contained thoroughgoing and monumental researches by such nation-wide authorities as Dean Roscoe Pound, Professor Felix Frankfurter, and Mr. Raymond Fosdick. On January 1, 1922, the Cleveland Association for Criminal Justice was established "by civic organizations, in the belief that an agency was needed in the community in addition to those public agencies established by law as an integral part of our political government, to make instantly and constantly articulate the principle of public vigilance through the courts in the matter of social self-defense against crime."1 No immediate enactment of a reformed criminal code resulted. Nevertheless, the Association has been active in centering public opinion on such deficiencies in criminal administration as its constant vigilance has discerned. The result has been a material improvement in various phases of the work. It is not our purpose to attribute any specific reform to either the Cleveland Crime Survey or the Cleveland Association for Criminal Justice. Both have undoubtedly had some influence.

New and advanced means of arranging and preserving crime statistics in the police department of Cleveland were inaugurated during 1926 under a supervisor of records with the rank of lieutenant.2 During 1925 a bureau of criminal investigation to aid in the preparation of

1 *First Quarterly Bulletin*, 1927, The Cleveland Association for Criminal Justice, p. 3.
cases was established in the police department. On June 1, 1923, the clerk of the municipal court "introduced an index of state and city cases designed to record each criminal case and indicate at a glance its status or disposition. This system saves both time and effort in tracing cases through this court." Through order of the chief justice of the common pleas court, the administration of bail bonds was considerably tightened in 1926.

Probably the most important reform was that accomplished under the act of the Ohio legislature of 1924 which permitted the common pleas court in counties where there are two or more judges to elect a chief justice whose duty it is to unify the work of the court. This reform was recommended by the Cleveland Crime Survey and was soon adopted by the court of Cuyahoga county, in which Cleveland is located. This court, under the guidance of Chief Justice Homer G. Powell, has been proclaimed by the Journal of the American Judicature Society "the best court of general jurisdiction in the country." The court has established a probation department with qualified officers.

In 1924 there was established in the court of common pleas a psychiatric clinic to assist judges in sentencing persons convicted of crime. During 1922 and 1923 the Association's court observers presented to judges of the court of common pleas a report of the criminal record of the defendant in each case before the court. This led the court to establish its own criminal record department in 1924. The recent enactment of the new Ohio criminal code is treated elsewhere in the present article.

Illinois. The formation of the Illinois Association for Criminal Justice in 1926 was the result of a movement initiated by the Illinois State Bar Association, with the collaboration of various voluntary organiza-

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tions of a civic and industrial nature. The Industrial Club of Chicago furnished $100,000 for the purpose of conducting a crime survey which was duly completed and published in July, 1929, in the form of a 1,108-page volume entitled The Illinois Crime Survey. The report was edited by Dean John H. Wigmore, and the investigation was directed by Arthur V. Lashly, who held a similar position with the Missouri survey; in fact, most of the experts who collaborated in the Missouri survey had an important part in preparing the Illinois volume. The result was a series of painstaking and scientific researches that have covered from every angle the crime situation in a number of rural counties in Illinois as well as in Chicago. While matters of legal procedure and judicial administration are adequately dealt with, Part III of the study enters into an extensive treatment of the socio-political aspects of organized crime in Chicago. There is no question that it is the most thorough work of its kind yet published. The reputation for sound scholarship associated with such names as Wigmore, Bruce, Gehlke, Moley, Burgess, etc., should make it a prolific source-book for students, scholars, administrators, and legislators for many years to come.¹¹

While the Association did not go before the 1929 session of the legislature with a complete legislative program, it did work indirectly through various committees for the enactment of certain measures. A bill providing for an increase of the state police force was passed and signed by the governor. Bills providing for a state bureau of criminal identification and for prosecution by information were defeated. A bill permitting waiver of trial by jury and the optional choice of trial by judge was vetoed by the governor. The failure to secure prosecution by information and jury waiver was at least partly due to a serious question of constitutionality.¹²

Missouri. The Missouri Crime Survey is so well known that a reference to its many outstanding qualities is almost trite. Originating with the St. Louis Bar Association in 1923, under the leadership of Mr. Guy A. Thompson, the idea of a crime survey took form the following year with the formation of the Missouri Association for Criminal Justice, a voluntary organization supported by funds from private sources.


¹² Letters from Mr. W. C. Jamison, assistant director of survey, dated July 16 and July 22, 1929.
As much as $65,000 was spent, largely as fees to experts trained in the social sciences as well as in the legal profession, and a monumental piece of research was produced. The product—published in 1926 by the Macmillan Company under the name of The Missouri Crime Survey—formed a book of almost six hundred large pages. Mr. Justin Miller said of it: "Up to the present time (1927), that is the best thing that has been published in this field." The recommendations of the Missouri Crime Survey have not been enacted into law in Missouri—not even in a minor way. The inquiry, was not wasted effort, however. The findings were used extensively in many states which revised their criminal codes without intensive surveys. Moreover, they have supplied to publicists, scholars, and teachers invaluable information which cannot fail to contribute to the general ferment which is working toward a solution of the criminal procedure problem.

New York. A joint legislative committee, under the chairmanship of Caleb H. Baumes, appointed in 1926, became the New York Crime Commission in 1927 and has functioned as such, with continuing appropriations, ever since, having reported to four different sessions of the legislature. The commission has issued the most thorough studies of crime of any official commission to date. We must here be content with a mere summary of what seem to the writer to be the most important enactments resulting from its recommendations. The celebrated habitual criminal statute provides for heavier penalties for second and third felony convictions and life imprisonment for fourth conviction. Another statute imposes heavier penalties upon those committing felonies while armed. A later enactment makes it a felony knowingly to receive stolen goods, or to receive any goods without making a reasonable inquiry into their ownership—obviously aimed at the "fence."

