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## ANALYSIS OF CRITICISM OF THE GRAND JURY

JEROME HALL<sup>1</sup>

The May issue of the American Bar Association Journal contains an article by Professor Raymond Moley urging the superiority of the information over the indictment. It is noteworthy that the Wickersham report as well as the American Law Institute Proposed Code recommends the retention of both methods of starting criminal prosecutions rather than the complete abolition of the grand jury.

Be it stated at the outset, it is not the writer's purpose to quarrel particularly with Dr. Moley's conclusions in themselves. Indeed, it is generally conceded that the grand jury is of early origin (what part of our procedure is not?); that it formerly served a more obviously useful and direct purpose than it does now; that, as Dean Pound has pointed out,<sup>2</sup> its retention in England was justifiable as a check upon a system of private prosecutions; and that, as Dean Justin Miller has shown,<sup>3</sup> a great deal of its work is a duplication of what has already been done before the examining magistrate.

Granted all of this; granted the validity, in general, of the conclusions that have been reached by Dr. Moley, it is of the utmost importance, nevertheless, to examine the basis upon which the recommendations are super-imposed. Modifications in the procedure of criminal cases should not be inspired by passionate reactions from crime waves. Neither should they be dictated by business men or any other lay group. Repressive measures instituted to make convictions easy may be purchased at an excessive price. This is axiomatic. The administration of the criminal law is most intimately bound up with personnel, with deep psychological, economic, and political forces. It is failure to bear these basic facts in mind that causes competent academicians to become exponents of repressive measures and propagandists of narrowly conceived reform programs.

But there is even a more fundamental consideration which arises from all of this and that is with regard to the methods employed, the evidence adduced, and the interpretations made. For it is upon these factors that a really intelligent administration of the law de-

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<sup>2</sup>CRIMINAL JUSTICE IN AMERICA (1930), Henry Holt & Co., 109, 187.

<sup>3</sup>*Informations or Indictments in Felony Cases*, 8 Minn. L. R. at 388.

pend. Accordingly the writer invites attention to this problem reiterating that from this viewpoint, agreement with or dissent from the bare conclusions reached or the reforms recommended are not relevant.

Perhaps the most vital criticism that can be directed against most of the studies heretofore undertaken is that no attempt has been made to formulate a set of fundamental standards whereby to evaluate the administrative system. Tests applied by an engineer to a machine shop may be useful to some extent. Viewed in cold logic, no doubt, most of our procedure, especially in criminal cases, is indirect and cumbersome. Logically, this procedure is designed principally to bring about a finding of fact. A simple direct organization would appear to be obviously most desirable. Yet, there is danger in oversimplification. "Lynch-law" is simple, direct, and "efficient." A complex system may mean unnecessary outworn vestiges; on the other hand, it may be the mark of an advanced civilization and the achievement of a long legal history.<sup>4</sup> The whole problem of formulating standards is an immensely difficult one but needs to be undertaken, if a really sound evaluation of present administrative machinery is to be had.

Unfortunately zest for reform has characterized most investigations, with the ideology of certain small groups uncritically and unconsciously accepted as standards to gauge criminal procedure. Advocacy, reform, and propaganda are necessary and important but they are dangerous for scientific investigations. Selecting Dr. Moley's article in the *Journal* as typical of many of the best current studies regarding the grand jury system, the following limitations may be said to exist:

1. His analysis is based upon the worst aspects of the grand jury system. He has not considered such recent developments in the grand jury system as that adopted, for example, in Chicago during the past year.

2. His article opposes the one method to the other, forcing him into making sweeping conclusions. He does not consider the operation of both methods together as against either one alone.

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<sup>4</sup>Hypothetically, by way of illustration, one might adopt the standard that the more complicated a system of procedure is, the more protection the individual receives and the more civilized is the society; or this,—the more limitations placed upon any one official, the more protection the individual receives; or that the higher the percentage of convictions is to the number of cases initiated, the more secure are life and property. Professor Moley has employed the percentage of convictions to measure the "efficiency" of prosecutions.

