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Article 3

The Grand Jury

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THE GRAND JURY

SHALL the body legally designated as the Grand Jury be continued as an arm in the administration and the enforcement of the penal law of the state, or shall some other means of formally accusing those charged with crime be found? The question has received considerable attention and arguments have been offered on both sides. It is my opinion that neither public policy nor expediency nor any other reason appears why the Grand Jury should not be allowed to continue to exercise the powers it now possesses. The Grand Jury has served the public in the past, and served it efficiently and practically. It is my belief that to uproot it and supplant it with some other agency or instrumentality to inquire into crimes and to ascertain their perpetrators would be to take a step fraught with danger.

Innovations in the administration of the procedure to enforce the penal law are not to be encouraged except where they are palpably in the interest of the People of the state. Those charged with crime are amply safeguarded under the existing practice. There are milestones along the course of the presentation, trial and appeal of a criminal case where the defendant's rights are superior to those of the People. Efforts to equalize the positions of the parties, or at least to remove some of the handicaps attaching to the People's presentation of their case, have failed. That being so, the People should well look to the safeguarding of the powers they now possess rather than to indulge in experiments in practice and procedure which, when put to the critical test, may leave them shorn of some of the few advantages they now hold in their contest with the criminal, and especially the resourceful criminal, or, more to the point, the criminal who has it in his power and means to employ resourceful counsel.

More than ever before we are living in a work-a-day world. Work pressure is terrific. Volumes of business have to be disposed of, compared to which the daily routine of years ago appears trifling. This is as true of the successful law office, or the office of a district attorney, or of a cor-

poration counsel, or of a justice of the Supreme Court, as it is of organized industry. There is this difference, so far as a public prosecutor is concerned: despatch is of the very essence of his duties; prosecutions cannot be permitted to lag needlessly; they may not be permitted to become stale; they must be disposed of while the interest of all concerned remains unflagged. In the light of this viewpoint, it would be detrimental to the administration of the penal law to permit the machinery for its enforcement at this time to undergo change, which may or may not prove beneficial to the interest of the People of the state, when the machinery already set up functions properly and in the interest of all concerned. When I use the expression "all concerned," I use it advisedly, as including the interest of the People and of the defendant in a criminal case as well. There is a common notion that a Grand Jury is a fearsome body which spends its time inquiring into the business of everybody else, without any other object than to see to it that it fastens a crime upon whomever its whim selects as its victim. Of course, this is not so. The Grand Jury's duties are circumscribed, and it must act within them.[1] Whenever it oversteps its legal limits the courts are here to protect those whom it would improperly and unjustifiably impugn. So, far from peregrinating about seeking out whom it may impale, the Grand Jury conducts its proceedings in an orderly manner, according to a standardized method. Principally and primarily, it inquires into crimes for which defendants have been held by the action of committing magistrates charged with the duty of determining, in the first instance, whether accused persons brought before them are, in their opinion, guilty of the offenses with which they have been charged.[2] The Grand Jury may also take cognizance of a criminal charge on its own motion.[3] It usually does so upon the intervention of the district attorney. A magistrate, that is to say, may not have held a defendant for the action of the Grand Jury. The district attorney believes, notwithstanding the determination of the magistrate, that a crime has been committed and that the person accused

[1] Code Criminal Procedure, Sec. 255.
[2] *Ibid.* Sec. 221.
[3] *Ibid.* Sec. 259.

is guilty. The district attorney may initiate an inquiry by the Grand Jury,[4] and the Grand Jury may indict.[5]

The Grand Jury is an ancient body. Its origin and its functions are of historical interest. Justice Field has said:[6]