Another category of enactments modifies trial procedure. Those jointly indicted may be jointly tried. If the defendant offers evidence of his character, the prosecution may introduce in rebuttal proof of previous conviction. An indictment can be dismissed only upon writ-
ten statements of reasons therefor by the court. The 1929 session of the legislature enacted a simplified form of indictment, designed to avoid technical litigation. A simple indictment must be followed by a bill of particulars if demanded. A jury may consider the evidence of one delivering stolen goods in the trial of one accused of receiving them, even though the witness may have been convicted of their theft.

Legislation regarding bail attempted to overcome certain abuses. Security for bail bond must be sworn by affidavit. Bail is made more difficult for serious felonies and certain misdemeanors—illegally using, carrying, or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding escape from prison; and unlawfully possessing or distributing habit-forming drugs. Jumping of bail was made a felony, and bail is denied during appeal on conviction of a fourth felony or if the defendant is convicted of a felony committed while armed with a weapon.

Appeals must now be taken within thirty days after judgment. If an appeal is not heard within ninety days, the defendant is to surrender himself and the judgment is executed. Only one appeal is now permitted, and appeal by the people is permitted in certain cases.

In 1928 there was a determined effort to strengthen probation and parole. A division of probation was established in the department of correction under the supervision of a director of probation and three examiners, both director and examiners to be members of the competitive civil service. The director is to supervise probation work in all parts of the state, and has power to make and enforce rules, and may recommend the removal of probation officers. Local probation officers are to be appointed and dismissed by the court, and are to be members of the competitive civil service. They must possess the equivalent of a

20 Laws of 1927, Ch. 596.
21 Post Standard, Syracuse, N. Y., March 30, 1929.
22 Laws of 1928, Ch. 170.
23 Laws of 1926, Ch. 418.
24 Ibid., Ch. 419.
25 Laws of 1928, Ch. 374.
26 Ibid., Ch. 639.
27 Laws of 1928, Ch. 416.
28 Ibid., Ch. 464.
29 Ibid., Ch. 465.
30 Laws of 1927, Ch. 337.
31 Laws of 1928, Ch. 313.
high school education and have certain character requisites. The duties of probation officers are defined, and courts are charged with the duty of furnishing clinical facilities and psychiatrical examinations. The following are not eligible to probation: (a) persons convicted of a crime punishable by death or life imprisonment; (b) persons convicted of a fourth felony under the habitual criminal law; and (c) persons convicted of a felony committed while armed with a weapon. A department of parole, with a board of parole, was established. Parole officers were to have minimum educational requirements, and were to be placed in the competitive civil service.

Principal enactments of the 1929 legislature were two constitutional amendments. One, which will go to the voters in the fall of 1929, creates district criminal courts in counties in place of courts of special sessions conducted by justices of the peace. The other requires repassage by the legislature in 1931. It would permit defendants charged with felonies to waive the formality of indictment and receive immediate sentence to prison. The simpler form of indictment has already been referred to. The running of the statute of limitations is suspended from the time of indictment or the filing of the information until the determination of trial on merits.

II. SURVEYS WITH MAJOR TANGIBLE RESULTS

Several crime surveys have been able to secure immediate enactment of a major legislative program. Among these are New York (whose enactments have just been described), California, Michigan, and perhaps Ohio.

California. The California legislature of 1925 created a commission to study criminal procedure which reported to the forty-seventh legislature in January, 1927. That body enacted into law a surprisingly large percentage of the commission's recommendations, the chief of which follow. The district attorney is required to file the information within fifteen days after the accused has been committed by a magistrate, before whom he must have been taken within two days of his

31 Laws of 1928, Ch. 460.
32 Ibid., Ch. 841.
33 Ibid., Chs. 485, 490.
34 Ibid., Chs. 485, 490.
35 Post Standard, Syracuse, N. Y., March 30, 1929.
37 Statutes of California, 1927, p. 1045, amending Penal Code, Sec. 809.
The court is required to set all criminal cases for trial for a date not later than thirty days after the date of entry of the plea of the defendant. Continuance may be granted only upon conclusive proof that the ends of justice so require. If a court is unable to hear all cases pending before it in thirty days, it must notify the chairman of the judicial council. Criminal cases are given precedence over civil matters. All appeals in criminal cases are to be set and called for hearing within thirty days of the filing of the record in the appellate court. Continuances are to be granted only in exceptional cases, and never upon mere stipulation of counsel. On an appeal by the defendant, the appellate court must, in addition to the issues raised by the defendant, consider and pass upon rulings adverse to the state, if requested by the attorney-general. The commission recommended that the judge be permitted to select the jury and that he might, "in his discretion, permit reasonable examination of the prospective jurors by counsel for the people and for the defendant." The clause actually enacted makes it the duty of the trial court to select the jury, but adds that he "shall permit reasonable examination of prospective jurors by counsel for the people and for the defendant." Some causes for technical wrangling and delay were eliminated by combining what formerly constituted several different offenses under a new definition of theft.

The habitual criminal statute was amended so as to require life sentence without parole after conviction for the fourth felony and to permit proof of prior convictions during trial or after conviction and sentence. Technical defects in indictments, informations, or complaints which do not prejudice a substantial right of the defendant cannot affect trial upon the merits of the case.

The new provisions regarding the insanity plea are among the most interesting of the enactments. The defendant may plead "not guilty,

39 Ibid., p. 1036, adding new section 1050 to Penal Code.
40 Ibid.
41 Ibid., pp. 1047–1048, amending Penal Code, Sec. 1252.
43 Statutes of California, 1927, p. 1029, amending Penal Code, Sec. 1078.
by reason of insanity," or he may combine that plea with the plea of "not guilty." In case of the combined pleas, the defendant is immediately tried upon the merits for the crime charged. If in such a trial he is found guilty, or if the plea of insanity is his sole plea, the issue as to whether he was insane at the time of committing the crime is tried before a jury as the sole issue. If he is found sane, the accused is sentenced for the offense for which he was previously convicted, or if the plea of insanity was the only plea for the offense charged. If the defendant is found insane he is confined to the state hospital for the criminal insane, from which he cannot be released until the court which committed him, or the superior court of the county in which he is confined, finds that his sanity has been restored.47