3. He has based his argument upon inadequate and frequently misinterpreted statistics.

Criminal statistics in this country, as Professor Warner has demonstrated for the Wickersham Commission, are notable for their frequent absence, variability, and general unreliability. No one in particular can be blamed for this, but the statistician can be expected to be aware of the limitations inherent in this method and on guard against drawing highly unwarranted interpretations. A recent study by Professor Wayne Morse carried on under the guidance of Dr. Moley illustrates the dangers in the use of this method.<sup>5</sup> Professor Morse's survey of the grand jury is the most exhaustive, and in many ways the finest that has yet appeared on this subject. His study is a real contribution. Yet, because of the technique employed one gets the impression that the bringing of a criminal action is a particular, methodical, clock-like operation; it ignores complexity of factors, psychological, economic, and political that condition all prosecutions. Again, it is impossible to tell from the materials, anything about the type of locality; there is no indication even whether any of the materials were gathered from large cities. The probabilities are that practically all of it is from small communities which, if true, would be a fortunate circumstance for there would then be some validity *for that type of community*.

Dr. Moley has argued in his article in the *Journal* and elsewhere<sup>6</sup> that the grand jury is superfluous because it is merely a rubber stamp for the prosecutor; that it is therefore, not only unnecessary but that it provides an "escape from responsibility for actions which he really determines."

An examination of Professor Morse's data is enlightening with

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<sup>5</sup>Morse, *A Survey of the Grand Jury System*, 10 Oregon L. R. Arbitrary classifications are employed: crimes are divided into "liquor," and "non-liquor." Dr. Moley has himself pointed out that this is not a significant classification; "driving while intoxicated" is classified as a liquor offense; the classification, "all others" is meaningless; under the classification "crimes against the public morals and safety" are included such offenses as "extortion," "possession of burglary tools," "conspiracy," and "bootlegging." In this study, less than 7500 cases all of which came up during the fall and winter terms of 1929-30 are assumed to be adequate to draw conclusions applicable to the whole country. The questionnaire is used indiscriminately. There is no careful selection of men of recognized ability or of long experience. Furthermore, all of the statistics based upon the questionnaire would seem to be necessarily limited to the small community. In the offices of prosecutors in the large cities, the questionnaires would probably be answered by somebody's stenographer. Needless to add, the questionnaire calls for purely subjective data. Thus, what the prosecutor would have done with regard to what the grand jury has already done is an after-the-fact opinion.

<sup>6</sup>POLITICS AND CRIMINAL PROSECUTION (1929), Minton, Balch & Co., Chapter 6.

reference to the application of statistical method in the solution of this problem. He uses the categories "initiated by prosecutor" and "initiated by the grand jury," meaning by the former "all cases presented to the grand jury through the prosecutor's office." Now the term, "initiated by the prosecutor" is really a misnomer because it does not indicate whether the prosecutor advised or had anything to do with the issuance of the warrant (which should be implied from the term "initiated"), or whether a magistrate really started the proceedings by ordering the arrest of the defendant. The initiation of a prosecution is really a complex situation and is not the uniform simple matter that the statistical materials suggest. Unless the prosecutor ordered the arrest, that is, approved the warrant, it cannot properly be said that he initiated the prosecution. Presumably, his subsequent conduct is conditioned by whether or not he actually did order the prosecution started. This cannot be ascertained from the materials, and it is consequently impossible to draw conclusions based upon the prosecutor's "initiation" of the prosecution. The same criticism applies to "initiation by grand jury." A world of information remains undisclosed. These are cases, we are told, where "the complaining witness or witnesses go directly to the grand jury *without first presenting the case to the prosecutor or some other law officer.*"<sup>7</sup> Either this category is absolutely meaningless; or else what is more likely, it is so narrowly and rigidly limited that it necessarily connotes rare situations. The situation described would not even apply to a special grand jury summoned in a critical situation, such as investigation of political crimes because even in these unusual cases the grand jury is assisted by public officials who interview witnesses and otherwise prepare the case for presentation. Therefore it is not surprising that "in New York out of 842 cases reported only 2 were "initiated by the grand jury"; while in Pennsylvania out of 779 cases not a single one was reported as having been "initiated by the grand jury."<sup>8</sup>

So much for illustration of the technical difficulties involved in the selection of categories to correspond with facts. Of even greater importance is that we are asked to draw the conclusion that there is no validity to the argument that "the power of the grand jury to initiate criminal prosecutions is essential if we are to be assured of a just administration of the criminal law" inasmuch as the grand jury exercises this function so infrequently, since it initiated only

<sup>7</sup>*A Survey of the Grand Jury System*, 10 Oregon L. R. Reprint 126.

