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that "the state shall have proved enough to make it just for the defendant to be required to repel what has been proved with excuse or explanation, or at least that upon a balancing of convenience or of the opportunities for knowledge the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression. The decisive considerations are too variable, too much distinctions of degree, too dependent in the last analysis upon a common sense estimate of fairness or of facilities of proof, to be crowded into a formula. One can do no more than adumbrate them; sharper definition must await the specific case as it arises."³¹ It can at least be argued that there is little rational connection between the evidence admitted in the *Richardson* case of defendant's bad reputation and his guilt of the particular crime; and that the use of such evidence imposed as much of an unnecessary³² and undue hardship upon the defendant as if the court had treated it as a statutory presumption. Moreover, even if the Court were to decide that the particular use of reputation evidence in the *Richardson* case did not violate the due process clause, such evidence coupled with questionable corroborating testimony by an accomplice may have rendered the proceedings invalid.

ROBERT T. JENSEN

Private Communication with Grand Juries

The Illinois Supreme Court has recently reaffirmed and clarified its holding that unsolicited communications by private citizens to a grand jury to inform the jury of crimes that have been committed are unlawful and contempt of court.¹ In an earlier case of *People v. Parker*,² extensively commented upon in a recent issue of this Journal,³ defendant had addressed two letters to the Cook County grand jury charging the pub-

³¹ *Id.* at 89-91.

³² Such methods of facilitating prosecution have been criticized as tending to increase laxness on the part of law enforcing agents. *Cf.* 8 Wigmore, *Evidence* (3d ed. 1940) §2251. Particularly is this criticism applicable where, as in the *Richardson* case, the law enforcement agents themselves are permitted to testify to the defendant's bad reputation.

¹ *People v. Parker*, 397 Ill. 305, 74 N. E. (2d) 523 (1947), *aff'd.*, 68 S. Ct. 1082 (1948). In addition to litigation arising out of Parker's two attempts to communicate with the Cook County grand jury, he has also been adjudged guilty of contempt in connection with a slander action which he commenced. Purporting to comply with an order of court entered upon motion of the defendant to the slander suit, Parker filed on the records of the court various documents charging the Chicago Tribune and various officials and judges of Illinois with certain crimes. The facts are set out in detail in the opinion of the Appellate Court affirming the judgment of contempt, *People v. Parker*, 328 Ill. App. 46, 65 N. E. (2d) 457 (1946), *aff'd.* 396 Ill. 583, 72 N. E. (2d) 848 (1947). The finding of contempt was affirmed by the United States Supreme Court in *Parker v. Illinois*, 333 U. S. 571 (April 5, 1948), in which three justices dissented. The opinions involved issues of constitutional law arising out of Illinois appellate procedure which are beyond the scope of this note.

It should be noticed that all of the Parker litigation arose out of a conflict between Parker and the Chicago Tribune. It can be regretted that the important question of the circumstances under which a private citizen can communicate with the grand jury should be decided in such an atmosphere.

² 374 Ill. 524, 30 N. E. (2d) 11 (1940), *cert. denied*, 313 U. S. 560 (1941).

³ *Fremon, Private Communications with Grand Jurors* (May-June, 1947) 38 J. of Crim. L. & Criminology 43, which extensively examines the cases and authorities concerning the history and power of the grand jury.

lisher of the Chicago Tribune and various public officials with having connived to steal large sums of money from Cook County in the form of unpaid taxes and penalties. The Illinois Supreme Court held that the letters, which the court said were "couched in exceedingly vicious and inflammatory language," were contempts of court. The opinion left some doubt whether the court intended to hold that any communications by private citizens to a grand jury are forbidden unless through lawful channels. Some commentators expressed the hope that the court would limit its holding to communications which the court considered prompted by malice, and that the court would not abrogate the common law rule that a citizen has a right and even a duty to provide the grand jury with information in his possession concerning crimes which had not been brought to the jury's attention.⁴

