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LEGAL METHODS FOR THE SUPPRESSION OF ORGANIZED CRIME (A SYMPOSIUM)

Organized crime is a vital problem in the field of law enforcement. Because of the nature of its various forms of activity, the suppression of organized crime presents difficulties not ordinarily encountered in other areas of criminal conduct. In this and subsequent issues of the Journal, a series of articles will examine these problems and the legal remedies available for their solution.

The existence of organized crime in any community requires the co-operation of the local police or prosecutor. The legal methods for the prosecution or removal from office of such corrupt officials will be discussed in the first paper of the present symposium: “Legal Remedies Against Corrupt Law Enforcement Officers”.

Where the primary law enforcement officials fail to perform their duties, effective methods of enforcement must be found. This problem will be analyzed in the second and third papers: “The Investigative Function of the Prosecuting Attorney”; and “Circumventing the Corrupt Prosecutor: Supercession by the State Attorney General and the Appointment of a Special Prosecutor.”

Apart from the problem of official corruption, the usual forms of criminal prosecution often have been found ineffective in permanently eliminating organized gambling and vice. Alternative devices must therefore be employed. The fourth of the symposium paper, entitled “The Use of Equitable Devices to Suppress Organized Crime”, will consider the mechanics and availability of the use of the injunction and other equitable remedies where the usual legal remedies have proved inadequate. The fifth and concluding paper, “Indirect Control of Organized Crime Through Liquor License Revocation”, will examine this tactic as a substitute for direct criminal prosecution.

Warren L. Swanson*

Legal Remedies Against Corrupt Law Enforcement Officers

ARTHUR BULLER

The chief source of revenue for organized crime is gambling.1 This form of vice requires public patronage; for this reason, the police generally are aware of the existence of such illegal activity.2 The public will not patronize gambling houses unless there is some assurance of freedom from interference by the police.

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2 Id., at 184.
Consequently, criminal elements have centered their activities mainly in those areas in which they have achieved, or are able to achieve, official immunity from legal process. The basic problem thus presented is how to sever this corrupt connection between law enforcement officers and organized crime.

The corrupt official, from the public prosecutor to the policeman on the beat, is subject to penal sanctions for misconduct in office, a criminal offense, and to a civil removal action where he has failed to perform the obligations of his office. The fundamental obligations of law enforcement officials have been divided into two classifications: discretionary duties and ministerial duties, with different standards for each. A determination of the remedies available against a particular official, including the prosecutor himself, requires a consideration of the character of his functions, i.e., whether they are discretionary or ministerial.

**Nature of the Prosecutor's Office**

Since the foremost obligation of the prosecutor is to enforce the law through prosecution of its violators, if the criminal elements can control his office, they are in a position to frustrate such enforcement. Under the various state statutes, the prosecutor theoretically should use the machinery of his office whenever he has reason to believe that crimes have been committed by particular individuals. As a practical matter, however, his obligation to initiate prosecution is discretionary. In other words, the prosecutor, in the exercise of his general duty of prosecuting violators of the law, has a very broad, vaguely limited discretion to pursue that course of action which seems right to him under the circumstances. His discretion apparently is not subject to review so long as it is founded upon a good faith effort to enforce the laws. The actual application of this discretion to a particular case is controlled neither by law nor by the courts; the prosecutor selects the person and the time to prosecute.

An example of the difficulty encountered by the courts in trying to pin down the legal meaning of the word “discretion” is found in State v. Wallach, 353 Mo. 312, 182 S.W.2d 313 (1944). The court there ascribed to the prosecutor the discretion to “act officially in such circumstances, upon each separate case, according to the dictates of his own judgment and conscience uncontrolled by the judgment and conscience of any other person, such discretion to be used in accordance with established principles of law...” Query, if the prosecutor must act in accordance with “established principles of law,” is it really true that he can act upon each case guided by his own judgment and conscience and without outside influence?

The Wallach case highlighted another difficulty in this matter of discretion. The court said that the prosecutor may in good faith (but not arbitrarily) exercise his discretion with respect to when, how and against whom to initiate criminal proceedings. When is performance, or the lack of it, in good faith; or the converse, when does it indicate bad faith, or arbitrariness?

Where a prosecutor was shown to have failed completely in commencing any prosecution for violation of gambling laws, even after having full information about the conditions, it was held that he had been guilty of bad faith and arbitrariness in the use of his discretion. The court found that “He had made no attempt whatsoever to perform his duties as prosecuting attorney” and that he “never reached the point of even pretending to exercise discretion.” McKittrick v. Wymore, 345 Mo. 169, 132 S.W.2d 979, 986 (1939). In McKittrick v. Graves, 346 Mo. 990, 144 S.W.2d 91 (1940), it was held that the prosecutor-defendant willfully and unlawfully failed to properly enforce liquor control laws, where there was continuous long existing conditions of flagrant and notorious gambling, prostitution, and illegal sale of intoxicating liquor, frequently commended upon by the press. The prosecutor had made no attempt to prosecute, claiming that, since the police did not attempt any enforcement, he was excused from doing so.

7 See, e.g., Leone v. Fanelli, 87 N.Y.S.2d 850 (1949). In the Fanelli case, an attempt was made to compel the local district prosecutor to “forthwith and diligently prosecute the indictment against one Frank Smith...” The court pointed out that it was...
In formulating his decision whether or not to prosecute, the prosecutor may be influenced by one or more of the following considerations: Will prosecution be a waste of time? Will it be unduly expensive to the state? What are the chances of obtaining conviction? Are there extenuating circumstances? Will there be unfavorable political reverberations, both as to himself and his party or associates? Was the law that was violated an "undesirable" one? If the offender is a friend, the prosecutor may feel an indictment a poor way to repay friendship. Though not all of these considerations are proper elements of discretion, they are of such a personal nature as motivating factors that their presence in the mind of the prosecutor, without more, will not serve as a basis for judicial sanction against the prosecutor. Such considerations are practical elements of his discretion.

In addition to his ability to refuse to initiate prosecution, the corrupt prosecutor can in many instances effectively forfeit a conviction by underplaying his role in criminal investigations. Generally, by the time a case has progressed to the point where it is ready for trial, most of the evidence has been collected. Any additional necessary investigations are usually of a supplementary nature, and the prosecutor must conduct these in order to have the strongest possible case. A problem is presented, however, where the prosecutor has merely a complaint that a crime has been committed, or that some individual or group is carrying on a particular form of criminal activity. The question thereby presented resolves itself into two alternatives: 1) Is the prosecuting attorney only a lawyer for the state who presents to a court or grand jury the evidence obtained by others concerning the crime and the alleged guilty?; or 2) Does he have the broader duty of independently gathering the evidence? Unfortunately, most state statutes fail to assign to the prosecutor any precise duties in the institution of criminal investigations. The haziness in respect to the investigative powers, their extent and use, has been partially responsible for the failure of criminal indictments against inefficient or corrupt prosecuting attorneys. The corrupt prosecutor, when challenged to justify his laxity in the investigation of complaints, usually will defend his actions on the hypothesis that he lacks any positive investigative duty.