> "The institution of the Grand Jury is of very ancient origin in the history of England—it goes back many centuries. For a long period its powers were not clearly defined; and it would seem from the accounts of commentators on the laws of that country that it was at first a body which not only accused, but which also tried, public offenders. However this may have been in its origin, it was at the time of the settlement of this country an informing and accusing tribunal only, without whose previous action no person charged with a felony could, except in certain special cases, be put upon his trial. And in the struggles which at times arose in England between the powers of the King and the rights of the subject, it often stood as a barrier against persecution in his name; until, at length, it came to be regarded as an institution by which the subject was rendered secure against oppression from unfounded prosecutions of the Crown. In this country, from the popular character of our institutions, there has seldom been any contest between the government and the citizen which required the existence of the Grand Jury as a protection against oppressive action of the government. Yet the institution was adopted in this country, and is continued from considerations similar to those which give to it its chief value in England, and is designed as a means, not only of bringing to trial persons accused of public offenses upon just grounds, but also as a means of protecting the citizen against unfounded accusation, whether it come from government, or be prompted by partisan passion or private enmity. No person shall be required, according to the fundamen-

[4] People v. Dillon, 197 N. Y. 254, 90 N. E. 820 (1910).
[5] *Ibid.*
[6] Charges to the Grand Jury, 2 Sawyer (U. S.) 7, 668 (1872).

> tal law of the country, except in the cases mentioned, to answer for any of the higher crimes unless this body, consisting of not less than sixteen nor more than twenty-three good and lawful men, selected from the body of the district, shall declare upon careful deliberation, under the solemnity of an oath, that there is good reason for his accusation and trial."

Another learned jurist [7] many years ago said of the proposal now made to substitute for the Grand Jury some other agency of government: [8]

> "It has been said that, since there is no danger to the citizen from the oppressions of a monarch, or of any form of executive power, there is no longer need of a Grand Jury. But, whatever force may be given to this argument, it remains true that the Grand Jury is as valuable as ever in securing, in the language of Chief Justice Shaw (in the case of Jones v. Robbins, 8 Gray, 329), 'individual citizens from an open and public accusation of crime, and from the trouble, expense, and anxiety of a public trial before a probable cause is established by the presentment and indictment of such a jury; and in case of high offenses it is justly regarded as one of the securities to the innocent against hasty, malicious and oppressive public prosecutions.'"

The Grand Jury's findings are not conclusive upon a defendant whom it charges with a crime.[9] He may at once move for an inspection of the Grand Jury's minutes and, if the motion is granted, he may move, upon the minutes, for a dismissal of the indictment. The right to a dismissal, it has been held, if the evidence before the Grand Jury was insufficient to warrant the indictment, is inherent, and may not be impinged upon by the legislature.[10] Therefore, the notion

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[7] Mr. Justice Miller.

[8] *Ex parte* Bain, 121 U. S. 1, 12 (1886).

[9] *Supra* note 1 at Sec. 952t.

[10] People v. Glen, 173 N. Y. 395, 66 N. E. 112 (1903); People v. Sexton, 187 N. Y. 495, 80 N. E. 396 (1907).

generally held that a defendant must answer to an indictment by the Grand Jury is without basis. The defendant may move in attack of the indictment at its very inception and if he succeeds he is not, of course, compelled to stand trial. Formerly, so secure was the position of a defendant in a criminal case against an unjust or unwarranted indictment that the People had no appeal from the decision of the court dismissing an indictment. The People now, by force of one of the amendments known as the Baumes Laws,[11] have the right of appeal.

It is to be seen, therefore, that so far from being an agency of oppression or unjust attack, the Grand Jury may not improperly indict a defendant, inasmuch as its action in any case is subject to the close supervision and examination of the courts.

What useful purpose can be served by supplanting this body, in the light of the few comments I have just made? None, that I can see. On the other hand, if the practice suggested, of having the district attorney proceed by information before a magistrate, were adopted, interminable delays might result from the time of the filing of the information until the determination of the cause. There is no reason why, in every case, a defendant should be placed in possession of the evidence of the people, as he would be under such a practice.

Perhaps there have been instances where persons have been unjustly accused by the Grand Jury, but they have always had a remedy against unfounded accusation, and the courts have been always ready to enforce that remedy. It seems to me that under the practice now prevailing, a surer equilibrium is preserved between the People and the defendant in a criminal case than would be likely to follow any change in the ancient system which is in vogue.

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[11] *Supra* Note 1 at Sec. 518.