Among the various enactments aimed at expediting the progress of the trial was a general provision intended to give the judge greater control over the trial and evidence.48 The district attorney was given the power to amend an indictment any time before pleading, with the further provision that the court might amend it for any defect or insufficiency at any stage of the proceedings.49 The court was given the discretionary power of selecting two alternate jurors to replace those who might become ill during a protracted trial.50 If a juror should have become ill after these alternates had become regular jurors, a new juror might be sworn and the trial begin anew.51

Peremptory challenges of prospective jurors were equalized between state and defendant—twenty each for capital and life offenses and ten each for others.52

Probation is denied to those armed with a deadly weapon at the time of committing a crime, and to any one previously convicted of a felony.53 Minimum sentences of seven and fifteen years were es-


48 Statutes of California, 1927, p. 1040, adding to the Penal Code new section 1044.

49 Ibid., pp. 1040-1041, amending Penal Code, Sec. 1008.

50 Ibid., p. 1063, amending Penal Code, Sec. 1089.

51 Ibid., p. 1038, amending Penal Code, Sec. 1123.

52 Ibid., p. 1062, amending Penal Code, Sec. 1070.

tablished for those armed with deadly weapons when committing a crime, but prison authorities were given certain discretionary authority in reducing these minimums. The principal bail legislation permitted the court to enter summary judgment against the surety within ninety days of the forfeiture of the bail bond, the court being empowered to set aside the forfeiture if the accused appears in court within the ninety days. The recommendation that bail bond be a lien on property and binding even in case of subsequent transfer seems not to have been adopted.

Only one of the eight constitutional amendments proposed by the commission was submitted by the legislature, i.e., that permitting the defendant to waive trial by jury in felony cases; and it was approved by the people in November, 1928. Other important proposed amendments would have given the judge the power to comment to the jury on the character of witnesses and evidence, and would have permitted the jury to consider the fact that the defendant failed to take the stand in his own defense. The legislature seems, for the most part, to have gone the full distance of the commission's recommendations. These recommendations were not accompanied by reports of extended research as in New York or Missouri. They were contained in a small forty-page pamphlet, and were introduced in the form of previously drafted bills ready for consideration.

The legislature of 1927 provided for the continuance of the work of the Commission for the Reform of Criminal Procedure by a body known as the California Crime Commission, which duly reported a series of recommendations to the 1929 legislative session. A number of specific enactments followed. Courts are forbidden to accept as surety on bail any one against whom a summary judgment has remained unpaid for more than ten days. A provision stipulating that undertakings for bail shall be by written order of the court is aimed to correct the evil of easy bail by telephone. Another bail act provides that forfeited bail shall go into a trust fund for one year, from which the surety may redeem his funds by producing the defendant. The duties and pow-

54 Statutes of California, 1927, pp. 1491-1493, amending Penal Code, Sec. 1168.
56 Ibid., pp. 1385-1388, amending Penal Code, Secs. 1305, 1306, 1288, 1278, 1287, and adding new section 1275.
58 Ibid., 1927, p. 2367.
58 Statutes of California, 1929, Chs. 383, 299, 849.
ers of the state bureau of criminal identification and investigation were amplified in three respects: (1) provision for a limited number of trained criminal investigators to aid local peace officers; (2) the bureau is authorized to establish police schools; and (3) a statistician is to be appointed, with the power and duty to collect, compile, and publish criminal statistics.\(^9\) Hospitals and physicians are required to report wounds and injuries treated. Standardized instructions on flight and expert witnesses were prepared.\(^6\) Probation cannot be granted without consulting the probation officer, whose report is made a part of the record in the case. The courts are now required to appoint alienists to examine the defendant and give non-partisan expert testimony in cases where insanity is the plea. Provision is made for a new intermediate prison for young men and a new prison for women. The state department of social welfare is authorized to conduct investigations on probation.\(^61\) There was created a state department of penology under a director appointed by the governor, holding office at the governor's pleasure, and serving as a member of the governor's council. Six boards and bureaus are placed in this department for administrative purposes. The California Crime Commission is given a permanent statutory status. Twenty-four-hour elementary schools for the purpose of studying problem children were authorized.\(^62\) In addition to minor changes in parole procedure, numerous changes were made in the substantive criminal law.\(^63\)

**Michigan.** The 1926 extra session of the Michigan legislature established "a Commission of Inquiry into Criminal Procedure,"\(^64\) consisting of three members of the senate, three members of the lower house, and a seventh appointed by the governor.\(^65\) No extensive field survey was conducted. Mr. Shirley Stewart, a member of the commission, shouldered most of the responsibility for an examination of crime surveys and the work of similar commissions elsewhere, chiefly in New York.\(^66\) As a result of this inquiry, there was introduced in the 1927

\(^{9}\) *Statutes of California*, 1929, Ch. 788.

\(^{60}\) *Ibid.*, 1929, Chs. 417, 875, 786.


\(^{64}\) *Report of Commission of Inquiry into Criminal Procedure*, 1927, p. 3.

\(^{65}\) Letter from Sherman D. Callender, chairman, addressed to the writer on October 19, 1928.

\(^{66}\) Letter from Robert M. Toms, formerly prosecuting attorney of Wayne
session of the legislature a new draft code of criminal procedure. With one exception, the principal recommendations of the commission were enacted into law.\textsuperscript{67}

Defendants were given the option of waiving trial by jury in favor of trial by judge.\textsuperscript{68} No "technical variance between indictment and proof shall be considered jeopardy and grounds for dismissal of a subsequent action."\textsuperscript{69} Courts were permitted "to refuse to accept as surety a person who is on one or more bonds" in the same court, and provisions were enacted "to make the collection of defaulted bail bonds more definite and certain."\textsuperscript{70} Continuances of examinations were forbidden except for good cause shown, and "no continuance by consent of the prosecution and defense may be had unless a manifest injustice will be done."\textsuperscript{71} Chapter \textsuperscript{VII} of both report and code aim to avoid the dismissal of cases on technical grounds before actual trial.