A prosecutor linked with organized crime has

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8 Ploscowe, ORGANIZED CRIME, 219 (1952).
10 See the second one of the present series of articles, on prosecutor's investigative powers.
11 Ploscowe, ORGANIZED CRIME, 247 (1952).
12 Id., at 249. See also note 10 supra.
13 Even where statute assigns the prosecutor the general duty to investigate in preparation to bringing an indictment against an offender, it must be taken into consideration that judicial interpretation of the statutory provision may nullify in part or in whole the legislative purpose. In State v. Wallach, 353 Mo. 312, 182 S.W.2d 313 (1944), for example, the prosecutor was charged with the statutory duty to investigate, i.e., to inquire into the matter with care and accuracy, examine available evidence in each case, the law and the facts and the applicability of each to the other, and intelligently weigh chances of successful termination of prosecution, having in mind the relative importance to the county he served of different prosecutions he might initiate. The court held that the legislature really did not intend to saddle the prosecutor with the personal obligation of undertaking investigations, but intended instead merely to hold him responsible along with other law enforcement officials for having the work done by somebody. Such a judicial outlook, combined with the inherently discretionary nature of the prosecutor's functions, increases the difficulty in successfully prosecuting the official for failing to initiate investigation of complaints.
a potent weapon with which to defeat justice in the "bargain and compromise." By this discretionary procedure, a prosecutor may collaborate with the defense attorney and arrange for a plea of guilty, sometimes to the offense charged, but very frequently to a lesser offense. There are numerous instances in which the device serves a valid purpose; however, the peculiar adaptability of this strategem to criminal abuse should subject it to close scrutiny. Through an intermediary usually referred to as a "fixer," a defendant may make a proposal to the prosecutor advising that he will agree to plead guilty to a lesser offense than the one charged. There have been frequent occasions when the plea thus accepted, and the punishment which was imposed, were trivial in comparison to the severity of the crime committed.

Bargain and compromise are the usual result of law violations. Justice usually is futile in trials. The smart defendants usually get the best possible deal with the prosecution and then pay off. Our procedure has its faults. Juries often err and the human element in verdicts make any jury case a matter of uncertainty. One of the twelve may hold out and defeat justice. Moreover, the prosecutor must face as well the possibility of uncertain sentences if he goes to trial. If he were offered the acceptance of a four-year term by the defense, goes to trial and only wins a three-year term, the state suffers a double loss. The farther a case goes, the more uncertain it becomes. Contrary to the usual view, the prosecutor who is a shrewd bargainer adds to the certainty of the law. The good prosecutor tries his strong cases but he always bargains with his weak ones.


The decision to take a plea of guilty in a particular case lies, as a practical matter, within the discretion of the prosecutor, whether his motives be good or bad. Theoretically, courts can refuse to accept the pleas which are offered. The courts, however, are heavily dependent for information upon the prosecutor and are ineffective in supervising the taking of pleas. Furthermore, the judge cannot order prosecution of the greater offense. Consequently, as a general rule, the plea offered by the prosecutor is accepted by the court.

Armed with the power to employ the "bargain and compromise," the dishonest prosecutor can thus attain for himself a measure of respect in the community by securing an impressive number of convictions, and at the same time serve the cause of organized crime by the anemic nature of the punishments meted out. If, for instance, grand larceny has been committed, the corrupt prosecutor may agree to accept a plea of guilty to the offense of petit larceny; hence, the prosecutor will have a conviction added to his record and the offender will have received an illegal favor. To ameliorate the evils of the prosecutor's practically unrestrained discretion in using the "bargain and compromise," it has been suggested that a full hearing should be held on every request that a "plea to the lesser offense" be entered; and that some method should be devised to indicate to the court that a conviction cannot be expected on almost certain to have in the background, particularly in Cook County, a session of bargaining with the state's attorney. If the prisoner is charged with a severe crime, which for some reason or other he does not care to fight, he frequently makes overtures to the state's attorney to the effect that he will plead guilty to a lesser crime than the one charged.... These approaches, particularly in Cook County, are often made through another person called a "fixer".... We found many cases in which the plea accepted, and the punishment inflicted, seemed trivial in comparison to the magnitude of the crime committed.


the greater charge before it is permitted to be abandoned.\textsuperscript{19}

In addition to his authority to compromise, the criminally-influenced prosecutor can "throw" many cases by use of the common law motion \textit{nolle prosequi}, or similar motion to dismiss the indictment.\textsuperscript{20} This motion gives the prosecutor effective control over the progress of criminal proceedings. It is within his discretion to dismiss an indictment or refuse to prosecute. It has been held that a court is powerless to prevent the entry of the order \textit{nolle prosequi}, and that it may be entered without leave of court.\textsuperscript{21} In federal practice, if an order dismissing the indictment is properly made, the court, in the absence of special statutory authority, has no power to refuse it, unless it can be shown that the refusal to prosecute results from corrupt motives.\textsuperscript{22}

\textsuperscript{19} See \textit{id}, at 791.
\textsuperscript{20} United States v. Woody, 2 F.2d 262 (D. Mont. 1924).
\textsuperscript{21} The court commented that the motion itself is but a form to advise the court that the prosecutor will not prosecute the accused, and to clear the court's records of an abandoned case. \textit{id}, at 264.
\textsuperscript{22} United States v. Brokaw, 60 F. Supp. 100 (S.D. Ill. 1945). In this case, the federal government charged that an order be directed to the district attorney to show cause why an order \textit{nolle prosequi} should not be vacated and the cause reinstated and set for trial. The court held against the government. It said that the control of criminal litigation is a prerogative and power similar to the power to initiate a prosecution and with reference to such control the prosecutor derives his power and duty from the common law, and thus under the common law he may not be required to submit his authority with respect to controlling the litigation in its various stages to the control of judicial discretion or the desires of interested individuals. At common law, prior to trial the prosecutor had the absolute uncontrolled power to enter \textit{nolle prosequi}, and after the empaneling of the jury until the return of the verdict, the power was subject to control of the court, and following the return of the verdict the uncontrolled power of the prosecutor to enter a \textit{nolle prosequi} revives and continues until such time as judgment is entered and sentence imposed.

