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THE GRAND JURY; A SELECTED BIBLIOGRAPHY

WITH EXHIBIT NOTES

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INTRODUCTION

ACQUISITIONS

More remarkable than even its antiquity is the majestic concept embodied in the Grand Jury that the people of a community, while delegating the administration of order and justice to certain officials, retain the superior right to scrutinize the conduct of public affairs and to investigate and report on irregularities within their community. Centuries of legal precedent, tradition, and constitutional affirmation established the almost limitless powers of the Grand Jury "sitting as the conscience of its community."

This unique institution, the grand jury, arose from the foundations of English common law. There were two early institutions which resembled the Grand Jury today. The first, provided for in Anglo-Saxon law by King Ethelbert II of England in 978 AD, designated twelve men to determine whether an accused man should be made to answer for his crimes. The second was the Frankpledge System of Norman origin which held all the people of a village responsible for each other. These two institutions were combined together in 1166 when the Assize of Clarendon was enacted. In this edict Henry II decreed that twelve men of each county must present to the King's Justice those among them who were wanted by the authorities or who were suspected of robbery, murder, or theft. These crimes were designated as crimes against the Crown, thus transferring jurisdiction from the county to the King's Courts.

This assize created a new jury of presentment which became the direct ancestor of the grand jury. The Assize of Northampton, 1176, further advanced the grand jury by making arson, treason, and forgery serious crimes as well, thus transferring their jurisdiction to the King's Courts. Eventually all pleas were brought under the King's Courts. At each "eyre" or assembling of the King's Court, twelve persons were chosen as the presenting jury. This jury was instructed to order the arrest of any persons suspected of a crime or whom they wished to question about various phases of government such as responsibility for the failure to keep bridges, highways, and jails in order. Due to their unpopularity the "eyres" were finally abandoned by the 14th century. In the early 1400's, Edward III changed the method of selection of the jury of presentment. The sheriff was directed to summon twenty-four persons from each county, and twenty-three of them were ultimately selected. They formed the "Grand Inquest" or Grand Jury as it is called today. Since this Grand Jury was originally used as an instrument of the crown, the true origin of the Grand Jury as a defender of the liberties of the people and a shield against oppression can be traced back only to the 1681 case of the Earl of Shaftesbury Trial. In this case the grand jury refused to indict Lord Shaftesbury on charges of treason brought by Charles II. From that point on, the grand jury ceased to be an exclusive tool of the crown. The Grand Inquest followed the English colonists to America quickly becoming an important institution. The first Grand Jury in America met in Boston in 1635.

By 1735, forty-one years before the Declaration of Independence, the grand jury had established precedents in America for its own independence and the freedom of the press. This occurred as a result of the New York City grand jury's refusal to indict for libel John Peter Zenger, who as editor of the Weekly Journal had held the Royal Governor up to scorn. This institution was highly respected by the Founding Fathers that they specifically provided for it in the Constitution, 5th Amendment of the Bill of Rights:

"No person shall be held to answer for a capital of otherwise infamous crime, unless a presentment or indictment of a Grand Jury."

The grand jury consists of not less than twelve jurors and no more than twenty-three. This number varies from state to state. In Texas, there are twelve grand jurors. The grand jury's life extends for the full term of the Court. In Texas, this lasts from three to six months.

The grand jury is designed to protect the rights of individuals. It performs two duties: it is an accusative body, and an investigative body. The accusative function is the most common. In the performance of these duties, the Grand Jury, after hearing the evidence presented by the prosecutor, will determine whether this evidence is sufficient. Charges of crime may be brought to the attention of the grand jury through several different ways: by the court, by the prosecutor, or through the grand juror's own personal knowledge. Quite often the

grand juror will play a passive role allowing the prosecutor to bring all accusations. When the accusation originates with the grand jury, this accusation is called a "presentment", and is used as a basis for a bill of indictment to be submitted by the prosecutor.

The grand jury can also investigate specific offenses or general wrongdoing as the "watchdog" of the community. Although most investigations are conducted by the prosecutor, the grand jury can conduct its own investigation utilizing independent powers. The importance of these powers derives from the fact that it is an independent body answerable to no one except the court itself.