Criminal cases take precedence over others. Continuance of a trial cannot take place on mere consent, and in any instance only upon strict necessity. The court is given the discretion of trying jointly or separately those accused of jointly committing a crime. The report recommended an equal number of peremptory challenges for the state and the defense, five each for offenses not involving life imprisonment or capital punishment, and fifteen each for cases involving such sentences, each defendant being allowed to challenge his own jurors in case of joint trial. This provision was enacted, with the exception that in cases involving life imprisonment or death the state was permitted fifteen, while the defense was allowed twenty instead of the former thirty.\textsuperscript{72} The prosecuting attorney must be notified by the defendant at least four days before the trial of his intention to plead an alibi or insanity.\textsuperscript{73} The commission's recommendation that the prosecuting attorney be

\textsuperscript{67} The legislature failed to accept the commission's recommendation to comment upon the defendant's failure to take the stand and testify in his own defense. \textit{Report of the Commission}, p. 13; letter to the writer from Sherman D. Callender, chairman of the commission, dated October 19, 1928.


\textsuperscript{69} \textit{Report}, p. 9; \textit{Code}, Ch. 3, Sec. 6.

\textsuperscript{70} \textit{Report}, pp. 10-11; \textit{Code}, Ch. 5.

\textsuperscript{71} \textit{Report}, p. 11; \textit{Code}, Ch. 6, Sec. 7.

\textsuperscript{72} \textit{Report}, p. 12; \textit{Code}, Ch. 8, Sec. 1, 2, 5, 12.

\textsuperscript{73} \textit{Report}, p. 13; \textit{Code}, Ch. 8, Sec. 20, 21.
allowed to comment upon the defendant's failure to take the witness stand in his own defense\textsuperscript{74} was not enacted, but the provision that the judge be allowed to comment upon the evidence did become law. "The court shall instruct the jury as to the law applicable to the case and in his charge make such comment on the evidence, the testimony and character of any witnesses, as in his opinion the interest of justice may require."\textsuperscript{75}

It was made mandatory to sentence a defendant to life imprisonment upon the fourth conviction of a felony. Increased penalties were provided for second and third convictions, in which cases parole cannot be granted before the expiration of the sentence without the consent of the sentencing judge or his successors.\textsuperscript{76} The reduction of the number of dilatory appeals is attempted by leaving the matter of appeals to the discretion of the Supreme Court, or any justice thereof, giving the appellant the opportunity to present his case to that tribunal by means of a concrete statement rather than a cumbersome record.\textsuperscript{77}

The 1929 session of the Michigan legislature made some slight changes in the new code. Prosecuting attorneys had previously been required to secure the approval of the court for entering a \textit{nolle prosequi}. Now they must state on the record the reasons therefor.\textsuperscript{78} At least four days before trial, a defendant who desires to claim an alibi must furnish the prosecuting attorney in writing "specific information as to the place at which the accused claims to have been at the time of the alleged offense."\textsuperscript{79} The habitual criminal act was changed to recognize two classes of felonies for sentencing fourth offenders: if a sentence of imprisonment for five years were possible upon first conviction, the fourth offender must go to prison for life; otherwise his fourth sentence will range from seven and one-half to fifteen years.\textsuperscript{80}

\textsuperscript{74} Report, pp. 13-14.
\textsuperscript{75} Code, Ch. 8, Sec. 29.
\textsuperscript{76} Report, p. 15; Code, Ch. 9, Secs. 10, 11, 12.
\textsuperscript{77} Report, pp. 15-16; Code, Ch. 10.
\textsuperscript{78} House Enrolled Act No. 21, 55th Legislature, 1929, amending The Code of Criminal Procedure, Ch. 7, Sec. 29. These acts were furnished by the secretary of state. At the time of writing, official copies of bound session laws were not available.
\textsuperscript{79} Ibid., amending The Code of Criminal Procedure, Ch. 8, Sec. 20.
\textsuperscript{80} Ibid., amending The Code of Criminal Procedure, Ch. 9, Sec. 12. The writer was unable to find legislation amending the Code of Criminal Procedure so as to remove from the operation of the habitual criminal law liquor felonies such as
Ohio. The 1927 session of the Ohio legislature passed a joint resolution authorizing the appointment of a committee to revise the Ohio criminal code. The appropriation for its support was vetoed by the governor, A. V. Donahey; whereupon the Ohio State Bar Association entered the breach with a committee of its own and presented a revised code for the consideration of the 1929 legislature.\textsuperscript{81} Some of the more important enactments follow.

Sureties for bail are required to exhibit to the judge satisfactory evidence of ownership of Ohio real property of twice the value of the recognizance, in excess of all incumbrances, or present cash, government bonds, or certificates of deposit equal to the amount of the bond. Bonds secured by real property constitute a lien thereon. The court in which the prosecution is brought may enter judgment for all or any part of the bond if the sureties do not produce the accused within twenty days after he has failed to appear.\textsuperscript{82} Simplified forms of indictment are provided, and it is stipulated that indictments shall not be invalid for a specified list of technicalities "or for other defects or imperfections which do not tend to prejudice the substantial rights of the defendant upon the merits." Provision is made also for amendment of the indictment by the court during trial.\textsuperscript{83} If it is brought to the notice of the court that an accused person is not sane, the court may have the matter of insanity tried by a jury, three-fourths of which may reach a decision; or the court may reach a decision without a jury. If the accused is found sane, he is to stand trial on the merits. If he is found insane, he is to be committed to a hospital until his reason is restored. If the plea has been "not guilty, by reason of insanity," and the jury so finds, the accused must be committed to Lima State Hospital. Release can be secured only after the restoration of sanity has been found by a board consisting of the superintendent of that hospital, the judge of the court of common pleas of Allen county, and an alienist to be designated by said judge, and upon the further condition "that his release will not

\textsuperscript{81} Letter from Leona M. Esch, operating director of the Cleveland Association of Criminal Justice, dated October 23, 1928, 1 \textit{Ohio Bar}, No. 37, December 11, 1928.

