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THE GRAND JURY UNDER ATTACK. III

RICHARD D. YOUNGER

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Early in 1917, grand juries ceased to sit in England. Pressure of a life and death struggle with Germany led Parliament to suspend them for the duration of the war. Although the noise of battle hushed all but a few critics of the move, there were Englishmen who saw the paradox in fighting for democracy abroad while restricting it at home. They suggested that even a democratic government such as Britain's might need the strong check against arbitrary rule which grand juries provided. However, such protests lost out to cries of a manpower shortage. The issue of a war emergency enabled English legal reformers to accomplish what they had been unable to do in the name of efficiency and economy; To kill the grand jury. They succeeded in taking criminal prosecutions out of the hands of citizen panels, and in giving them to magistrates expert in the law.¹

In spite of the remarkable showing of grand juries in combatting municipal corruption and their proven value in regulating corporations, American legal reformers hailed the British action as a step in the right direction. They attributed the move to Parliamentary fear that the power of the indictment might become an instrument of oppression in the "hands of an inflamed populace." Opponents of the grand jury in the United States warned that suspension of English juries had come just in time to avoid a "flood of indictments" against pacifists and persons of German extraction. In England, however, officials expressed the fear that grand juries would refuse to indict persons arrested by the government.²

Legal reformers in the United States were unable to turn the war to their advantage as their counterparts had done in England. American entry into the first World War in April 1917, temporarily ended efforts to abolish grand juries. But, opponents both in the United States and England resumed their agitation following the War. In America, they sought to persuade additional states to abandon its use, while in England they fought to make the temporary suspension permanent. In January 1920, Assemblyman Louis A. Cuvillier introduced a resolution in the New York legislature to amend the state constitution to eliminate grand juries. The American Judicature Society advised delegates attending the Illinois Constitutional Convention in 1920, that grand juries were of little value except to delay the courts. The Society warned that time was the most important element in criminal justice. The State's Attorney's Association of Illinois agreed wholeheartedly and made a plea for abolition

¹ PARLIAMENTARY DEBATES, 5th Series, (1917), LXXXXV, 380, 736, 1086–1097; LONDON TIMES, January 3, 8, 29, 30, February 13, 14, 15, 17, March 29, 1917.

² NEW YORK TIMES, January 22, February 20, 1917; MINOR BRONOUGH, *Shall the Grand Jury Be Abolished?* LAW NOTES (January 1922), XXV, 187.

of the grand jury system. However, delegates remained unmoved and refused to sacrifice the citizen's panel to the experts. In Massachusetts Judge Robert Wolcott of Cambridge reiterated the appeal for judicial efficiency. In October 1921 he told members of the State Bar Association, that abolishing the grand jury was one means of ending congestion in criminal courts, but his statement did not go unchallenged. Former district attorney Arthur D. Hill of Boston protested against a system of criminal law which eliminated "the popular element" and told prosecutors that they could learn a great deal from working with grand jurors.³

Wartime suspension of grand juries in England ended in December 1921, but solicitors and magistrates throughout the island requested Parliament to make the order permanent. The London *Times* supported the campaign characterizing grand inquests as expensive and inefficient, but drew a host of replies in defense of the system. Judges as well as laymen objected to eliminating the panels of citizen accusers. Judge L. A. Atherly-Jones praised their wholesome influence and warned that justice was already too tightly controlled by "an official and professional class." Sir Alexander Wentworth Macdonald, a layman, declared that a group of non-professional men should stand above judges and courts. However Lord Justice J. Eldon Bankes agreed with most jurists, that grand juries were of little value in reviewing the work of experienced magistrates. In spite of charges of inefficiency, however, Parliament refused to extend the suspension order and citizen investigators resumed their traditional place at English courts.⁴

In the United States, as in England, opposition increased. In March 1922 the New York County Association of the Criminal Bar announced that it planned a vigorous state wide campaign to abolish the institution. Former district attorney Robert Elder called upon public prosecutors to take the initiative in replacing the "inefficiency, ignorance and traditional bias" of grand jurors, and Judge Thomas Crain of New York supported the movement. Testifying before the Committee of Law Enforcement of the American Bar Association, he observed that "a judge or some other man learned in the law" should participate in grand jury hearings. In Minnesota attorney Paul J. Thompson urged his state to adopt the Wisconsin system of prosecution upon the order of a district attorney. In 1922 Judge Roscoe Pound and Felix Frankfurter conducted a survey of criminal justice in Cleveland and added the weight of expert testimony to those who sought to eliminate use of grand juries. Pound and Frankfurter reported that juries were inefficient and unnecessary, since trial courts were quite capable of protecting Americans against executive tyranny.⁵

³ NEW YORK TIMES, January 24, 1920; *Grand Jury Reform*, JOUR. OF THE AMER. JUDICATURE SOC. (October 1920), IV, 77-80; *Proceedings of the Illinois Constitutional Convention* (Springfield, 1921), II, 1929, 1941, 1944, 1948; *Report of the Annual Meeting of the Massachusetts Bar Association*, MASS. LAW QUAR. (January 1922), VII, 27-29.