<sup>8</sup>*Ibid.*, Table III, 137.

353 or 4.76 per cent of a total of 7414 cases.<sup>9</sup> A splendid non-sequitur for several reasons. As already suggested above, pure and unadulterated initiation of cases by the grand jury called for in the questionnaire is too rigidly defined to develop the required analogous data. But even granting that the statistical data really represent facts, 353 cases out of 7414 may be an enormous number considering the circumstances, and the standard of evaluation used. The conclusion drawn that the power of the grand jury to initiate prosecutions is not necessary to a just administration of the criminal law is an assumption which though properly made within the statistical system itself, is not thereby proved valid when translated into reality. Not a scintilla of fact is shown regarding any of these 353 cases. In any of a dozen real senses these cases might be far more important for justice—and that is what is referred to—than all of the other 7000 odd cases combined.

The fundamental point, moreover, in our evaluation of the methods used in investigations upon which sweeping reforms are based and recommended is that nowhere is it pointed out or apparently borne in mind, that to the statistician any number 1 is as significant as any other number 1. The manipulation of numbers and their relationship to each other is of peculiar mathematical value within the statistical system itself, as well as in some very limited, sharply defined, fully described situations. But the interpretation of these statistics especially with reference to such a concept as "justice" is an entirely separate and unique process.<sup>10</sup> With reference to cost and speed, certain conclusions can be well ascertained statistically; but even here, care must be taken to avoid sweeping conclusions regarding the "efficiency" of the administration of the law. In other words, such investigations have not only been inadequate as far as the gathering of data is concerned; not only has there been a lack of formulating and applying categories which correspond to fact; but, what is by far of greatest importance, there has been a lack of awareness of the purpose of and the limitations upon the use of the statistical method, with consequent naïve assumptions and conclusions drawn without the slightest warrant.<sup>11</sup>

<sup>9</sup>*Ibid.*, at 134.

<sup>10</sup>See Warner, *Survey of Criminal Statistics*, in the NATIONAL COMMISSION REPORT ON CRIMINAL STATISTICS, at 27.

In fairness to Professor Morse, it must be stated that he is aware of many of the limitations upon statistical methods. See his *Survey of the Grand Jury System*, reprint, 164.

<sup>11</sup>. . . "The formulas and methods used in statistics have been developed on strictly limited assumptions, that they are exceedingly useful to investigators but that appeal must always be made to experience, and the assumptions must

No better proof can be offered of the unwarranted conclusions drawn from inadequate statistics than the fact that the very opposite conclusions may reasonably be drawn from the self-same statistics used in Professor Morse's study. Thus it appears that "out of 7061 cases initiated by the prosecutor, 1170 cases—16.7 per cent—were 'no true billed' by the grand jury."<sup>12</sup> Assuming these figures to be accurate, they indicate on their face that the grand jury is by no means a mere rubber stamp, but on the contrary, is a definite, important check upon over-zealous prosecutors and the examining magistrates. But there is always room for interpretation of statistics, and in this instance, in order to arrive at the *a-priori* conclusion that the grand jury must be a mere rubber stamp, Professor Morse is at great pains to "explain" these figures. He ignores his own statements to the contrary made elsewhere in his study and argues that the prosecutor, under the information system, does not have to file, while under the indictment system, he must present to the grand jury. Furthermore, the prosecutor, under the indictment system, can frequently prevent warrants from being issued; and almost always is able to *nolle* any cases he chooses to before the magistrate (and, indeed, has not Dr. Moley vehemently deprecated this power and this practice?). Accordingly the rationalization resorted to regarding these figures is not convincing. Incidentally, if the prosecutor under the information system is not in fact required to proceed after the bind-over, then it becomes a fair question whether this concentration of power in the hands of the prosecuting attorney is desirable. One would hardly expect the author of *POLITICS AND CRIMINAL PROSECUTION* to be enthusiastic in that direction.