It has the power to subpoena witnesses, compel testimony, and grant immunities in exchange for self-incriminating testimony. Testimony can also be forced through the threat of charging the witness with contempt of court. All grand jury proceedings - testimony and evidence -- are kept secret. There are several reasons for this rule: first, it protects the jurors from outside pressure; second, it prevents persons from escaping while an indictment against them is under consideration; third, it encourages freedom of disclosure on the part of informers; and fourth, it prevents disgrace of the accused if no indictment is returned.

These investigations result in either indictments or reports. A report is a critique directed at general conditions, agencies, or an individual. The report is appropriate when an indictment cannot be returned such as in cases where the statute of limitations has

run out or where proper evidence was unobtainable. Although the issuance of reports in Texas is a common practice, in the majority of courts reports are prohibited unless accompanied by indictment. There are exceptions though. These are reports criticizing public officials, those criticizing a general class. If the class is so small that its members would be harmed by the report, such as television-quiz-show producers or labour-union officials, most courts will disallow the reports. If used effectively, these reports are truly the "people's big stick."

The grand jury as an effective institution has been the subject of much controversy since before World War I. Opposition to this institution became more intense after 1933, when England abolished their grand jury. The proponents of the grand jury, though continually worked to give a dynamic quality to the old institution. At the most opportune time, the grand jury would arise and unleash its powers against corrupt machine politicians, corporate monopolies, and racketeering criminals. One of the grand jury's most successful investigations occurred in 1872 when the grand jury of New York City succeeded in breaking up the Tweed Ring, accomplishing what all other attempts at reform had failed to do. The grand jury's broad authority to subpoena witnesses and books, made effective by its contempt powers and ability to indict for perjury, enabled it to obtain evidence. The secrecy that attended all investigating sessions made it possible for witnesses who feared reprisals to disclose safely what they knew. This grand jury operated

without the aid of the prosecutor. The grand jury became the people's "hero", their "big stick".

In 1935, the New York City grand jury again revitalized the system by breaking up the rackets in New York City. What started out as a routine investigation continuing that begun by the predecessor grand jury, resulted in the empanelling of a special grand jury and the appointment of Thomas E. Dewey as special prosecutor. This special grand jury uncovered a \$12,000,000 prostitution racket and indicted the leaders of organized crime in New York. These included "Lucky" Luciano, and "Dutch" Schultz. This was the first step toward liberating a gangster-dominated city. Through the resulting publicity, citizens of communities throughout the U.S. realized they could attack crime in this manner. Investigations patterned after Dewey's followed in all the major cities of the U.S. Once again the success of the grand jury completely quelled the opposition.

The most significant aspects of the grand jury are its democratic control and its local character (the placing of criminal justice in the hands of members of the community). With the increasing centralization of governmental authority and the growth of a high bureaucracy in no way responsible to the people, the preservation of the grand jury has become a necessity. As Thomas E. Dewey said:

"The Grand Jury, when it is in service and much of the time when it is out of service, is in fact one of the few remaining

bulwarks in our present centralized systems of city, state, and national government by which the people of a city have a direct and very powerful voice in the manner by which the affairs of their community shall be conducted."

The opponents of the grand jury claim that this institution no longer operates the way it was intended to. They say that the grand jury has become a "rubber stamp" of the prosecutor. F. Lee Bailey called the modern grand jury "a flock of sheep led by the prosecutor across the meadows to the finding he wants", that the grand jury has become a tool of the prosecutor to elicit political intelligence data. The opponents of the grand jury are calling for the institution of one-man grand juries. In this system, the judge performs the functions of the grand jury. The prosecutor presents the information to the judge and the judge conducts a preliminary hearing. They claim that this is more efficient as far as the time and cost involved. If the one-man grand juries become instituted, the indictment power will go to a judge, another public official.