But recently in a second case involving the same defendant,⁵ the court appears to have set the matter at rest. On this second occasion Parker sent another letter to the grand jury charging the same individuals with substantially the same offenses as in the first case. Parker purported to sign the later communication, which was temperately phrased, as an officer of the Puritan Church and insisted that it had been composed by the church and mailed in furtherance of church duties. Refusing to distinguish the first case on the basis of the tempered tone of the letter involved in the second, the court also rejected Parker's contention that the communication was sent in the exercise of his constitutional rights of freedom of religion and freedom of speech. The court held that the obvious purpose of communicating with the foreman of the grand jury was to incite the grand jury into action and that hence the letter fell within the rule "which forbids communicating with the grand jury, except through recognized lawful channels."⁶

Parker then took the case to the United States Supreme Court, where he argued that in punishing him for communicating with the grand jury the courts of Illinois had denied him his freedom of speech and of religion guaranteed to him by the due process clause of the Fourteenth Amendment. In a per curiam opinion, the Court recently announced that it had divided four to four on the merits and that, therefore, the judgment of contempt was affirmed.⁷ Since no individual opinions were filed, one

⁴ See comment (1941) 8 U. of Chi. L. Rev. 561, in which the conclusion is reached that the first *Parker* case did not change the common law in Illinois. Fremont, *op. cit. supra* note 3 at 46, in his discussion of the first *Parker* case, concluded that there "the Illinois Supreme Court rejected the contention of the state that any communication was contemptuous, but upheld a contempt conviction where the communication on its face showed malice and personal enmity." The broad language of that opinion would not seem to support such a conclusion.

⁵ *People v. Parker*, 397 Ill. 305, 74 N. E. (2d) 523 (1947), cited *supra* note 1, a per curiam opinion.

⁶ *Id.* at 307, 74 N. E. (2d) at 525.

⁷ 63 S. Ct. 1082 (1948). The brief memorandum opinion said: "Mr. Justice Jackson is of the opinion that the writ of certiorari should be dismissed and did not participate in the question as to the disposition of the case on its merits. With respect to the merits the judgment is affirmed by an equally divided Court."

It should be noticed that private communications to federal grand jury were restricted by Mr. Justice Field in 1872 when he instructed a grand jury that its investigations were to be limited to matters called to its attention by the court or submitted by the district attorney, or to matters based on its own observations and knowledge. He seemed to think that private communications were generally actuated by enmity or malice. 30 Fed. Cas. 992 (1872). For citation of the federal cases see Fremont, *op. cit. supra* note 3 at 45.

can only conjecture that four of the justices could not stomach the thought that a man could be punished simply for communicating with a governmental agency such as the grand jury. The other justices presumably believed that the states must be left free to protect their judicial machinery from interference, and that they could at their discretion forbid communications with grand juries.⁸

The Illinois Supreme Court in the two *Parker* cases has rejected a distinction, recognized in some jurisdictions, between private communications which concern matters then pending before the grand jury and those which are intended to inform the jury of crimes not previously reported to it. Although communications not made through official channels about crimes currently being investigated are generally considered unlawful attempts to interfere with grand jury action, many courts recognize the right and even the duty of a citizen to bring original charges directly to the jury. In a proper case the Illinois Supreme Court might conceivably limit the rule of the *Parker* cases to communications by malicious individuals or cranks; but the broad language of the two opinions leave little hope that it will do so.

It should be noted, however, that communications by public-spirited groups, such as Chambers of Commerce or local bar associations, intended to advise grand jurors of their powers and duties do not appear to fall within the language of either case. Such information in other jurisdictions has never been construed as tending to obstruct the administration of justice. Judicial instructions to grand juries are not always phrased so as to acquaint them with their broad common law power to investigate crimes free from supervision or control by court or prosecutor. The preparation and distribution by private groups of information for grand jurors would, therefore, appear to be a desirable check to a tendency to convert the grand jury into an expensive rubber stamp for prosecuting attorneys.

PETER A. DAMMANN

⁸ For more extensive treatment of the problem see Fremon, *loc. cit. supra* note 3.