⁴ LONDON TIMES, October 24, 28, 1921; January 3, 4, 9, 10, 11, 13, 1922; THE LAW TIMES, January 7, 14, 1922, CLIII, 1-2, 17.

⁵ NEW YORK TIMES, March 15, 19, 1922; JOUR. OF THE AMER. BAR ASSOC. (June 1922), VIII, 326; PAUL J. THOMPSON, *Shall the Grand Jury In Ordinary Criminal Cases be Dispensed With In Minnesota?* MINN. LAW REV. (June 1922), VI, 616; ROSCOE POUND AND FELIX FRANKFURTER, *CRIMINAL JUSTICE IN CLEVELAND* (Cleveland, 1922), 176, 211-212, 248.

THE GRAND JURY ASSOCIATION

Professional opposition to the inquest of the people did not go unchallenged, however. In 1924 the Grand Juror's Association of New York began publication of the *Panel*, a militantly pro-grand jury periodical. Through its pages, former grand jurors, judges, and prosecutors made clear the importance of the institution. The Association urged grand juries to exercise their full powers as representatives of the people and fought all attempts to make them mere agents of the court. As a result of its efforts grand juries took on a new importance for many citizens.⁶ But, at the same time, a series of crime surveys conducted by criminologists and sociologists sought to impress upon the American people the futility of having a panel of laymen enter a field about which they knew nothing. Crime commissions in Minnesota and New York both recommended broader powers for district attorneys to institute prosecutions. After careful study, experts surveying conditions in Illinois reported that grand juries handicapped prosecutors and delayed justice. In 1928, drafters of the American Law Institute's model Code of Criminal Procedure advised that all prosecutions be begun by information. Only one grand jury a year should meet in each county. They based their recommendation on advantages of speed, economy, and efficiency.⁷ In 1929, Professor Raymond Moley of Columbia University approved increased powers for prosecutors and characterized grand jury investigations as cumbersome and ineffective. Judge Roscoe Pound went even further and warned that inquests of the people constituted "a power needing check."⁸

CRIME SURVEYS

In 1928 the Social Science Research Council commissioned Professor Moley to make a survey to obtain accurate information on the relative efficiency of grand juries and public prosecutors. He and his staff compared criminal justice in three states (in which procedure was on information) with three others in which an indictment was required. Dean Wayne L. Morse of the University of Oregon conducted a poll of judicial opinion. Early in 1931 Moley and Morse released a summary of their findings. They concluded that the evidence showed public prosecutors to be "more efficient, economical and expeditious" than panels of citizen accusers. Moley contended that most grand juries were content to "rubber-stamp" the opinions of the district attorney and thus served to relieve prosecutors of their rightful responsibilities. The Moley survey focused public attention upon the weaknesses of the grand jury system but in so doing, it took into account only the tangible factors in criminal proceedings: speed, economy of operation, and percentage of convictions. Supporters of the jury system refused to agree that efficiency alone was an adequate criterion for justice under a democratic government. For criminal justice deals with people

⁶ ROBERT APPLETON, *What Is An Association*, PANEL (January 1928), VI, No. 1, 1; *Grand Jury Association Notes Its Twenty-Fifth Anniversary*, PANEL (May-June 1937), XV, 15.

⁷ *Report of the Minnesota Crime Commission*, MINN. LAW REV. (January 1927), XI, Supplement, 30; *Report of the Crime Commission, New York Legislative Document No. 23* (1928), VI, 167; THE ILLINOIS CRIME SURVEY (Chicago, 1929), 218, 298-299; AMER. LAW INST. CODE OF CRIMINAL PROCEDURE (1928), sec. 113-114.