The court noted that whenever an order of \textit{nolle prosequi} is properly entered, it remains the act of

It has been suggested that the motion \textit{nolle prosequi} gives the prosecutor a power that is especially vulnerable to abuse in large cities, because of a mounting crime rate, lack of a tradition of disinterested public service, and the unhealthful ramifications of political influence.\textsuperscript{23} Several states have sought to remedy this unrestrained power by providing that the prosecutor must obtain court approval for a motion to dismiss an indictment or information.\textsuperscript{24} The unethical use of this common law power of the prosecutor to dismiss indictments may perhaps be circumscribed by a requirement that the court approve a \textit{nolle prosequi} only for "good cause" which decision should be entered in the minutes "with reasons therefor."\textsuperscript{25} Due to the dependency of the court upon the prosecutor for information, and frequently congested dockets, however, such dispositions by the prosecutor usually are final, the prosecuting officer terminating the criminal proceeding, and the court, unless authorized by statute, has no power to enter such an order or direct that such order be entered. The \textit{Brokaw} case held that prosecution or dismissal of all criminal actions in federal courts rests in the honest discretion of the prosecutor, and if from a corrupt motive he prosecutes, or refuses to prosecute, the only remedy is a proceeding to remove him from office or a criminal prosecution.

\textsuperscript{23} The motion \textit{nolle prosequi} is another example of the decay of an institution which flourished successfully under the rural conditions of its origin, but which threatens to become a menace in a great modern city. Where the few criminal cases furnish diversion for the town, where the prosecutor is a marked man among his fellow-citizens, where interest in the crime and the criminals lightens the harvest and shortens the winter evenings, there can be little abuse of the motion. Such checks are lost, however, in the rush and roar of a great city, especially the typical American metropolis, with its mounting crime rate, its lack of a tradition of disinterested public service and the insidious ramifications of political influence.

Cleveland Crime Survey, 328 (1922).

\textsuperscript{24} See Wickersham Commission Report on Prosecution, 98 (1931).

with or without the approval or direction of the court.

**NATURE OF THE POLICE OFFICE**

In contrast to the discretionary nature of the duties of the prosecutor, the duties of the police department are essentially ministerial. The police officer's duty is to execute the mandates lawfully issued by his superiors. His obligation to perform is mandatory rather than permissive. The performance of his duties is not subject to the factor of personal judgment which characterizes the office of the prosecutor.

It is conceivable, however, for a ministerial officer to possess a quantum of discretionary power to look into facts and act upon them without altering the ministerial nature of his office. For example, it has been held that a police superintendent, charged with ministerial obligations in causing the laws of the state to be executed and enforced, is at the same time invested with discretion in the allocation of available resources in the performance of those duties. Where the superintendent is faced with a serious gambling problem, for example, and also other crimes demanding attention, he must take into account the number of men at his disposal, and the relative severity of the various crimes, in deciding what action to take in the performance of his ministerial duties. This discretion in the allocation of men and other resources is a significant factor to be considered in an action against such a police official for misconduct in office.

**REMEDIES—MISCONDUCT IN OFFICE**

There are two forms of judicial sanction against law enforcement officials—civil and criminal. Included in the former are personal remedies, and in the latter criminal sanctions. The former may be applied against minor offenses and the latter against offenses involving serious crimes. The two forms are designed to protect the public from the misconduct of law enforcement officers.


29 A duty is nonetheless ministerial because the person required to perform it is permitted a choice of methods or instrumentalities in its discharge. State v. Howard, 83 Vt. 6, 74 Atl.392 (1909).

If ministerial officers can perform nothing but ministerial acts, then it is hard to conceive of such officer, for some of the acts of every ministerial officer must require the exercise of judgment and discretion, which is the very antithesis of a ministerial act. The ministerial officer may, therefore, very properly be invested with power and authority of a quasi-official character without at all affecting the general classification into which all civil officers are divided.

State v. Ellis, 163 Neb. 86, 77 N.W.2d 809 813, (1956).

Generally, the character of a duty as ministerial or discretionary must be determined by the act to be performed, and not by the office of the performer. Official duty is ministerial when it is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts; that a necessity may exist for the ascertainment of those facts does not operate to convert the police superintendent, charged with ministerial obligations in causing the laws of the state to be executed and enforced, is at the same time invested with discretion in the allocation of available resources in the performance of those duties. Where the superintendent is faced with a serious gambling problem, for example, and also other crimes demanding attention, he must take into account the number of men at his disposal, and the relative severity of the various crimes, in deciding what action to take in the performance of his ministerial duties. This discretion in the allocation of men and other resources is a significant factor to be considered in an action against such a police official for misconduct in office.

30 He may suspect that a person is violating the laws against gambling and yet it may be wise to postpone a raid or an arrest until more evidence is secured, or until other persons concerned may be apprehended. He must work largely through subordinates and it may well be that all police matters cannot be given immediate attention. He may have to decide whether to use his men at a certain time for the suppression of gambling, or for the solution of a murder. If he used his men for other purposes at a certain time, even though he acted in perfect good faith, it would be true that, as the indictment charges, he “did wilfully omit, neglect and refuse to cause the laws of the Commonwealth prohibiting the maintenance...of gambling houses...to be executed and enforced.” Had he used his men in a concerted drive against gambling, he might with equal justice be charged with failing to enforce the law against murder, or some other crime. Obviously this is a case where there can be no crime unless the motive be bad, and all counts of the indictment are insufficient because there is no charge of fraud, dishonesty or corruption.


31 Id, at 621.
Civil remedies, including removal of policemen from their jobs through process of the civil service commission hearing, are more flexible than criminal prosecutions, in that they need not be based upon the commission of a crime. In this respect, they afford a remedy when the official, particularly the prosecutor, is incompetent but not corrupt, or when the requisite

for instance. The executive order must merely state facts having a reasonable relation to a ground of suspension from office outlined in statutory provisions. Furthermore, an allegation of fact contained in an executive suspension order need not be as definite and specific as allegations in an information or indictment in a criminal prosecution. Judicial review in this sphere is limited. A court cannot review the sufficiency of the evidence used by the governor as a basis for removal. The determination of the grounds for removal is a function solely for the senate and governor under such rules as may be prescribed. The court, however, can examine the jurisdictional facts upon which the governor rests his action. Also, the court may examine the charges against an official to see that they conform reasonably to statutory cause, and to enforce the right of the defendant to a hearing on the specified charges. On this topic of executive removal, see: State v. Allen, 126 Fla. 878, 172 So. 222 (1937); Donahue v. Will County, 100 Ill. 94 (1881); State v. Hay, 45 Neb. 321, 63 N.W. 821 (1895); State v. Purchase, 57 N.D. 511, 222 N.W. 652 (1928).