\textsuperscript{82} Amended Senate Bill No. 8. An Act to Revise and Codify the Code of Criminal Procedure of Ohio, etc., 1929, Ch. 14.

\textsuperscript{83} \textit{Ibid.}, Ch. 16.
be dangerous." In any case where the question of insanity enters, the accused may be placed under observation of experts appointed by the court for not more than one month.84

All criminal cases must be set for trial not later than thirty days from the entry of the plea. Continuances are to be granted only upon proof of the necessity thereof in open court. Criminal cases are given precedence over civil matters. A defendant is given the privilege of waiving trial by jury in all criminal cases. Joint trial of those jointly indicted is permitted except in capital cases.85 Two California jury provisions were enacted. It is the judge's duty to examine prospective jurors, permitting reasonable examination by counsel, and alternate jurors may be provided. Prosecution and defense are allowed an equal number of peremptory challenges.86 The failure of the accused person to testify "may be considered by the court and jury and may be made the subject of comment by counsel."87 Review by an appellate court upon petition in error stands as a matter of right for thirty days after sentence or judgment; after thirty days, only by leave of the court or two judges thereof. The accused must perfect the appeal and furnish the transcript. Hearings on petitions in error have precedence over all other business. The prosecution's brief must be filed within fifteen days after the petition is filed.88

III. SURVEYS WITH MINOR TANGIBLE RESULTS

Other crime surveys have been able to secure the immediate enactment of a minor portion of their recommendations. These include the inquiries in Indiana, Louisiana, Minnesota, Pennsylvania, and Rhode Island.

Indiana. At its 1926 meeting the Indiana State Bar Association voted to establish a committee "to draft a revision of the criminal code of Indiana, or propose amendments thereto."89 A number of the findings of this committee were contained in an article written by Professor James J. Robinson, of the Indiana University School of Law, and published in the Indiana Law Journal for December, 1926. In a

84 Amended Senate Bill No. 8, Ch. 20.
85 Ibid., Ch. 21.
86 Ibid., Ch. 22.
87 Ibid., Ch. 23, Sec. 3. It would seem, however, that a similar provision has been a part of the Ohio law for some time.
88 Ibid., Ch. 38.
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referendum to the Indiana bar only four of the thirty-four proposals were rejected. Twenty-one of the remainder were submitted for the consideration of the 1927 session of the legislature. Of the resulting statutes, those regarding bail seem to the writer to be more drastic than any of the current enactments in other states. Judgment and certification for execution on bond are to be entered by the judge of the court against whom it was forfeited, without separate trial, pleadings, or change of venue. Bondsmen must state and describe their property on oath and list the other bonds upon which they are surety, and at the same time declare that they are surety on no bond remaining unpaid. False statement constitutes perjury. Clerks and sheriffs are liable to the state from future salary for failure to execute. Bonds are made a lien upon all lands owned by the surety in the county from the date of docketing the case. Sureties are required to be resident freeholders of the county and must possess property in the state equal in value to twice the amount of the bond.

Several other recommendations were enacted into law, some of them in modified form. Appeals from justice, mayor, or city courts must be made within ten days of judgment, and all papers necessary to perfect appeal must be filed within fifteen days of judgment. All public offenses, except treason and murder, may now be prosecuted by affidavit (prosecution on the initiative of the prosecutor without preliminary hearing). A conviction cannot be invalidated on appeal because of failure of the record to show arraignment and plea. An affidavit for change of judge or change of venue must be filed ten days before the date set for trial. There was enacted a provision designed to avoid continuances which merely aim at delay. Interstate reciprocity or service of subpoenas is now possible. A person convicted

91 Laws of Indiana, 1927, Ch. 132, Sec. 2.
92 Ibid., Ch. 132, Sec. 3.
93 Ibid., Ch. 132, Sec. 6.
94 Ibid., Ch. 132, Sec. 1.
95 Ibid., Ch. 132, Sec. 4. The writer is indebted to Dean Justin Miller, of the Law School of the University of Southern California, for an explanation of this use of the word affidavit.
96 Ibid., Ch. 132, Sec. 6.
97 Ibid., Ch. 132, Sec. 10.
98 Ibid., Ch. 132, Secs. 11–12.
99 Ibid., Ch. 132, Sec. 13.
and fined is required to stand committed until his fine is paid or replevied.\textsuperscript{106} All appeals must now be taken within one hundred and eighty days after judgment or within one hundred and eighty days after motion for a new trial. Transcript must be filed within sixty days after appeal is taken.\textsuperscript{107} The only one of the several proposed constitutional amendments to be initiated by the legislature was that repealing the provision permitting all voters to practice law.\textsuperscript{108} A state bureau of criminal identification and investigation was established, with an annual appropriation of $30,000.\textsuperscript{109} In case of the plea of insanity by the defense, the court is authorized to appoint two or three disinterested physicians whose testimony is to follow that of the medical experts hired by the state and defense.\textsuperscript{110}

The criminal legislation of the 1929 session of the Indiana legislature was for the most part substantive in nature. It is deemed worthy of notice, however, because of its drastic nature in dealing with certain types of crime. Whoever inflicts a wound or other physical injury while committing a robbery, "or while attempting to commit robbery, shall, on conviction, be imprisoned in the state prison for life."\textsuperscript{111} The same provision is made to apply to burglary.\textsuperscript{112} The crime of "automobile banditry" is defined as the commission of or attempt to commit a felony while "having at the time on or near the premises where such felony is attempted or committed an automobile, motorcycle, aëroplane, or other self-moving conveyance, by the use of which he or they escape or attempt to escape or intend to escape, or having attempted or committed such felony, he or they seize an automobile, motorcycle, aëroplane, or other self-moving conveyance, by the use of which he or they escape or attempt to escape." The penalty is placed at from ten to twenty-five years' imprisonment;\textsuperscript{113} no court can suspend or commute sentence for any of the foregoing offenses; nor can a defendant be found guilty of an offense less than that charged.\textsuperscript{114} A blow at fences is attempted in a statute requiring "auction sale barns" to keep a record of goods pur-

