

THE AMERICAN LAW REGISTER

FOUNDED 1852.

UNIVERSITY OF PENNSYLVANIA

DEPARTMENT OF LAW

VOL. { 49 O. S. }
 { 40 N. S. }

APRIL, 1901.

No. 4.

SHOULD THE GRAND JURY BE ABOLISHED?

In presenting this question to the public for their consideration and discussion last August, I only briefly called attention to the subject, and made no effort to advance arguments in favor of my proposition. Since that time much has been written and said upon the subject, and my present effort will be to show that this venerable institution has outlived its usefulness.

A plain and fair statement of the proposition, I think, is this: Why should we summon each month twenty-three (23) citizens (called a Grand Jury), swear them to secrecy, then send before them the Commonwealth's witnesses (who had previously testified before a magistrate in public), and have this body certify to the court that the magistrate was right in holding the defendant for trial, by returning the indictment a "true bill"; or that the magistrate was wrong, by marking the indictment "ignored"?

One of the arguments in favor of this proposition is the antiquity of the institution. I admit the fact, but cannot assent to its being any argument in favor of its retention. The fact that it is an ancient body ought to make us carefully consider any proposed change, but ought not, I submit, prevent a change.

One of the most objectionable features of the Grand Jury system is the secrecy of its sessions. The only argument I have seen advanced in favor of the oath of secrecy is that it would be very unfair and prejudicial to a person accused of crime, if a bill of indictment was ignored, to have the evidence made public. But as every defendant whose case goes to the Grand Jury has had a hearing before a magistrate, where the witnesses were examined in public, the reason does not seem to be a very strong one. The other view of the situation is that a secret session makes it possible for the unwilling or corrupted witness to refrain from telling the whole truth, and by withholding the whole or part of a story, cause an indictment to be "ignored" that ought to be found "true."

A hearing before a magistrate is a public one, and we know exactly what the testimony is on which a defendant is held for trial or discharged. What is to be gained by having a body in secret hear the same testimony (if it is the same), or making it possible for the witnesses to change their story when no outsider can hear them and thus cause a return of "ignored"?

There is the additional wrong to the individual grand juror of being liable to criticism and censure for a result that he may have had no hand, or rather voice, in producing, or which was entirely proper from the evidence heard by him, but which he is prevented from disclosing.

Is it not more in accord with the whole system of the administration of justice to have all its avenues open to the public?

Why should there be this "dark corner" for evil deeds?

From a somewhat extended experience in the criminal courts, I can say that I never knew an indictment found "true" that ought to have been "ignored"; but I have known many to be "ignored" that ought to have been found "true."

Has anybody's experience been different? Aside from the feature of secrecy, why should there be any Grand Jury at all? What need does it supply?

When the citizen was liable to persecution by the crown, or government, before magistrates appointed by the same power, and had to be tried before judges holding office at

"the pleasure of the King," there may have been a use, and a good one, for the Grand Jury to stand between the power of the oppressor and the individual. The secret session prevented any one from fixing the responsibility for the result; and as the number of the Grand Jury was twenty-three, and it required twelve votes to find a "true bill," there always was a large margin of uncertainty as to how the members voted on any case. But is any citizen now liable to persecution by the government?

He elects his own magistrates and judges. Every man is presumed to be innocent till proved guilty; every reasonable doubt is given to a defendant; and the legality of every commitment can be inquired into, at the request of any defendant, by a judge, by means of a writ of habeas corpus. This would seem to give the citizen every protection an innocent man should want.

I can understand why the guilty man should be firm in his demand for the Grand Jury. It gives him a chance to produce an improper result by corrupting witnesses or jurymen under the cover of secrecy.

In our great desire to secure to the individual accused of crime all reasonable safeguards, let us not forget that the community has some rights that ought not to be overlooked. Probably a natural question is, what would you give us in place of this body? I would have every binding over certified by the magistrate to the district attorney. I would have the district attorney draw an indictment, just as he now does, and have that filed in court as the Commonwealth's statement of its charge; the same as a plaintiff's "statement of claim" in civil matters. This should be treated as an indictment now is, in all future steps.

By this we accomplish what? We save the time and expense of all the witnesses for the Commonwealth for at least one day. Every step in the prosecution of crime is open and aboveboard. There is no place where those that want to do evil can find a secret corner in which to procure protection from crime provided by the law.

What do we lose? The one accused of crime loses an opportunity to corrupt witnesses to testify falsely where their falsehood cannot be discovered, or to debauch jurymen, and being deprived of these great privileges, loses a "chance."

This is a question well worthy of discussion, and much, I think, is to be gained by discussing it. I would be very glad to see others present their views about it, whether they agree with mine or not. It is the only possible way we can get all the light on a subject in relation to which we may some day be required to act.

F. Amédée Brégy.