Since courts have no inherent power of removal of public officials, Brister v. Weston, 241 Wis. 584, 6 N.W.2d 648 (1942), provision is often made by constitutions or statutes for judicial removal proceedings of such officials. State v. Scarth, 151 Okla. 178, 3 P.2d 446 (1941); In re Bostwick, 43 Ohio App. 76, 181 N.E. 905 (1931). This proceeding may be brought by a private citizen where it is provided for by statute. Otherwise, the individual is required to show a special interest in the action, such as an allegation that he is entitled to the same office. Wishek v. Becker, 10 N.D. 63, 84 N.W. 590 (1900); Woods v. Varnum, 85 Cal. 639, 24 PAC. 843 (1890). Where not otherwise provided for by statute, it is permissible for the court to authorize proceedings to be conducted either by the district attorney or by attorneys appointed by him. State v. Box, 34 Tex. Civ. App. 435, 78 S.W. 982 (1904). Judicial removal proceedings are designed to provide a speedy remedy for the removal of corrupt and unfaithful officials. State v. Scarth, 151 Okla.

moval actions, quo warranto proceedings, and proceedings to remove the prosecutor's name from the rolls of the court. The criminal action involves indictment for misconduct in office. Removal actions are based upon statutory cause, generally for incompetency, misconduct in office, and the conviction of a crime in a criminal proceeding.

22 E.g., State v. Allen, 126 Fla. 878, 172 So. 222 (1937); State v. Foster, 32 Kan. 14, 3 Pac. 534 (1884); In re Byrne, 193 La. 566, 191 So. 729 (1939).

23 McKittrick v. Graves, 346 Mo, 990, 144 S.W.2d 91 (1940); State v. Wallach, 353 Mo. 312, 182 S.W.2d 313 (1944).


25 The following have been assigned by statute as causes for civil action against a public official: malfeasance, misfeasance, nonfeasance, neglect of duty in failing to use due diligence in the performance of official duty, inefficiency, incompetency, ineligibility, intemperance, intoxication, collection of illegal fees, acceptance of free passes, commission of a felony, favoritism, maladministration, and, occasionally, misconduct not connected with office. In proceedings to remove the prosecutor's name from the rolls of the court, the court formulates its own standard as to what constitutes "unprofessional conduct" to warrant striking of the prosecutor's name. This remedy merely prevents the prosecutor from practicing in the particular court involved, and does not prevent his practicing in any other court, nor does it affect his holding of office. See Wilbur v. Howard, 70 F. Supp. 930 (E.D. Ky. 1947).

The most effective and widely used civil remedies are personal removal actions and quo warranto proceedings. There are two main forms of personal removal proceedings: executive removal, and judicial removal.

In some states, where there is constitutional provision for executive removal, the governor has the sole power to determine whether charges against an officer are sufficient to warrant removal. State v. Allen, 126 Fla. 878, 172 So. 222 (1937); People v. Ahearn, 131 App. Div. 30, 115 N.Y.S. 664 (1909); O'Brien v. Olson, 42 Cal. App. 2d 449, 109 P.2d 8 (1941); Hatton v. Joughin, 107 Fla. 850, 145 So. 174 (1933). No question of discretion is involved where the governor uses the executive suspension power over the public official. In this respect, executive removal differs widely from quo warranto,
proof of corruption is not available. Consequently, such actions have been more frequently employed against law enforcement officials than criminal procedures.

The objective, in imposing judicial sanction against a dishonest law enforcement official, is not primarily his removal and punishment, but the incidental effect upon the criminal elements necessitate removal. State v. Tarr, 62 S.D. 305, 252 N.W. 854 (1934). Generally, however, the judicial removal proceeding is classified as a civil remedy. State v. Scarth, supra. In the absence of statutory provisions prescribing the procedure, proceedings are prosecuted according to common law practice and according to the civil procedure applicable in the particular jurisdiction. State v. Scarth, supra. Sometimes, however, it is held that the ordinary rules of civil procedure do not apply to a summary proceeding for removal authorized by statute. Beeley v. State, 219 Ind. 239, 37 N.E.2d 540 (1941). In such cases, the legislature has a liberal discretion in prescribing the procedures to be followed. Fitts v. Superior Court in and for Los Angeles County, 6 Cal.2d 230, 57 P.2d 510 (1936).

Ordinarily, the rules governing criminal pleading do not apply in a judicial removal proceeding, and the rules of pleading used are those applicable to ordinary civil actions. King v. Smith, 98 Mont. 171, 38 P.2d 274 (1934). The majority rule is that in this type of removal action, an officer may be removed for an offense which is punishable criminally, although he has not been convicted on an indictment for the crime. The official, however, cannot be imprisoned excepting upon conviction in a criminal action. Bland v. State, 38 S.W. 252 (Tex. 1896).

Quo warranto and judicial removal proceedings are similar in that in order to warrant removal where the charge is the commission of misconduct in office, guilt must be established beyond a reasonable doubt, Phillips v. State, 75 Okla. 46, 181 Pac. 713 (1919), or by evidence that is clear and convincing. In re Diehl, 47 Ohio App. 17, 189 N.E. 855 (1933).

As distinguished from judicial removal, quo warranto is an action to try title to a public office. Ames v. Kansas, 111 U.S. 449 (1884). Although in form a criminal proceeding, quo warranto is a civil remedy addressed to preventing a continued ex-rcise of authority unlawfully asserted. Johnson v. Manhattan Ry. Co., 289 U.S. 479 (1933). The remedy, however, is not ordinarily available to regulate the manner of exercising the powers of the office. Johnson v. Conservative Savings & Loan Ass'n, 143 Neb. 805, 11 N.W.2d 89 (1943).

The action of quo warranto is a judicial proceeding, and the fact that the legislature has assigned a specific removal process for public officials does not prevent judicial removal through a quo warranto proceeding, upon any of the same statutory causes which would warrant a statutory removal proceeding. They are not mutually exclusive remedies. State v. Wymore, 345 Mo. 169, 132 S.W.2d 979 (1939). An information in quo warranto may be instituted by the attorney general or by the district attorney of an adjoining district, McKittrick v. Graves, 346 Mo. 990, 144 S.W.2d 91 (1940), or by statute, a civil district judge can appoint an attorney to institute suit to remove the official from office on the request of a specified number of taxpayers. In re Byrne, 193 La. 566, 191 So. 729 (1939).
to produce sufficient evidence to sustain a criminal indictment against a known dishonest official. In criminal proceedings against public officials, the prosecution is governed by general rules governing the weight and sufficiency of evidence in criminal prosecutions. Furthermore, the rules as to admissibility of evidence in criminal prosecutions usually apply in criminal actions against officials. Thus, if the law enforcement official has neglected his duties, or performed them improperly, but there is insufficient evidence to support a criminal charge of nonfeasance, a civil action may at least permit his removal from office.