\textsuperscript{106} Laws of Indiana, 1927, Ch. 132, Sec. 15.
\textsuperscript{107} Ibid., Ch. 132, Sec. 16.
\textsuperscript{108} Ibid., Ch. 268. Passed again in 1929. See Laws of Indiana, 1929, Ch. 235.
\textsuperscript{109} Ibid., Ch. 216. This was continued for the biennium 1929-30. Laws of Indiana, 1929, Ch. 116.
\textsuperscript{110} Ibid., Ch. 102.
\textsuperscript{111} Laws of Indiana, 1929, Ch. 54, Sec. 1.
\textsuperscript{112} Ibid., Ch. 54, Sec. 2.
\textsuperscript{113} Ibid., Ch. 54, Sec. 3.
\textsuperscript{114} Ibid., Ch. 54, Secs. 5-6.
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chased and from whom purchased and goods sold and to whom sold.\textsuperscript{109} Another statute makes it unlawful to sell, barter, exchange, give away, use, operate, or possess armored motor vehicles except in certain specified instances.\textsuperscript{110}

\textit{Louisiana.} Probably the most remarkable feature of Louisiana's recent attempt to overhaul her criminal code was the establishment of a survey commission by constitutional amendment proposed by the 1926 legislature and adopted by the people in November of that year.\textsuperscript{111} This commission was to be composed of three lawyers of the state, who were to report to the 1928 legislature; and the latter's procedure was modified for the occasion. Constitutional formalities were to be dispensed with; all amendments to the proposals were to be offered in the first twenty days after convening and were to be referred to a joint committee of both houses consisting of two members from each house, with the attorney-general as ex-officio chairman. Only those amendments favorably reported by the committee were to be voted on, and each amendment had to be voted on separately.\textsuperscript{112}

The changes actually accomplished were not as drastic as might have been expected. Only the most important, in the light of experience elsewhere, will be mentioned here. The power to issue search warrants was extended.\textsuperscript{113} Securing bond was made more difficult, and the court was required to enter immediate judgment against the surety in case of forfeiture.\textsuperscript{114} It seems that gubernatorial appointment of jury commissioners in the parish of Orleans had led to abuses, and the commission recommended the transfer of this power to the courts; but the legislature made the transfer in all parishes except Orleans\textsuperscript{115}. The form of indictments was simplified and made flexible.\textsuperscript{116} Plea of insanity must be tried and disposed of prior to any trial on plea of not guilty, and no evidence of insanity is admissible in the trial of the plea of not guilty.\textsuperscript{117} State and defense were given an equal number of peremptory challenges.\textsuperscript{118}

\textsuperscript{109} \textit{Laws of Indiana, 1927}, Ch. 117.
\textsuperscript{110} Ibid., Ch. 203.
\textsuperscript{112} \textit{Louisiana Session Laws, 1926}, Act No. 276.
\textsuperscript{113} Title 8 in both draft and enacted codes.
\textsuperscript{114} Title 11 in both draft and enacted codes.
\textsuperscript{115} Title 15, Ch. 3, in both draft and enacted codes.
\textsuperscript{116} Title 19 in both draft and enacted codes.
\textsuperscript{117} Title 20, Ch. 4, in both draft and enacted codes.
\textsuperscript{118} Enacted Code, Art. 354; Draft Code, Art. 357.
Both the draft and enacted codes provided that nine out of twelve jurors may reach a verdict in certain felony cases. In capital offenses a jury of twelve must unanimously concur to reach a verdict. In certain other felony cases a unanimous decision of a jury of five is required to reach a verdict. It should be noted, however, that Louisiana has permitted the less than unanimous verdict in certain criminal cases for a number of years. The draft code eliminated the law which forbids the district attorney and the judge to discuss and comment on the defendant's failure to testify, and we cannot find that it was reinserted in the enacted code. A defendant who testifies in his own behalf may be cross-examined on the whole case. A "harmless error" provision avoids the setting aside of judgments on appeal because of mere technicalities. A system of crime reporting will furnish a state-wide survey of criminal statistics to be published semi-annually.

Minnesota. Governor Theodore Christianson created the Minnesota Crime Commission by executive order on January 6, 1926. It consisted of prominent judges, lawyers, educators, laymen, and the presiding officers and chairmen of the judiciary committees of both houses of the state legislature—twenty-five in all. The recommendations of this body were embodied in twenty-five proposed bills, of which the house passed all but two and the senate passed nine. Eight became laws. These included the establishment of a state criminal apprehension bureau, with adequate records for identification, and with authority to cooperate with local peace officers. An habitual criminal statute was enacted, providing for harsher sentences for subsequent convictions of felonies and for life imprisonment on the fourth conviction if that was within the range of sentences for first

119 Draft Code, Title 23; Enacted Code, Title 22.
120 Draft Code, p. 6.
121 Draft Code, Art. 466; Enacted Code, Art. 462.
122 Draft Code, p. 7; Enacted Code, Art. 557.
123 Draft Code, Title 32; Enacted Code, Title 31.
124 The Minnesota Crime Commission's report was published as a supplement to the Minnesota Law Review, Vol. 11.
125 See mimeographed report of the National Crime Commission Conference at Washington, November 2 and 3, 1927; Oscar Hallam's address on Minnesota Crime Commission, November 2, pp. 15-17.
conviction of the same crime. Another act empowers the court to sentence for a minimum of five years any person committing a felony while armed with a gun, with intent to use the weapon in the commission of the crime. Indictments may be amended by the prosecuting attorney any time before trial, but the defense is given four days to prepare defense under the amendment. The court may dismiss any action, but must cause a public record of the reasons therefor to be made. Whenever a plea of guilty is accepted for an offense less than that charged, a written record of the reasons must be made. It is made discretionary with the court whether surety on bail bonds shall make an affidavit declaring what other bonds they are surety on, location and value of property pledged, its liens or incumbrances, etc. The clerk of every court of record is required to keep a permanent record of sureties and certain facts relating thereto. An examination of the Minnesota session laws for 1929 reveals but one act of any significance relating to crime, i.e., a provision requiring health records of school children to be kept, such records to be introduced as evidence whenever a child comes before the juvenile court. These enactments, while undoubtedly worth while, do not begin to approach the thoroughgoing reforms proposed by the commission.