Proceeding with our demonstration that the very statistics of the proponents of the information system may be used to reach conclusions directly opposite from those drawn by them regarding the independence of the grand jury, attention is again invited to Professor Morse's survey,<sup>13</sup> where it appears that almost 41 per cent of

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not go beyond the premises by which the methods were originated . . . The greater part of the statistical work that has been done in the social sciences, is, from this point of view, of little value. . . . A difficulty in interpreting many of the statistical studies in the social sciences is that, as published, they reveal little about the assumptions and compromises the investigator has had to make, and the necessary adjustments between methods and data. . . . the author of a study can (if he will) throw a certain amount of light on these processes which may otherwise appear either unduly obscure or unduly clear cut." D. S. Thomas, *Statistics in Social Research* (1929) 35 *Am. Jour. of Soc.* 2-3.

<sup>12</sup>Op. cit. Table IV, 140.

<sup>13</sup>Op. cit. Table IVa, 141.

manslaughter cases are "no true billed"; 32 per cent of assault cases, 20 per cent of sex charges, and almost 23 per cent of sale of liquor cases are likewise "no true billed." Again, it is shown<sup>14</sup> that the prosecutors who answered the questionnaire submitted to them disagreed with the grand jury disposition in almost 20 per cent of the cases which were "no true billed." This may be interpreted as supporting the "objective data," and making even more tenable the conclusion that the grand jury is an independent body which uses discretion in its work. The statistics showing the very large dissent of the prosecutors from the grand jury in cases where the grand jury "no billed" would suggest, as does the large number of "no true billed" cases, that the grand jury is a very potent check upon over-zealous prosecutors. In some quarters indeed, it is the opinion of very competent officials that the grand jury may be the very opposite of a rubber stamp and that once it gets started it is impossible to restrain it. In either event, whether the statistics above referred to which indicate that the grand jury checks the prosecutors are correct, or in the latter mentioned circumstance of an ambitious grand jury, it is a tenable conclusion that the grand jury is an active organization. If this is true, the grand jury is serving a very useful purpose with reference to the ordinary run of criminal cases in addition to being essential in the exceptional situations created by political crises.

Finally, in substantial refutation of the rubber stamp argument are the opinions of a large number of judges.<sup>15</sup> Only 157 judges out of 453 said that the grand jury follows the prosecutor's suggestions without careful consideration. The others stated either that the grand jury did not follow the prosecutor's suggestions automatically, or that the grand jury considered the facts carefully at times, conditioned upon its personnel, the prosecutor and other factors. Despite the above statistics which tend to establish the independence of the grand jury, Dr. Moley announces with assurance that it is established by Professor Morse's investigation that "the prosecutor is the dominant influence of their (grand jury's) action in 95 per cent of all cases."<sup>16</sup>

It follows, if the above mentioned statistics indicating that the grand jury exercises a check upon over-zealous prosecutors, are to be taken as correct, that statements made regarding the cost of the grand jury must be revised. No deductions have been made for the elim-

<sup>14</sup>Op. cit. Table VII, 149.

<sup>15</sup>Op. cit. Table XXXVII, 326.

<sup>16</sup>*A. B. A. Journal*, May 1931, 294.

ination of prosecutions that would presumably have failed before the petit jury. Indeed, this amount cannot be calculated, but apparently it is large. Besides, suggestions are made in various quarters that prosecutors operating under the fee system are anxious to file informations. When considered in the light of the report of the Wickersham Commission, the cost of the grand jury is an infinitesimal part of the total cost of crime in this country. A whole array of facts comes into view that conditions treatment of and conclusions regarding costs. Even if it is reasonably certain that money could be saved by the elimination of the grand jury, this consideration would still be almost entirely dependent upon and subservient to the other factors involved in the whole problem.