⁸ RAYMOND MOLEY, *POLITICS AND CRIMINAL PROSECUTION* (New York, 1929), 127-128; ROSCOE POUND, *CRIMINAL JUSTICE IN AMERICA* (New York, 1930), 109, 186-187.

and the number and speed of convictions does not necessarily indicate a superior system.⁹

Proponents of the grand jury rushed to answer Professor Moley. John D. Lindsay, a former New York district attorney, reminded the experts of what they seemed to have forgotten: that "the grand jury is the public and they have a right to investigate any evil condition of a criminal nature." United States District Attorney George Z. Medalie warned that the grand jury "breathes the spirit of the community" as no prosecutor could ever do.¹⁰ Others charged Moley with bias in interpreting his statistics and drew vastly different conclusions from the survey data. They maintained that grand juries were far from being "rubber-stamps" and caused little delay in criminal trials.¹¹

Shortly after Professor Moley made his findings public, the commission headed by George W. Wickersham submitted its recommendations on law enforcement to President Hoover. They advised abolishing grand juries on the ground that they served no useful purpose and impeded criminal courts. Thinking only in terms of efficiency, the commission viewed the grand jury as a "mitigating device and opportunity for escape" for criminals.¹²

SUCCESS OF GRAND JURIES

While experts in the United States flayed the system for its inefficiency, their English counterparts continued their efforts to abolish it. The depression came to their aid as the war had done in 1917, and made arguments of economy very appealing. In January 1930 the Lord Chief Justice observed that grand juries no longer served any useful function. Other jurists followed suit and called for an end to expensive juries in view of "the grave national emergency." Gradually, anti-jury forces impressed upon the depression-pinched English people the fact that great savings in tax money could be expected if they abandoned the system.¹³ A Commission of the House of Commons studied the matter and reported in favor of eliminating grand juries. The commissioners emphasized the burden of jury duty and the great expense of the system. Parliament accepted the recommendations of the special commission and abolished grand juries in England, effective September 1, 1933.

⁹ RAYMOND MOLEY, *The Initiation of Criminal Prosecutions by Indictment or Information*, MICH. LAW REV. (February 1931), XXIX, 403-431; WAYNE L. MORSE, *A Survey of the Grand Jury System*, OREG. LAW REV. (February, April, June 1931), X, 101-160, 217-257; 295-365.

¹⁰ *Analysis of the Moley Survey*, PANEL (March-April 1931), IX, No. 2, 14; JOHN D. LINDSAY, *Grand Juries As The People, A Reply To Professor Moley*, PANEL (March-April 1931), IX, No. 2, 1; GEORGE Z. MEDALIE, *Grand Juries Value*, PANEL (March-April 1931), IX, No. 2, 16.

¹¹ Excellent and thorough criticisms of Professor Moley's conclusions may be found in: JEROME HALL, *Analysis of Criticism of the Grand Jury*, JOUR. OF CRIM. LAW AND CRIMINOL. (January 1932), XXII, 692-704; GEORGE H. DESSON, *Indictment To Information*, YALE LAW JOUR. (December 1932), XXXXII, 163-193.

¹² *Report on Prosecution of the National Commission on Law Observance and Enforcement* (1931), 34, 124.

¹³ *Lord Hewart On Grand Juries*, THE SOLICITOR'S JOUR. (January 25, 1930), LXXIV, 47; *Suspension of the Grand Jury System*, THE LAW TIMES (October 3, 1931), CLXXII, 252; *Grand Juries and Quarter Sessions*, LAW TIMES (January 23, 1932), CLXXIII, 61-62; *Grand Juries*, LAW TIMES (March 5, 1932), CLXXIII, 166.

Magistrates and others throughout the island who disliked seeing an end to the system, awoke only in time to deliver panegyrics over the corpse. During the spring and summer of 1933 they expressed their displeasure in grand jury charges and filled the columns of the *Times* with protests, but all to no avail. Professor W. S. Holdsworth castigated "the bureaucrats of Whitehall . . . and the lawyers who think with them" for establishing their own form of tyranny over the nation. It was only natural, Holdsworth observed, that they "should instinctively dislike anything which independently safeguards liberty." A national emergency finally accomplished what legal reformers had tried to do for over a century. The grand jury in England "succumbed to an acute onset of depression."¹⁴