Where the official is charged with the commission of a crime subjecting him to removal from office, it is not necessary in a civil action that he be found guilty of the crime itself. However, notwithstanding the civil character of judicial proceedings for removal, some courts hold that the rules governing the introduction of evidence in criminal cases must be followed. This rule has been qualified in some jurisdictions so that an objection to the introduction of any evidence under the accusation will be allowed and sustained only where it affects the real merits of the controversy and the substantial rights of the defendant. There is lack of uniformity among the decisions as to the standard of proof that must be met before the official can be removed from office on the basis of the alleged crime. Some cases hold, that, irrespective of whether such removal proceedings are deemed criminal or civil in character, the defendant cannot be removed unless it is established by the evidence beyond a reasonable doubt that he committed the crime. Other cases hold that the evidence in support of the complaint need only be clear and convincing. In such a proceeding, of course, the officer can only be removed from office; he cannot be convicted of the alleged crime, conviction being attendant only to a criminal prosecution.

Where the basis of sanction against the official is the commission of a crime, a criminal indictment is preferable to a removal action, both because of its punitive quality and incidental effect on organized crime, and because the elements of guilt in both criminal and removal actions may have to be established substantially to the same degree. In other words, if the state has sufficient evidence to prove the commission of the crime for civil removal purposes, it probably has sufficient evidence to warrant criminal indictment.

Law enforcement officials generally may be

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36 State v. Williams, 94 Vt. 423, 111 A. 701 (1920).
37 People v. Deysher, 2 Cal.2d 141, 40 P.2d 259 (1935); Sanders v. Commonwealth, 249 Ky. 225, 60 S.W.2d 586 (1933).
38 It must be kept in mind, however, that the discretionary nature of the prosecutor’s office plays as significant a part in civil actions as in criminal. This discretion must be overcome in a civil proceeding by proof that the acts, or instances of inaction, were such as to be without the bounds of a good faith use of discretion. See State v. Wallach, 353 Mo. 312, 182 S.W.2d 313 (1944), for an example of the breadth of this discretion as it affects requirements of proof in civil actions.
40 Skeen v. Paine, 32 Utah 295, 90 Pac. 440 (1907).
41 State v. Borstad, 27 N.D. 533, 147 N.W. 380 (1914).
42 Some cases have held that judicial removal proceedings are penal, Beesley v. State, 219 Ind. 239, 37 N.E.2d 540 (1941), or quasi-criminal, State v. Naumann, 213 Ia. 418, 239 N.W. 93 (1931), in character, while others have considered them civil actions. Sullivan v. District Court of Second Judicial Dist. in and for Silver Bow County, 196 P.2d 452 (1948); State v. Scarth, 151 Okla. 178, 3 P.2d 446 (1931). It has been held also that such proceedings, being governed by the special practice provided by the legislature, are neither civil nor criminal. State v. Borstad, 27 N.D. 533, 147 N.W. 380 (1914). As distinguished from quo warranto, a removal proceeding concedes title to office and proceeds on the theory that the official either has not forfeited his office by the act forbidden or has committed a criminal offense and subjected himself to punishment and forfeiture of the office on conviction. McKittrick v. Wymore, 343 Mo. 98, 119 S.W.2d 941 (1939).
44 In re Diehl, 47 Ohio App. 17, 189 N.E. 855 (1933); Crowder v. Smith, 232 Ia. 254, 4 N.W.2d 267 (1942).
indicted for the broad crime of "misconduct in office" in the performance of duties of the office. This crime is of three types: malfeasance, misfeasance, and nonfeasance. Malfeasance is the doing of an act wholly wrong and unlawful, involving moral turpitude. Misfeasance is a default in not doing a lawful act in a proper manner. Self-gain is often an ingredient of the crime of malfeasance, but is not usually associated with misfeasance. An official who accepts a bribe would be guilty of malfeasance rather than the lesser offense of misfeasance. Nonfeasance is the substantial failure to perform a duty without sufficient excuse.

At this point, the distinction between the ministerial duties of the police and the discretionary ones of the prosecutor, assumes practical importance. It is generally held that willfulness and corruptness are essential elements of the general crime of misconduct in office. Where the office is ministerial, however, the only prerequisite to bringing a criminal action for misconduct in office is that his breach of duty be wilful. A showing that a police officer

46 McKittrick v. Williams, 346 Mo. 1003, 144 S.W.2d 98 (1940).
48 Ex parte Amos, 93 Fla. 5, 112 So. 289 (1927); cf. State v. Jefferson, 88 N.J.L. 447, 97 Atl. 162 (1916); Commonwealth v. Rowe, 12 Ky. 482, 66 S.W. 29 (1902); Speer v. State, 130 Ark. 457, 198 S.W. 113 (1917).
49 In the Jefferson case, the prosecutor was charged with accepting bribes from violators of the criminal law and thus giving them immunity from prosecution for their crimes. The court ruled that an allegation of bribery was sufficient to sustain a malfeasance indictment.
50 The Speer case involved an indictment charging malfeasance against the prosecutor for abetting crime by prosecuting operators of gambling houses for the misdemeanor of gaming, instead of for the felony as it was under state law. In defining "corrupt intent" to satisfy malfeasance requirements, the court said it did not have to include wrongful self-gain, but could be shown through evidence of acts committed with lack of good faith. In resolving the issue of good faith, the opinion stated that similar acts of commission or omission occurring about the same time as the violation alleged, tending to prove the issue, are admissible. Hence, evidence that other gambling houses were running during the time of the breach of the duty alleged, was competent to show bad faith in the exercise of discretion. In defining the duty of the prosecutor to initiate proceedings against parties whom he knows, or has reason to believe, have committed crimes, the court held that the mere fact that such duties rise to the dignity of exercising discretion, cannot excuse neglect of duty by the prosecutor.
51 The Speer case is questionable in its application of malfeasance requirements to the indictment. Generally, it is not necessary in such a case to allege corruptness: corrupt intent should be a necessary allegation only when the intent with which the particular action was effected results in the moral turpitude of the act itself. Thus far the Speer case is on familiar ground. Query, however, whether acts committed without good faith are therefor inherently corrupt?
knowingly and intentionally refused to perform his duty, such as in following orders issued by a superior, without good excuse, would tend to prove wilfulness. It is not necessary that illegal or corrupt motives of the officer be alleged in police force. Police officials have the power in Illinois to destroy gaming implements without violating any constitutional provision. People v. Moore, 410 Ill. 241, 102 N.E.2d 146 (1951). It is at this point that corrupt officials have gone through the semblance of performing their duty by raiding gambling houses without a search warrant, seizing a few pieces of equipment, and thus preventing the use of the equipment in a criminal prosecution against the offender. They perform their duty when the raids are instituted; as such, they serve an harassment quality which is not without value as a means of discouraging the criminal elements from continuing their illegal operations. The fact has been, however, that such raids have accomplished very little of practical value. Furthermore, the official is only truly performing his duty when he diligently attempts to obtain the necessary search warrant in order to obtain competent evidence for use against the offender in a criminal trial. Harassment raids are of supplemental utility only, if the responsible law enforcement officer is doing his job. Unfortunately, it is difficult to get a case against such an official, since he can reply that whenever he applies for a search warrant, the particular gambling house is “tipped off” in advance, thus frustrating the purpose of the warrant. This type of defense has assumed a certain nuisance value in criminal prosecutions of police officials in Cook county.