With regard to delay, the need is for discrimination in the selection of data, and the concomitant narrowing of conclusions rather than for total revision. It is difficult to evaluate the effect of delay as a general proposition. On the one hand the constitutional guaranty indicates that the defendant suffers thereby. On the other hand, experience in certain cases especially in the large cities indicates that the prosecution suffers, although it is apparent that the witnesses of a poor defendant frequently disappear. Occasionally, delay is vitally necessary to permit public passions to cool before a fair trial can be had.

It may be granted readily that by and large, delay is an evil both to the ordinary defendant, and to the state when the defense is powerful and unscrupulous. Nevertheless, in illustration of the inadequacy of the data relied upon in the investigations under consideration, it is relevant to point out that the statistics chosen do not represent certain very important contemporary facts regarding the large cities. Specifically, statistics for 1926 are selected by Dr. Moley with reference to New York and Chicago. In Chicago for more than a year prior to the publication of Dr. Moley's article, the procedure has been modified so that there is hardly any delay at all between the holdover and the indictment. The specially created Felony Court, which is a branch of the Municipal Court, hears practically all felony cases in Chicago. It is located in the Criminal Courts Building upon the same floor as a branch of the Bureau of Identification and the Grand Jury which is constantly in session. Just as soon as the defendant is bound over, he is taken to the Bureau of Identification with a speed that would satisfy the most ardent advocate of law-enforcement, and submits to having his finger prints and photographs taken and full measurements made. At the same time, the witnesses are

led into the grand jury room. Thus delay is almost entirely eliminated. A consideration of this improvement in the grand jury system along with other recent developments (such as the selection of outstanding men in the community to conduct the investigation, the selection of the grand jury from a carefully compiled list of men, etc.) would be much more suggestive than the marshalling of facts from country districts and the drawing of sweeping conclusions that do not fit the metropolitan centers at all.

Dr. Moley is very vehement in his attack upon waiver of felonies, what he calls "bargaining." Indeed, he states that "this (absence of bargaining) is by all odds the most important reason for preferring the information to the indictment."<sup>17</sup> It is not strange to find the proponents of an exclusive information system most zealous in destroying the waiver of felonies. Are they not, nevertheless, at cross-purposes with themselves? On the one hand, they are calling for the elimination of the grand jury, and the concentration of authority in the prosecutor, and on the other hand, and almost in the same breath, they are attacking the prosecutors and arguing that they are "bargaining," dishonest, inefficient, and subject to political influences. The waiver of felonies is indeed particularly obnoxious in certain quarters, but *mirabile dictu*, such is the wonder of statistics that Professor Moley is able to prove that there is less frequent waiver of felonies in some states as compared with others and that this is actually due to the existence of the information system in the former!

It is not surprising to find that the statistics gathered by Professor Morse are very definitely opposed to Dr. Moley's conclusion in this regard.<sup>18</sup> 348 judges out of 373 were of an entirely different opinion. Only 25 agreed with Dr. Moley's view that the indictment facilitates "bargaining," while 95 judges were of the opinion that the information system facilitates "bargaining," although most of these lived in indictment states. Some judges stated that the prosecutors are frequently compelled to act because the grand jury knows the facts in the cases.<sup>19</sup> In any event, it seems more probable that a

<sup>17</sup>29 Mich. L. R., 423. Professor Moley's statement that "In New York and Illinois and to some extent in Virginia, the charge is a mere 'bid' by the state in a game of bargaining," (A. B. A. Jour., May, 1931, 293) is such an exaggeration as to cause one to suspect preconceptions on his part which would make impartiality and objectivity impossible regarding this question.

<sup>18</sup>Op. cit. Table XXV, 194, reprint.