Grand juries themselves contributed greatly to the campaign to revitalize the institution. Their spectacular exploits captured the public imagination and led citizens of city after city to use this weapon against government by corruption. Americans could not help seeing the importance of having panels of citizen investigators when they watched a fearless grand jury in action. In April, 1933, a panel of citizens in Atlanta, Georgia, threatened to indict the county commissioners if they did not institute reforms. Judge John D. Humphries, speaking for the five judges on the Atlanta bench, rebuked the jurors for departing from their duties. He reminded them that they were mere agents of the court and would be "as helpless as a body of citizens meeting on a street corner" without the power of the court behind them. The jurors rebelled and demanded a new prosecutor and judge to work with, but the court denied their request. Before they adjourned, however, the jurymen indicted the county commissioners and appointed five citizens to conduct a thorough probe of the Municipal and Superior Courts and report to the next grand jury. The attack of Atlanta judges upon the powers of the local grand jury led residents to organize a grand juror's association to encourage future panels to uphold their rights.¹⁵

In October, 1933, a Cleveland, Ohio grand jury began a probe of the city police department. Led by its energetic and fearless foreman, William Feather, the panel spent three months in investigation and issued a report which shocked the people of Cleveland. The jurymen announced that the entire city had been intimidated by union racketeers who received protection from city officials. They denounced law enforcement officers and declared that the local criminal court "neither merits nor receives the respect or confidence of the people." The jurors noted that the talent of the prosecutor's office was well "below par" and they chided the Cleveland Bar Association for its lack of concern in the matter. Before concluding its report, the grand jury reminded jurors throughout the state of Ohio that they, too, could initiate independent investigations. The succeeding Cleveland grand jury began a thorough inquiry into the defunct Guardian and Union Trust Companies. Indictments

¹⁴ *Report of the Business of the Courts Committee, House of Commons Reports, (1932-1933), X, 14-19; London TIMES, March 9, 16, April 27, May 24, 27, June 14, 20, 28, July 5, 13, August 3, 1933; 23 & 24 Geo. V, c. 36 (1933), The Administration of Justice Act; ALBERT LEICK, Abolition of the Grand Jury in England, JOUR. OF CRIM. LAW AND CRIMINOL. (1935), XXV, 623-625.*

¹⁵ *ATLANTA CONSTIT., April 15, 19, 20, 21, 22, 25, 28, 29, 1933; CHARLES H. TUTTLE, Grand Juries By Exercising Their Initiative Can Put Fear Into Criminals and Unfaithful Public Servants, PANEL (March-April 1933), XI, 13; PHIL C. MCDUFFIE, Fulton County, Georgia Grand Jurors Assert Independence, PANEL (November-December 1933), XI, 31.*

followed against officers of both for fraud. In October, 1934, citizens of Cleveland followed the example of those in Chicago and Atlanta and organized a grand juror's association to preserve the rights of their investigative body.¹⁶

In New York, it took a fighting body of grand jurors to combat the hampering tactics of city officials and to mobilize public opinion for a thorough investigation of rackets. The March, 1935, grand jury took up a probe of policy rackets begun by a predecessor. It soon broke with District Attorney William C. Dodge and began summoning its own witnesses. Foreman Lee Thompson Smith took charge of the inquiry and demanded that the District Attorney appoint a special prosecutor. Racketeers threatened jurors and their investigators but they continued their work. When Dodge and the panel could not agree, the jurors asked the court to discharge them and they appealed to Governor Herbert Lehman to summon an extraordinary grand jury and appoint a special prosecutor.¹⁷ Governor Lehman named Thomas E. Dewey as special racket prosecutor and summoned a new panel to convene September 5, 1935. During the next four months the special jury examined over five hundred witnesses as they investigated racketeering in labor unions and trade and protective associations. In December 1935 the panel returned twenty-nine indictments, reporting that control over racketeering in New York City centered in the hands of a dozen or so major criminals who extorted millions from the city each year. A second extraordinary grand jury took up the racket probe in January, 1936. It uncovered a \$12,000,000 prostitution racket and put vice lord Charles "Lucky" Luciano and his lieutenants on the road to prison. When the court discharged the panel in August, 1936, after seven months of service, it had broken the back of organized racketeering in New York City.¹⁸ Persons all over the United States followed the exploits of Prosecutor Dewey and his "racket busting" grand juries.