Pennsylvania. On May 13, 1927, the General Assembly of Pennsylvania authorized the establishment of a commission to study the laws and practices relating to crime in that commonwealth. This body duly met and functioned under the chairmanship of Mr. Charles E. Fox. By January 1, 1929, it submitted to the General Assembly a report containing eighteen drafted bills recommended

133 Session Laws of Minnesota, 1929, Ch. 277.
134 Report to the General Assembly Meeting in 1929 of the Commission Appointed to Study the Laws, Procedure, etc., Relating to Crime and Criminals.
for passage, of which eight were finally passed in somewhat modified form. One of the latter provides for reciprocity of extra-state sub-
poena of witnesses. An effort was made to establish a state board of parole commissioners, with a state supervisor of paroles subject to the board and in charge of local parole agents selected by the supervisor subject to standards set by the board. As finally passed, the work was given to an existing board of pardons, and the supervisor of paroles was made responsible directly to the attorney-general. Two other acts had to do with breach of parole. The department of justice was authorized to collect crime statistics from local officers and publish them semi-annually in a form such as to permit ready comparison. Probably the most interesting enactment was the habitual criminal law. The matter of a life sentence for conviction of the fourth felony is left to the discretion of the judge. Moreover, if five years intervene between offenses, the subsequent conviction does not count under the habitual criminal statute. Only time while at liberty, not prison time, counts in reckoning the five years. The commission was continued with an appropriation of $15,000.

Rhode Island. In 1927 the legislature of Rhode Island established a Criminal Law Advisory Commission, a continuing body which made its first annual report to the legislative session of 1928. Several enactments resulted. The presiding justice of the superior court of Providence and Bristol counties is authorized to assign an additional judge for criminal matters upon the request of the attorney-general. The method of making up jury lists was modified. Statistics on criminal actions are to be reported annually by the clerks of the various courts to the secretary of state. A report upon the status of prosecutions during the year must be made annually by the attorney-general to the governor.

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126 Act No. 10, Report, p. 94; Senate File 272. These acts, furnished by the legislative reference bureau, could not be verified with session laws at time of writing.
127 Act No. 11, Report, pp. 95–100; Senate File 309.
128 Act No. 18, Report, p. 117; House File 683.
130 Act No. 17, Report, p. 115; House File 566.
131 Session laws of 1928 were not available to the writer. This information was taken from a copy of First Annual Report of the Criminal Law Advisory Commission, 1928, marked by Harold A. Andrews, secretary of the commission. See also Journal of the American Institute of Criminal Law and Criminology, Vol. 19, p. 269; Public Laws of Rhode Island, 1927–28, Chs. 940, 950, 977, 1192, 1193.
IV. PERMANENT VOLUNTARY ASSOCIATIONS

Another type of voluntary association has a permanent organization which is in constant touch with the crime situation in its municipality. Such is the Cleveland Association for Criminal Justice (referred to elsewhere in this article), the Baltimore Criminal Justice Commission, and the Chicago Crime Commission. The Cincinnati Bureau of Municipal Research is also devoting a part of its efforts and resources to crime problems.

_Baltimore._ The Baltimore Criminal Justice Commission was established in 1922 upon the initiative of the board of trade of that city during a wave of popular indignation occasioned by a particularly atrocious murder committed during a daylight robbery. Supported by private funds, the commission immediately set out to survey the actual conditions of crime in Baltimore, the results of the investigation being published in the first annual report covering the year 1923. Statistics of all agencies having to do with crime were gathered and for the first time correlated in a single place. An attempt has been made to stimulate public interest in the situation by periodically publishing the results of investigations. It is said that arrests now occur in one out of every two reported crimes, whereas formerly the ratio was one out of five or six. "Cases are tried with a degree of promptness unparalleled in the United States as far as any known records show, as ninety-two per cent of the cases tried are tried within three weeks of the date of arrest." The commission recently called attention to the fact that Baltimore stands first among the eight cities listed by Raymond Moley for finally punishing those actually arrested, Baltimore having a percentage of fifty-one as against seventeen for New York and fifteen for Chicago. A complete investigation of probation disclosed facts which led to a considerable curtailment of unscientific practices in that matter. During the first quarter of 1929 sentences were imposed in ninety-six per cent of the


143 Moley, _Politics and Criminal Prosecution,_ p. 28; Sixth Annual Report, 1928, Baltimore Criminal Justice Commission.

144 James M. Hepbron, _Probation and Penal Treatment in Baltimore,_ June, 1927.
cases resulting in conviction.\textsuperscript{145} The commission was instrumental in securing the change of the Maryland constitution so as to permit the abolition of the fee system in the states attorney's office. It now publishes a quarterly bulletin of crime statistics in Baltimore. A report on the activities of professional bondsmen in the state and federal courts from October, 1926, to October, 1928, was issued recently.

\textit{Chicago}. The killing of payroll messengers during a robbery in 1917 stimulated the Chicago business community to establish the Chicago Crime Commission under the sponsorship of the Chicago Association of Commerce. Beginning operation on January, 1, 1919, the commission has been in continuous existence since.\textsuperscript{146} Its efforts have been centered largely upon securing the facts of crime and the operation of the courts and then throwing the white light of publicity upon them. It has published periodical bulletins and pamphlets, and has furnished up-to-the-minute crime reports to the press. Its funds for 1926 amounted to $69,000 and for 1927, to $95,000.\textsuperscript{147} The commission seems to be enjoying increased prestige under the presidency of Mr. Frank J. Loesch, who possesses the confidence of all classes desiring law enforcement.\textsuperscript{148} The Chicago Crime Commission collaborated in the publication of the reports of the Illinois Association for Criminal Justice in 1929.