The Kefauver committee uncovered several Illinois cases where a jury acquitted a corrupt official despite the strongest competent evidence against him. See note 90 infra.

Another practical difficulty, has been the peculiar antipathy occasionally displayed by Illinois courts toward the efforts of the law to root out organized crime. As an example, in a recent Cook county case, the court sustained a motion to suppress illegally seized evidence by a defendant who lacked any proprietary interest in the goods introduced or the premises from which they were taken. State v. Torrello, (unreported). Such a holding, in clear violation of any basic requirement of the exclusionary rule, compels the thought that if it happened once, it could happen again. That is, it is conceivable that a judge in a case against a public official, in which illegally seized evidence is sought to be introduced against the official, and in which he has no interest, will sustain a motion to suppress made by order to find him guilty of the crime of misconduct in office.

Where the duty violated involves discretion, however, it is usually held that “corrupt intent” is a vital element of the offense. This requirement is designed to protect the discretionary official from indictment for mere error of judgment or for mistake of law. 52 Corrupt intent signifies the doing of an act with the intent to obtain an improper advantage inconsistent with official duty and the rights of others. 53 Corrupt intent may be actual, as in the case of the crimes of bribery, embezzlement, and receiving benefits from the deposit of public funds; or it may be implied from an habitual failure to perform the duties of the office. 55

While “corrupt intent” is generally all that is required in an indictment charging nonfeasance and misfeasance, confusion has resulted from application of the terms “corrupt” and “willful.” For instance, several cases have held that if the duty involves discretion, the wrongful act or omission must be both wilful and corrupt to constitute nonfeasance or misfeasance. 56 Another case held that an allegation
of either willfulness or corrupt intent is sufficient to sustain an indictment for violation of a discretionary duty.\textsuperscript{57} Even where statutes have been enacted requiring only a wilful refusal or neglect in order to convict, cases sometimes have construed these statutes as requiring an allegation of corrupt intent in the case of an alleged violation of a discretionary duty.\textsuperscript{58}

One of the reasons for the rather indiscriminate use of "corrupt" and "wilful" is the fact that courts sometimes have blurred the precise meaning of "corrupt intent."\textsuperscript{59} A few courts, for instance, have held that "wilful" is synonymous with "corrupt intent."\textsuperscript{60} Another view is that an allegation of willfulness is sufficient, even though the duty involved is discretionary, and that corruptness need not be alleged.\textsuperscript{61}

Hubbs, 137 Pa. Super. 244, 8 A.2d 618 (1939); 1 Bishop, Criminal Law §460; 1 Burdick, Law of Crime §272(a); Miller, Criminal Law §162(a).

\textsuperscript{57} Ex parte Amos, 93 Fla. 5, 112 So. 289 (1927).

\textsuperscript{58} E.g., State v. Battrud, 210 Minn. 211, 297 N.W. 713 (1941).

\textsuperscript{59} State v. Winne, 12 N.J. 152, 96 A.2d 63 (1953); Commonwealth v. Hubbs, 137 Pa. Super. 244, 8 A.2d 618 (1939); Steinman v. McWilliams, 6 Pa. 170, 178 (1847).


\textsuperscript{61} State v. Winne, 12 N.J. 152, 96 A.2d 63 (1953).

In this case, the court held that "wilfulness" indicates a lack of good faith, and in the absence of just cause or excuse, equivalent to bad faith. The court further held that these elements sufficiently constituted the mental elements of the crime.

For a case apparently supporting this view, see State v. Jefferson, 88 N.J.L. 447, 97 Atl. 162 (1916). In that case, the court indicated that a charge of corruptness is surplusage, being implicitly alleged by "wilfulness." The Jefferson case, however, can only be regarded as doubtful authority for the principle that willfulness constitutes a substitute for corruptness, since there the crime alleged inherently involved moral turpitude (accepting a bribe), and no allegation of corruptness was required. The case of Commonwealth v. Hubbs, 137 Pa. Super. 244, 250, 8 A.2d 618 (1939), on the other hand, held that only an exercise of discretion in bad faith could be indictable. Furthermore, only when "wilfully" appears in criminal statutes has it been construed to include improper motive within its meaning. Roberts v. United States, 126 Fed. 894, 904 (5th Cir. 1903). See also Commonwealth v. Hubbs, supra. But see 1 Bishop, Criminal Law §428.

For cases on the question of whether "corrupt intent" necessarily includes wrongful self gain or if it is sufficient that the alleged acts were committed with a lack of good faith, see Speer v. State, 130 Ark. 457, 198 S.W. 113 (1917); State v. Sweeten, 83 N.J.L. 364, 85 Atl. 309 (1912); cf. Broadbent v. United States, 149 F.2d 580, 581 (10th Cir. 1945).

Public officers should not be hampered in the performance of discretionary duties by fear of criminal prosecution for an error of judgment committed in good faith. Hence, it is necessary that in the prosecution of a discretionary official, "corrupt intent" be alleged. Commonwealth v. Hubbs, 137 Pa. Super. 244, 8 A.2d 618 (1939).


\textsuperscript{61} See notes 60 and 61 supra.
“intentional” is synonymous with “wilful”, and that the latter is synonymous with “corrupt intent”, would be in effect to destroy the discretionary nature of the prosecutor’s functions, with the result that a prosecutor might fail to exercise his discretion for fear of prosecution for an honest error in judgment, and proceed with an investigation or prosecution which he considers unwarranted. It would be an expense to the state and to society, and reduce the efficiency of the prosecutor’s office. Wilfulness, therefore, should not be used as an alternative allegation to corrupt intent in nonfeasance and misfeasance actions; it is not synonymous with the latter and its use generally should be restricted to cases involving alleged breach of a ministerial duty.