The example of New York gave a tremendous impetus to the work of laymen trying hard to revitalize the system. Beginning in September, 1937, a Philadelphia grand jury conducted a seventeen month crusade against vice and racketeering patterned after the Dewey investigations. In May, 1938, the jurors charged 107 persons with gambling and prostitution and accused police officials of accepting bribes to give immunity to criminals. The panel called for immediate dismissal of forty-one police officers on grounds of inefficiency and dishonesty. The jurors reported to the people of Philadelphia again in August, 1938, and charged city and county officials with a "criminal conspiracy" to protect crime and vice. In September they indicted Mayor S. Davis Wilson, on twenty-one counts, of misbehavior in office and failure to suppress crime. But the Mayor managed to have the indictments quashed

¹⁶ CLEVELAND PLAIN DEALER, October 10, 14, 24, November 3, December 22, 1933; February 2, April 3, 14, October 23, 1934; *Ohio Grand Jury Report Starlles Country*, PANEL (January-February 1934), XII, 11; WILLIAM FEATHER, *Foreman Tells Why Criminals Fear Action By Grand Jury*, PANEL (March-April 1934), XII, 17.

¹⁷ NEW YORK TIMES, March 12, June 4, 5, 7, 9, 11, 1935; ROBERT B. WILKES, *A History Making Grand Jury*, PANEL (September-October 1935), XIII, 1.

¹⁸ NEW YORK TIMES, December 27, 1935; July 1, August 11, 1936; L. SETON LINDSAY, *Extraordinary Grand Juries*, PANEL (March 1936), XIV, No. 1, 3; *Dewey Grand Jury Strikes At Rackets*, PANEL (May-June 1936), XIV, No. 2, 6; *Grand Juries Active in Presentments To Court*, PANEL (November-December 1936), XIV, No. 3, 4.

on a technicality. In order to prevent further exposures by the grand jury, state officials withdrew financial support and the Philadelphia court discontinued the investigation. The jurors charged that the move was but "the culminating act of a long continued opposition which has crippled our work," and they appealed directly to the state Supreme Court which allowed them to continue their inquiry. Free to go ahead once more, the panel lashed out at the District Attorney, accusing him of using the vice investigation for political purposes. The jurymen demanded a complete reorganization of the Philadelphia police department, including dismissal of incompetent officers and reapportionment of police districts to end the influence of politicians. They concluded their work in March, 1939, by re-indicting Mayor Wilson, accusing him of permitting vice and crime to flourish, while he issued blasts of meaningless words.¹⁹

Investigations in other communities advertised effectively the capabilities of an alert grand jury, also. In Buffalo, New York, a special panel exposed bribery and fraud in the municipal government. Seventeen city officials faced trial for perjury and bribery. A Miami, Florida, inquest found that bribery had played an important part in establishing electric rates for their city, and they indicted Mayor Robert R. Williams, several councilmen, and other municipal officials. After a two month investigation of city affairs, the jurors condemned the police department for protecting criminals and criticized a newly instituted program to refund the city debt. Members of the jury did not cease to be concerned after they completed their work. As private citizens they inaugurated a recall movement which eventually removed Mayor Williams from office. At Greensboro, North Carolina, a grand jury initiated an inquiry into a primary election. In spite of determined opposition from the court, it discovered and reported many irregularities to the people.²⁰

Opposition to investigations frequently developed when grand juries threatened to expose prominent officials and upset the balance of political power. In April, 1938, Pennsylvania politicians were engaged in a heated primary election struggle. Dissident elements within the Democratic party leveled charges of corruption and fraud against the Democratic administration of Governor George H. Earle. The district attorney at Harrisburg petitioned for a special grand jury investigation and the Court of Quarter Sessions summoned a panel. Governor Earle took to the radio and in an address to the people of Pennsylvania charged that the proposed probe was "a politically inspired inquisition, to be conducted by henchmen of the Republican State Committee." Two days before the inquiry was to begin, the Attorney General asked the state Supreme Court to restrain the grand jury from beginning an investigation but, the high court declared that it had no such power. The panel prepared to convene early in August. On July 22, 1938, when it appeared that the administration had exhausted all efforts to block the inquiry, Governor Earle summoned an extraordinary session of the state legislature "to repel an unprecedented judicial invasion of the executive and legislative branches of our

¹⁹ NEW YORK TIMES, February 6, May 5, 14, August 18, November 20, 24, December 2, 28, 1938; March 2, 3, April 7, 1939; Shenker vs Harr, 332 *Penna State Reports* 382 (1938); Commonwealth vs Hubbs, 137 *Penna Superior Court* 229 (1939).

²⁰ NEW YORK TIMES, January 9, 11, 18, 25, February 2, April 15, 1938; March 2, 1939; FRANK C. MILLER JR., *Grand Juries—Independent Investigations*, N. C. LAW REV. (1938), XVII, 43.

government." Three days later, he stood before the law makers and warned them that "the Inquisition and the Bloody Assizes . . . stand as grim reminders of judicial tyranny." The Governor charged the judges and the District Attorney with abusing their authority and asked the legislature to look into their conduct. He then requested legislation to block the threatened grand jury probe.