<sup>19</sup>Dean Justin Miller, who has had considerable, actual experience in the administration of the criminal law writes as follows: "There can be no question that the mere fact that there is or may be a grand jury has a very salutary effect upon the whole group of law enforcement officers. . . . It is equally true that once in a while, even a very conscientious officer may

system which centralizes authority in the prosecutor would lend itself the more readily to the "bargaining" that is deplored. Accordingly, the real cause for differences in the waiver of felonies must be looked for elsewhere than in the pleadings filed by the prosecution. Needless to add, it is at least an even question, whether or not the waiver of the felony is a socially desirable device.

In all particularistic explanations, all evils are laid at one door. Thus the inefficiency of prosecution is attributed at the indictment. How can efficiency of prosecution be evaluated in terms of the number of convictions? Indeed, once granted that innocent men are sometimes indicted, 100 per cent efficiency becomes undesirable. Where to stop? But the problem is much more complicated than that. The factors of police, investigation, apprehension, economics, the prosecution, politics, and public opinion, not to mention the particular sets of facts in the cases, determine the number of convictions. The number of acquittals cannot be charged to inefficient prosecution any more than sole credit can be given to the prosecution for convictions, and to limit the rating to the *method of starting the prosecution* is fantastic. Yet this is precisely Dr. Moley's standard of evaluation, although he himself at times evinces some doubts in the matter. Nevertheless, he proceeds to use this criterion of percentage of convictions to measure the efficiency of prosecution. He selects five information states,<sup>20</sup> most of them predominantly agricultural and finds that in these states 67 per cent of the cases result in "successful" prosecutions, i. e., in convictions; whereas, in four indictment states<sup>21</sup> which include the three most populous states in the country, he finds that only 52 per cent of the cases result in "successful" prosecutions. Therefore, says Dr. Moley, prosecution is more efficient in the first group of states, and this is due to the information!

No doubt, a great, complex aggregate of forces accounts for differences of this sort. The greater number of convictions whether

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be tempted from one motive or another, to neglect his clear duty. If that officer knows that the case which he is tempted to neglect, may be called to the attention of a grand jury, he will think again, and very seriously, before he acts. Occasionally, it happens that the law enforcement officers may be active participants in crime or in shielding criminals. . . . It is equally true that the custom of calling grand juries has a salutary effect on the general public. It gives an opportunity for persons who feel that they have been aggrieved, to present their cases to an unbiased tribunal. . . . It is apparent then, that whatever change be made in the method of initiating prosecutions in criminal cases, provision should be made for periodic meetings of the grand jury." *Informations or Indictments in Felony Cases*, by R. Justin Miller, 8 Minn. Law Review, 405-406.

<sup>20</sup>Calif., Ind., Mich., Ia., and Conn.

<sup>21</sup>Ill., Penn., Va., and N. Y.

by plea or by jury are to be explained by individualization of treatment and use of discretion, by the grant of probation or of a suspended sentence; by better judiciary, more competent bar, an honest, efficient police department, a different public and different conditions in every particular.<sup>22</sup>

Referring for a moment to his statistics, it is necessary simply to note the following: in Indiana which is one of the five "information" states selected by Dr. Moley, 50 per cent of the cases result in convictions; whereas, in two other states selected by him, namely, in Pennsylvania, an "indictment" state, 54 per cent of the cases result in convictions, and in Virginia another "indictment" state 57 per cent of the cases result in convictions. Let us merely ask what would happen to Dr. Moley's statistics, if he selected five Indianas and four Virginias?

Drawing again upon Professor Morse's most interesting survey,<sup>23</sup> it appears that more judges were of the opinion that a greater number of convictions could be secured under the indictment rather than under the information method, although the overwhelming number of judges said what was to be expected, namely, that it made no difference. It was pointed out by some that the information carries little weight because it is only an opinion of the prosecutor.<sup>24</sup> Besides, if our previous reference to the elimination of 17 per cent of the cases by the grand juries voting "no true bill" was based upon valid statistics, then it is fair to expect that the indictment system, having eliminated doubtful cases, would be the more efficient. The problem has never been satisfactorily worked out. Perhaps, it can never be demonstrated one way or the other, because all other factors are never equal.