An exception to the general rule of alleging “corrupt intent” in criminal indictments is to be found in misfeasance prosecutions. Since misfeasance is an act involving moral turpitude, it is the perpetration of the act itself, apart from the motive for the act, which subjects the official to punishment. Since the act of misfeasance inherently involves corruptness or self gain, it has been held that corrupt intent need not be alleged in order to charge this crime. Neither does misfeasance in office require proof of corruption, selfish motives or hope of private gain. The indictment, however, must contain an allegation of the commission of the act, and the proof must sustain this charge.

It has been advocated that there should be no criminal proceedings against prosecutors for misfeasance or nonfeasance. This view is based upon the hypothesis that the threat of criminal prosecution, regardless of the elements necessary to be proved for a conviction, will detract from the discretionary nature of the prosecutor’s duties. Adherents of this view argue that the threat of civil removal is a sufficient sanction, and yet affords protection from criminal prosecution to honest but incompetent prosecutors. There is, however, the contrary view that, in spite of the dangers involved and the difficulty in ascertaining corrupt intent, the benefits to be gained from controlling law enforcement officials through criminal process are too valuable to society to be jeopardized. This latter view is the more realistic. The danger to the honest prosecutor or other official whose duties are discretionary, is more apparent than real. There is a wide gap between even a series of blunders of judgment and their commission in bad faith, or with corrupt intent; and the courts fairly consistently require that this gap be convincingly bridged before allowing a conviction of the official. Even conceding the existence of certain dangers to a wise use of discretion from the threat of criminal prosecution, they are outweighed by the possibility that such an official may be more susceptible to criminal influence than he otherwise would be if he knows that the worst eventuality is civil removal from office.

alleging failure to enforce the laws, nonfeasance, it must be shown that he knew such places existed, where they were located, and that he failed to act upon this information. People v. Flynn, 375 Ill. 366, 31 N.E.2d 591 (1941).


In order to sustain an indictment charging bribery in Illinois, for example, the state must prove that the defendant was a public officer, that he was offered and accepted money or other valuable thing, and that such payments were for the purpose of influencing him in the performance of his official duties. People v. Siciliano, 4 Ill.2d 581, 123 N.E.2d 725 (1954). In the same state, to sustain an indictment against a public official alleging failure to enforce the laws, nonfeasance, it must be shown that he knew such places existed, where they were located, and that he failed to act upon this information. People v. Flynn, 375 Ill. 366, 31 N.E.2d 591 (1941).


E.g., State v. Allen, 126 Fla. 878, 172 So. 222 (1937); Attorney General v. Tufts, 239 Mass. 167 (1927); State v. Wallach, 353 Mo. 312, 182 S.W.2d 313 (1944); McKittrick v. Graves, 346 Mo. 990, 144 S.W.2d 91 (1940); McKittrick v. Wymore, 345 Mo. 169, 132 S.W.2d 979 (1939).

See Wilbur v. Howard, 70 F. Supp. 930 (E.D. Ky. 1947); McKittrick v. Graves, 346 Mo. 990, 144 S.W.2d 91 (1940); McKittrick v. Wymore, 345 Mo. 169, 132 S.W.2d 979 (1939).
Special Evidentiary Problems

It is frequently difficult to establish the official's knowledge of illegal activities which he is under a duty to suppress. Where a public official is charged with failure to enforce gambling and liquor laws, evidence of gambling stamps outstanding in the community should be competent evidence against him. In one case, the number of persons who had paid federal occupational tax on slot machines was held admissible as evidence of the bad faith of the prosecutor in repeatedly failing to initiate prosecution. The court stressed the fact that the names of the purchasers of these stamps were listed in a public record, with which the prosecutor should have been familiar. While this case involved merely a proceeding to remove the prosecutor's name from the rolls of the court, a civil action, there is no infirmity in the nature of such evidence to prevent its utilization in criminal proceedings.

Where a prosecutor has entered many nolle prosequis, and it is shown that there was ample evidence to warrant further prosecution, his actions in this respect may be used as a basis for determining the bad faith of the prosecutor in the performance of his duties. In addition, pleas of guilty by individuals named in grand jury indictments returned against them constitute admissions against interest, and as such are competent evidence in a removal proceeding to prove that the official knew, or should have known, of law violations within his jurisdiction.

Evidence illegally seized from a third party should be admissible in an action against the official where it is pertinent to show neglect of duty or wrongful performance. In federal courts, and in those states which have adopted the federal exclusionary rule, evidence illegally seized from a defendant is not admissible in a criminal proceeding against him. It has also been held that if the defendant can show merely a proprietary interest either in the goods seized without a warrant or in the premises from which they were seized, he has standing to object to their admissibility against him. But since a law enforcement official usually does not have any proprietary interest in the illegally seized evidence, it should be considered usable against him.

Role of the Grand Jury

A potent weapon in fixing responsibility for corruption in law enforcement is the use of the common law investigative powers of the grand jury. The grand jury has the duty to make investigations whenever the arm of the government charged with the duty of conducting criminal prosecutions presents evidence to it under the reasonable belief that the criminal laws have been violated. Where the public prosecutor himself is corrupt, the court, when it becomes apparent that a system of crime exists among public officers, can properly order an investigation by the grand jury; however, the investigation initially cannot be directed at a particular individual, nor at the commission of ordinary crimes. Once the grand jury is convened, however, its power is not dependent upon the court, but is original and complete, and it has the power to inquire into all offenses which come to its knowledge, whether from the court, the prosecuting attorney, its own members, or from any other source. It may make

72 McKittrick v. Graves, 346 Mo. 990, 144 S.W.2d 91 (1940).
74 Id., at 96.
75 The Jeffers case, note 75 supra, by holding that an allegation of proprietary interest in either the goods or the premises gives the defendant standing to suppress, is at variance with the prior exclusionary rule requirements that the defendant must allege a property interest in the goods and the premises in order to have such standing. United States v. Jeffers is not binding upon state courts, of course, and many states require still that the defendant meet the dual-requirement test.
76 In re Black, 47 F.2d 542 (2d Cir. 1931).
77 The inquisitorial power of the grand jury is the most valuable function which it possesses today and, far more than supposed protection which it gives to the accused, justifies its survival as an institution. As an engine of discovery against organized and far-reaching crime, it has no counterpart. Policy emphatically forbids that there should be any curtailment of it except in the clearest cases. In re Grand Jury Proceedings, 4 F. Supp. 283 (1933).
presentments of its own knowledge, without any instruction or authority from the court.79