Whether a judge or a group of laymen are better suited to this task is an issue that looms ever larger as society seeks to protect its individual members through the implementation of even more restrictive and complex laws. The grand jury may have entered its twilight or it may be entering the Dawn of a new era as the Champion of the People.

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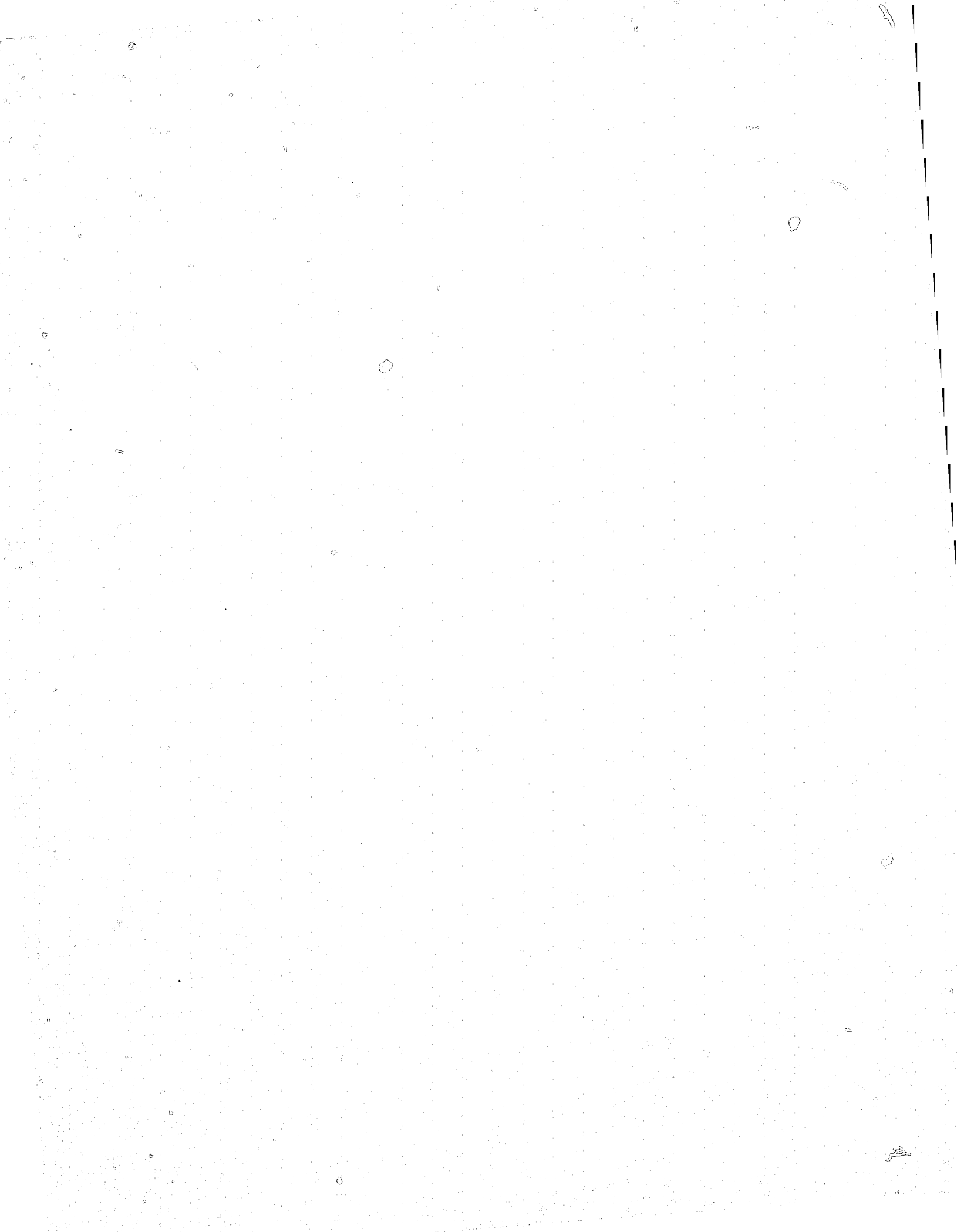
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