\textit{Cincinnati}. The Cincinnati Bureau of Municipal Research has for some time been examining into the local crime problem. Pamphlet No. 4, issued in April, 1928, claims the following results: (1) surveying the police department at the request of the city manager and submitting constructive recommendations, most of which have been adopted; (2) designing a complete police and crime record system at the request of the city; and (3) completion of a statistical analysis of the court disposition of felony arrests, at the request of the county prosecutor.\textsuperscript{149} The director reported on November 7, 1928: "The final

\textsuperscript{145} Quarterly Bulletin, Baltimore Criminal Justice Commission, quarter ending March 31, 1929.
\textsuperscript{146} Bulletin of the Chicago Crime Commission, No. 42, Sept. 1, 1926.
\textsuperscript{148} Comment on the Chicago Crime Commission is contained in an editorial in the New Republic, Vol. 56, August 29, 1928, p. 36. Professor Merriam refers to the personality of Mr. Loesch in his Chicago (New York, 1929).
\textsuperscript{149} Pamphlet No. 5, May 1928.
report of our first study in the field of criminal justice is still in course of preparation.\textsuperscript{150}

V. MISCELLANEOUS SURVEYS

Among a group of crime surveys with respectable findings, but with no apparent concrete results, are those made in Connecticut and Memphis by the American Institute of Criminal Law and Criminology, that conducted by the Law Association of Philadelphia, and the incomplete work of the Institute for Research in Social Science at the University of North Carolina.

Connecticut. A limited survey of the administration of justice in Hartford, New Haven, and Bridgeport, sponsored by the American Institute of Criminal Law and Criminology, was published in the \textit{Journal of the American Institute of Criminal Law and Criminology} for November, 1926, two years after it was made. To the present time there have apparently been no legislative results.\textsuperscript{151}

Memphis. The study of crime conditions in the city of Memphis by Professor Andrew A. Bruce and Mr. Thomas S. Fitzgerald seems to have grown out of local indignation aroused by the statement of Dr. Frederick L. Hoffman, consulting statistician of the Prudential Insurance Company of America, that Memphis had the highest homicide rate in America. After a series of recriminations, in which the people of Memphis endeavored to show Dr. Hoffman that his figures were erroneous, a crime commission of local officials was established to seek the facts in the case. The American Institute of Criminal Law and Criminology was asked to cooperate with the group in conducting a survey of existing conditions and to make feasible suggestions.\textsuperscript{152}

A letter dated May 9, 1929, from Mr. Charles N. Burch, president of the Memphis and Shelby County Bar Association, states that his association studied the report and made several suggestions to the Tennessee legislature of 1929, but that no legislation resulted.

Philadelphia. The question of a crime survey in Philadelphia was discussed years ago by prominent judges and attorneys meeting with the president of the American Institute of Criminal Law and Crimi-

\textsuperscript{150} Letter of that date to the writer.


The judges of the court of common pleas of the city soon requested the Law Association of Philadelphia to undertake the task. After some three years of study, the report of a committee of this organization was published in 1926 as a four hundred and seventy-six page volume, under the title of *Report of the Crime Survey Committee*. It was decidedly more legal than sociological. One reviewer even suggested that its conservative nature might be interpreted as a deliberate intention to whitewash. The writer has been unable to find any appreciable results. Indeed, the Philadelphia Association of Criminal Justice has recently been organized upon the initiative of Mr. George W. Norris, governor of the Philadelphia Federal Reserve Bank. It is reported to be patterned after the Baltimore Criminal Justice Commission. The work of the crime commission of the state of Pennsylvania is treated elsewhere in this article.

*North Carolina.* The Institute for Research in Social Science at the University of North Carolina is conducting a series of crime studies. Jesse F. Steiner and Roy M. Brown's *The North Carolina Chain Gang* was the only publication issued at the time when this was written (summer of 1929). Several other projects are under way and will reach publication within the next two years.

**VI. CONCLUSIONS**

Certain general conclusions suggest themselves as a result of the foregoing review. The first is that, speaking generally, greater immediate legislative results can be accomplished where a survey originates as an official legislative commission rather than as a voluntary organization. Of the four surveys with major results, three—in California, Michigan, and New York—fall in this category. To be sure, the Ohio code was formulated by the State Bar Association; but the idea was fostered by the previous legislature, which made provision for an official commission, only to have the measure vetoed by the governor. The second thought which suggests itself is that the surveys which have produced the best research have not uniformly produced the greatest immediate tangible results. New York may be an exception; but it should be remembered that the scholarly research of the New

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York Crime Commission has been conducted largely since the enactment of the Baumes laws. The research activities in Michigan, California, and Ohio were in no sense comparable with those in the Missouri and Illinois projects. This conclusion is not meant to disparage research in crime. Undoubtedly the states which did not do much themselves relied largely on the results of the Missouri and New York reports. Moreover, it is impossible to foretell what will happen in the next few years in those states which seem to have turned their backs on the disclosed facts. For instance, how much of the subsequent improvements accomplished by the Cleveland Association for Criminal Justice and the new Ohio criminal code of 1929 can be attributed to the Cleveland crime survey of 1921? Probably a very great deal. The process of securing knowledge of the criminal process is cumulative, and is progressing rapidly. The writer cannot help feeling that much has been accomplished in the last ten years by these surveys. While some have been far more productive than others in immediate tangible results, all have added to that ferment which is gradually adapting a rural, eighteenth-century criminal-justice machine to the contemporary urban and industrial age.

The foregoing review has not attempted to cover the entire field of criminal law activity. There have been numerous efforts and accomplishments in the domain of criminal procedure in many states which have not had organized surveys. Most bar associations have been actively interested in the movement. In several states the judicial councils have applied themselves to the problem with notable results. The present article has been concerned primarily with organized crime surveys.

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See a series of articles by Professor J. P. Chamberlain in recent issues of the American Bar Association Journal.