The Democratic legislators rushed through a retroactive law suspending all investigations of public officials once the House of Representatives had taken jurisdiction and begun an inquiry. They also empowered the Attorney General to supersede any district attorney. A House committee launched an immediate investigation, but the court impounded all evidence awaiting the grand jury. Again the matter went to the Supreme Court. In October, 1938, it declared unconstitutional the law restricting investigations and reminded the legislators that they could not abolish the grand jury.²¹

The example of public officials going to any length to prevent a panel of citizens from investigating, led New Yorkers to strengthen their grand jury system. Rallying behind the slogan, "What happened in Pennsylvania can happen here," the constitutional convention meeting at Albany in 1938 made certain that the grand jury would remain the people's shield against official corruption. A new clause added to the state constitution provided that inquiries into official misconduct could never be suspended by law. In addition, all public officers summoned before grand juries had to testify without immunity or be removed from office.²² Pennsylvania's Governor Earle failed in his attempt to dictate to grand juries. Shortly after his defeat at the hands of the state Supreme Court, a panel of citizens investigated the state government and indicted Secretary of Highways Roy E. Brownmiller on charges of using \$600,000 in state funds for political purposes.²³

The Pennsylvania lesson did not go unheeded in other states. Citizen's groups in Washington in June, 1941, succeeded in getting the state legislature to approve a constitutional amendment making one grand jury a year mandatory in each county. In addition, the amendment would bar prosecuting attorneys from advising grand juries. Special prosecutors conducted a vigorous campaign against the proposals and managed to defeat them in a referendum held in November, 1941. Citizens of Missouri were more successful. The convention which met in 1943 to revise the state constitution inserted a specific provision that the power of grand juries to investigate misconduct in public office should never be suspended.²⁴

The growth of dictatorship abroad and United States entry into the second World

²¹ NEW YORK TIMES, July 26, August 8, 11, 1938; *Dauphin County Grand Jury Investigation*, 332 Penna State Reports 290, 342 (1938); *Laws of the General Assembly of Pennsylvania, Extraordinary Session* (1938), 18-19, *Legislative Interference With the Grand Jury*, HARV. LAW REV. (1938), LII, 151-153; *Power of the Legislature to Suspend Grand Jury Investigations*, COL. LAW REV. (December 1938), XXXVIII, 1493-1501.

²² NEW YORK TIMES, August 8, 11, 1938; JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK (Albany, 1938), 248; Article I, sec. 6, of the New York Constitution as revised in 1938.

²³ *Commonwealth vs Brownmiller*, 141 Penna Superior Court 107 (1940).

²⁴ *Session Laws of the State of Washington* (1941), 436-437; EWEN C. DINGWALL, *Independent Grand Juries Opposed In Washington State*, NAT. MUNIC. REV. (June 1941), XXX, 374; *Journals of the Constitutional Convention of Missouri* (Jefferson City, 1944), III, 13.

War convinced many thinking Americans that institutions which protected the rights of the people were not outmoded. Fear of executive tyranny and infringement of individual liberty gave a new importance to the inquest of the people. Those who had previously called for abolition of the grand jury for reasons of economy and efficiency now remained strangely silent. They did not reply when Governor Dewey denounced "the bright young theorists, the fuzzy minded crackpots and others of less idealistic purpose who would like to see the grand jury abolished;" or when Judge Francis Martin of New York dismissed charges that juries were rubber-stamps, "as the rantings of inexperienced and highly theoretical professors." With war and other threats to freedom close at hand, mere efficiency made less appeal. It became apparent to many persons that the grand jury was more than a means of bringing individuals to trial. It was an integral part of the American democratic government.²⁵

GRAND JURIES IN A DEMOCRATIC GOVERNMENT

Successful as grand juries have been in speaking out against abuses, there still remain threats to their existence as the spokesman of the people. Opponents of the grand jury in New York put a bill through the state legislature in 1946 prohibiting juries from making presentments or otherwise censuring persons for misconduct which did not constitute a crime. The Grand Jury Association of New York, metropolitan newspapers and civic and business groups conducted a vigorous campaign to have Governor Dewey veto the measure. They pointed out that the grand jury was the only local body which could effectively reprimand lax and indifferent public officials. Requests to veto the bill poured into Albany. In his veto message, Governor Dewey warned legislators that the power of grand juries should not be impaired and that they should remain "the bulwark of protection for the innocent and the sword of the community against wrongdoers."²⁶