The grand jury has the power to proceed with an investigation and to subpoena witnesses, without being required to state in the subpoena the subject matter of the investigation or name the person or persons against whom the inquiry is directed.80 This is a useful power where an official is under suspicion of misconduct, but there is not enough evidence to warrant an outright criminal prosecution. The grand jury has the authority to seek this evidence through its broad investigative powers, once it has been properly convened. Furthermore, where an inquiry is desired as to matters of general concern, and no particular person is charged with an offense, the grand jury and not the court, is the only proper body to make such investigation.81

In some states, statutes have been enacted giving the grand jury authority to call witnesses to discover whether or not a crime has been committed.82 Even where special statutes have set up special investigating bodies for particular offenses, they have been construed as not limiting the power of the grand jury to make investigations as to such offenses, or to divest it of such power.83

In at least one state, the grand jury has the power to inquire into the commission of all offenses, whether they are felonies or misdeavors, and whether or not there has been a preliminary hearing before a magistrate.84

There are limitations to the jurisdiction of the grand jury, however. The majority rule seems to be that a grand jury investigation must not become a “fishing expedition”, or a blanket inquiry for purely speculative purposes. It has been held in some cases that there is no power in the grand jury to institute or prosecute an inquiry on the chance or possibility that some crime may be discovered.85 On the other hand, many courts have ruled that the scope of the grand jury’s inquiry is not narrowly limited by forecasts of the probable result of the investigation.86

The grand jury has served, incidentally, as a method of control over police officers called to testify before it. There is authority for allowing the dismissal of policemen who refuse to sign “immunity waivers” in advance of testifying before the grand jury.87 The theory is that a

80 United States v. Invader Oil Corp., 5 F.2d 715 (1925); In re National Window Glass Workers, 287 F. 219 (D.C. 1922).
81 McNair’s Petition, 324 Pa. 48, 187 Atl. 498 (1936).
82 Ploscowe, ORGANIZED CRIME, 230 (1952).
83 Hinz v. Hunt, 96 Okla. 285, 221 Pac. 1022 (1924). A statute prescribing additional causes for the removal of a person from public office, actions thereunder to be commenced in name of state on the relation of the attorney general, held did not deprive the grand jury of jurisdiction granted in a prior act to inquire into and prefer charges against any public officer not subject to impeachment, within the prescribed causes for removal mentioned in the statute.
84 Reis v. Warden, 239 App. Div. 891, 264 N.Y.S. 948 (1933).
85 McNair’s Petition, 324 Pa. 48, 187 Atl. 498 (1936). In states like Pennsylvania, which limit the grand jury to something more than a fishing expedition, if an investigation by a grand jury is directed by a court, it involves all the powers and incidents necessary to a complete inquiry into the subject matter involved, and that the jury, through the court, may subpoena books, papers, and witnesses, and subject them to investigation. See Fraley v. Rotan, 82 Pa. Super. 172 (1923).
86 People v. Doe, 247 App. Div. 328, 286 N.Y.S. 343 (1936); O’Connell v. United States, 40 F.2d 201 (1930, cert. denied, 51 Sup. Ct. 658; Carroll v. United States, 16 F.2d 951 (2d Cir. 1927), cert. denied, 273 U.S. 763. In the Carroll case, the court discussed the scope of the grand jury’s power of investigation:

The grand jury investigation does not necessarily cease after it has heard the witnesses brought before it by the . . . attorney. Its investigation and full duty is not performed unless and until every clue has been run down and all witnesses searched for and examined in every proper way to find if a crime has been committed, and to charge the proper person with the commission thereof. 16 F.2d at 592.
87 Drury v. Hurley, 339 Ill. App. 83 (1949);
police officer, by reason of his special status, his
duties and responsibilities, may not invoke his
constitutional privilege against self-incrimina-
tion in matters touching upon his occupation
without being guilty of a breach of his official
duty. However, since his dismissal is in the
nature of a civil service discharge it is not a
criminal punishment, and from that standpoint
is less desirable than an outright criminal in-
dictment against a corrupt officer. It is an
effective means of removal, however, and there
is always the possibility that an officer would
rather "talk" than lose his job. The coercive
effect, therefore, of such a measure should not
be overlooked. Furthermore, if enough indi-
viduals can be removed from the law enforce-
ment scene by this method, it may be of con-
siderable value as a lever of control.

CONCLUSION

The responsibility for the existence of cor-
ruption within the ranks of those officials
charged with the duty to execute and enforce
the law is not limited merely to the policeman
and the prosecutor. Some of the blame must be
shared by juries which occasionally, in the face
of the strongest possible case against a corrupt
official, nevertheless manage to deliver a verdict
of acquittal. In addition, the judiciary may be
subject to some criticism for not making more
frequent use of the grand jury as a means for
uncovering corruption in official circles.

Christal v. Police Commission of San Francisco,

In the Drury case defendants filed for writ of
certiorari to review action of civil service commission
which had ordered them discharged from the
police force because of their refusal to sign an immunity waiver
before testifying are actually similar in effect.

Such officers are guardians of the peace and
security of the community, and the efficiency of our
whole system, designed for the purpose of main-
taining law and order, depends upon the extent to
which such officers perform their duties and are
faithful to the trust reposed in them.... It is for
the performance of these duties that police officers
are commissioned and paid by the community, and
it is a violation of said duties for any police officer to
refuse to disclose pertinent facts within his knowl-
edge even though such disclosure may show, or
tend to show, that he himself has engaged in
criminal activities. Christal v. Police Commission
of San Francisco, 33 Cal. App.2d 564, 92 P.2d 416
(1939).

The Kefauver committee considered the
following cases bad examples of jury action. When
the chief of police of Calumet City, Illinois, was
indicted for malfeasance in office, he admitted to
the jury that gambling was widespread in the city.
He defended his action on the basis that license fees
from illegal taverns were supporting the town and
were keeping the tax rate low. Largely on the
support of such a defense, the chief of police was
acquitted by the jury of all charges. The chief of
police of Melrose Park, Illinois, was indicted for
nonfeasance for his repeated failure to take any
action after notification received from the State's
attorney's office, to the effect that certain named
illegal houses were operating within his jurisdic-
tion. The defendant was acquitted. Senate Special
Committee to Investigate Organized Crime in
Interstate Commerce, Third Interim Report, S.

The records of the chiefs of police in these towns,
where gambling joints could be identified merely
by walking down the street, are records of neglect of
official duty and shocking indifference to violations
of law. Equally shocking is the acquiescence of the
people of the towns, as evidenced by the acquittal
of these men and their continuation in office. ibid,
at 61.

An outstanding example of what this jury can
accomplish is furnished by the activities of the
"Blue ribbon" grand jury of 1943, which sat in
Cook county, Illinois. As a result of its efforts,
eleven officers of the local highway police, including
the former chief of that organization, were indicted

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