Occasionally the state's attorney appears directly before the grand jury when he believes that secrecy is necessary in the proceedings, or where the facts are so involved and numerous that the police magistrate cannot properly deal with the case. In these instances which are very important ones, and in others there is no duplication of

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<sup>22</sup>Professor Moley, himself, points out that "for several years Los Angeles and San Francisco have differed in a quite marked way in the proportion of cases in which guilt is established by plea and after trial. Legally prescribed procedure is identical, of course, and general administrative methods are not dissimilar." 29 Mich. L. R., 211.

<sup>23</sup>Op. cit. Table XXXIV, 309.

<sup>24</sup>The writer has frequently seen prosecutors read the entire indictment to the jury, and has had occasion to do this himself, apparently with some effect. There seems to be some basis for the opinion that reading of the indictment makes the initiation of the prosecution appear more mechanical and impartial and hence effective.

work or any inconvenience to witnesses, hence, no loss in efficiency. Even in the great mass of cases where there is duplication and some inconvenience to witnesses, commentators upon this have overlooked the fact that all of this procedure is excellent preparation for the trial both for the state and the witnesses—a matter of no small importance as would be conceded by persons familiar with the average trial call of an assistant state's attorney in a large metropolitan prosecutor's office. In short, the necessity to present the case so that a body of laymen can understand and act upon it, is valuable experience in preparation for the real battle that is to come.

In support of this latter view, it may be stated that an overwhelming number of judges<sup>25</sup> gave it as their opinion that the prosecuting attorney more thoroughly investigates his case under the indictment system. 178 judges gave this as their opinion as against 12 who thought the information system favored a more thorough investigation. Perhaps, the reason for a more thorough investigation being made, if that is the fact, is the necessity to get the case in such shape that a jury of laymen will understand and act upon it.

From the point of view that the question has been raised by Dr. Moley, that is, information versus indictment, it may well be concluded that the indictment system renovated and improved, is the preferable one. It is noteworthy that many jurists and scholars who have had broad experience in the administration of the criminal law are opposed to the abolition of the grand jury. Thus Professor Edward Hinton writes,

“The grand jury is so necessary in some cases, where the state's attorney is unwilling to take responsibility or where the facts are impossible to discover without a secret investigation that its total abolition would be a serious mistake.”<sup>26</sup>

The job that really wants being done is an investigation of the finer questions regarding the division of routine cases from extraordinary ones, of certain routine matters from others, of critical times from normal ones, of centers and localities (usually urban) presenting many unique conditions from rural communities and small towns; of particular crimes of special public concern from others. It goes without saying that such an approach will receive more serious attention in

<sup>25</sup>Professor Morse's survey, *Op. cit.* Table XXXI, 185.

<sup>26</sup>ILLINOIS CRIME SURVEY, 196; and see note 19 *supra* for Dean Miller's remarks.

places where the grand jury system has been long established. In brief, the following is in order:

1. The formulation of standards whereby to evaluate the administration of the law.

2. Special, intensive case studies of particular areas conducted by investigators who among other qualifications, have had actual experience in the administration of the criminal law; recommendations framed in the light of specific local conditions.

3. The compilation of adequate statistics and the proper use of them.

As stated at the outset, research on the grand jury invites attention because of the methods employed rather than the conclusions reached. Current investigations lend themselves with considerable facility to an analysis of the sort undertaken. If the writer coincided in every particular with the conclusions reached in these investigations, his treatment of the processes involved would neither gain nor diminish in relevancy. In fact, in this latter event, he would have to be especially on guard against assuming the validity of opinions which coincided with any preconceptions that he might have. Also there has been no opportunity here for any analysis of the questionnaire methods employed,<sup>27</sup> or for consideration of case methods.

Undoubtedly, there is a crying need for the application of the social science techniques to legal problems, and those scholars who have thus broadened the horizon of legal research merit every encouragement. But the lawyer cannot afford to cast aside his critical faculties when he is making use of social science methods; on the other hand the lawyer who carries over his objective viewpoint into the social sciences will inevitably and most significantly contribute to the store of legal scholarship.

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<sup>27</sup>See note 4, *supra*.