Legislative restrictions upon grand juries are not the only threat to their survival. Legislative investigating committees have intruded upon the work of the grand inquest and have tended to replace them. The rules of evidence and other traditional safeguards which control the deliberations of a grand jury do not exist to protect witnesses before Congressional committees. Federal Judge Simon H. Rifkind reminded New York grand jurors in 1947 that legislative investigators constituted "a dangerous tendency" which juries could combat only by increased attention to their responsibilities.²⁷ In 1950 the grand jury of Merrimack County, New Hampshire, investigated a large public utility company. At the conclusion of the probe a committee of the state legislature sought to question the jurors on their deliberations. Members of the panel refused to testify however, and the state Supreme Court

²⁵ THOMAS E. DEWEY, *Grand Jury, The Bulwark of Justice*, PANEL (May 1941), XIX, 3; FRANCIS MARTIN, *Grand Jury Must Be Just, Free and Fearless*, PANEL (May 1941), XIX, 8; LAMAR HARDY, *Grand Juries*, PANEL (November 1941), XIX, No. 2, 5; H. L. McCLINTOCK, *Indictment by a Grand Jury*, MINN. LAW REV. (January 1942), XXVI, 153-176; MARTIN H. WEYRAUCH, *Grand Jury, A Bulwark Against Tyranny of Dictatorship*, PANEL (December 1942), XIX, No. 2, 5; FRANK S. HOGAN, *Advice to Grand Jurors in the Present World Crisis*, PANEL (March 1942), XX, No. 1, 3.

²⁶ NEW YORK TIMES, March 3, 14, 15, 19, 27, April 4, 1946.

²⁷ NEW YORK TIMES, October 8, 1947.

upheld them. It warned the law makers that they had no power to interrogate grand jurors regarding their investigations.²⁸

Legislative investigators are not alone in encroaching upon the field of grand juries. In some states experts have already supplanted citizen panels for inquiries into official misconduct. This has been accomplished by setting up substitutes to take over the tasks normally performed by grand juries. Three states, Michigan, New Hampshire and Connecticut have created "one man grand juries" consisting of a magistrate empowered to launch investigations, summon witnesses and return indictments. This innovation has followed as a logical step in the process of excluding the people from law enforcement activities. In other states, legislatures have given judges powers similar to those of a grand jury, enabling them to conduct "John Doe" hearings to determine whether crimes have taken place. However efficiently magistrates may exercise their newly acquired authority, it is not in line with democratic procedure to destroy an investigating body composed of representative citizens and then delegate its broad inquisitorial powers to public officials.²⁹

Abolition of the grand jury leaves a void in local government which can be filled only by increasing the authority of judges and prosecutors. Substitution of a preliminary hearing by a committing magistrate has found the judge lacking in authority to perform properly the functions of a grand jury. Magistrates possess no power to launch investigations where specific charges have not been made. The system of giving district attorneys the authority to bring the persons to trial upon an information places too much power in the hands of the prosecution. In addition, under the information system the broad inquisitorial powers of the grand jury are lost. A prosecuting attorney may inquire into wrongdoing, but he lacks subpoena powers to compel the attendance of witnesses and the production of documents. Grand juries on the other hand may issue their own subpoenas for witnesses and records. They may cite recalcitrant witnesses for contempt and bring perjury charges against persons who refuse to tell the truth. They hear all testimony in secret and may indict or refuse to indict as they see fit. No power can influence them and panel members cannot be sued for libel for material contained in presentments or indictments. In most states which have abandoned the grand jury, it is held in reserve at the call of a judge, for instances of widespread violation of the law. But when this is done the procedure for summoning a grand jury is soon forgotten. Panels which must be specially called by a judge are not readily available to the people.³⁰

The work of grand juries may be improved by selecting competent individuals to serve as jurors. It is important that political faction within a community do not dominate the selection of grand jurors and use panels for partisan purposes. In some

²⁸ *Opinion of the Justices*, 96 N.H. 530 (1950).

²⁹ PLENY W. MARSH, *Michigan's One Man Grand Jury*, JOUR. OF THE AMER. JUDICA. SOC. (December 1924), VIII, 121-123; WILLIAM P. LOVETT, *One Man Grand Jury In Action*, NAT. MUNIC. REV. (June 1944), XXXIII, 292-294.

³⁰ MORDECAI KONOWITZ, *The Grand Jury As An Investigating Body of Public Officials*, ST. JOHN'S LAW REV. (April 1936), X, 219-294; WILLIAM FEATHER, *Foreman Tells Why Criminals Fear Action by Grand Jury*, PANEL (March-April 1934), XII, 17; GEORGE H. DESSON AND ISADORE H. COHEN, *The Inquisitorial Functions of Grand Juries*, YALE LAW JOUR. (March 1932), XXXXI, 687-712.

states jury commissioners have replaced sheriffs and other officials in choosing grand juries and they have done much to remove the procedure from politics. In New York City, county jury boards maintain a list of persons qualified to serve on grand juries. Any citizen may ask to be included on the list, but the board attempts to obtain a representative cross section of the community.³¹

It is not enough to secure capable individuals to serve on grand juries. They must also be persons who understand their great responsibility and realize their tremendous powers for good. Jurors who perform their work in a routine and superficial manner betray the public interest and reflect upon the institution as a whole. They must take the initiative and remain independent of both court and prosecutor. They should not wait for the district attorney to lay cases before them. Judges have been partly to blame for grand jurors not understanding the extent of their powers. Many judges have intimated to juries that they were limited to considering matters suggested to them by the court or the prosecutor. They often fail to inform jurors of their power to launch investigations on their own initiative. Such practices have made many grand juries unwitting rubber stamps. Unless juries know and exercise their powers in the public interest and refute the arguments of those who wish to abolish them, they will sacrifice the confidence of the American people.³²

As an instrument of discovery against organized and far reaching crime, the grand jury has no counterpart. But, in spite of its broad investigating powers, legislation is needed in most states to strengthen the people's weapon by giving grand juries greater freedom to act. They often find themselves in the embarrassing position of being dependent upon the police department for evidence and the public prosecutor for legal advice. Juries should have the authority to employ investigators, expert accountants and separate counsel if they see fit.³³ In large cities regular grand juries are frequently kept too busy with routine criminal matters to have sufficient time to supervise the conduct of public officials. Where this is true it would be a tremendous advance in the fight against racketeering and corruption to have special panels meet at stated intervals to guard against abuses in government.

If Americans are to take full advantage of the opportunity offered them by their grand juries, to make government more responsible, every citizen must know what grand inquests are and what they can do. Toward this end, associations of grand jurors have conducted vigorous educational campaigns and alert juries have demonstrated their value. But, there is a need for more widespread information on the importance of the institution to democratic government, to counteract the preachings of those who would restrict or abolish the people's panel. In states which have abandoned the grand jury, few persons realize the importance of their loss.³⁴

Today, the most important aspects of the grand jury are its democratic control

³¹ MANUAL FOR GRAND JURORS IN THE CITY OF NEW YORK (New York, 1948), 4-6.

³² E. J. DAVIS, *Grand Jurors Federation of America*, PANEL (May-June 1932), X, 30-31; *The Grand Jury*, JOUR. OF CRIM. LAW, CRIMINOL. AND POL. SCI. (May-June 1953), XXXIV, 64.

³³ *Grand Jury Contracts*, MINN. LAW REV. (December 1922), VII, 59; JOUR. OF CRIM. LAW, CRIMINOL. AND POL. SCI., XXXIV, 61-62.

³⁴ The educational program of the Association of Grand Jurors of New York County is set forth in PANEL (February 1950), XXIV, 5; See also C. C. MASON, *Value and Importance of Grand Juries*, ALA. LAW. (October 1950), XI, 473-477.

and its local character. Governmental power has to a large extent replaced all other threats to democracy in the United States. The increasing centralization of governmental authority and the growth of a huge bureaucracy in no way responsible to the people, has made it vitally necessary to preserve the grand jury. It often serves as the citizen's only means of checking on political appointees or preventing illegal compulsion at the hands of zealous law enforcement officials. At a time when centralization of power in Washington has narrowed the area of democratic control, grand juries give the people an opportunity to participate in government and make their wishes known. In 1951, the Kefauver Crime Investigating Committee warned Americans not to rely upon the central government to control racketeering and organized crime in the United States. The Committee advised the people to use their local grand juries to attack conditions in their own communities.³⁵ Citizen panels have demonstrated repeatedly in the past that they could protest effectively in the name of the people against centralized authority. Today, grand juries remain potentially the strongest weapon against big government and the threat of "statism."

³⁵ THIRD INTERIM REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE, *Senate Report No. 307 82* Congress, 1 session (1951), 3.