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Appendix A

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STATE OF MICHIGAN

IN THE 4th CIRCUIT COURT FOR THE COUNTY OF JACKSON

In Re: Petition by the Prosecuting Attorney of Jackson County for a Judicial Inquiry

INDICTMENT AND ORDER AUTHORIZING ISSUANCE OF WARRANT

At a session of said Court held in the Courthouse in the City of Jackson, County of Jackson, State of Michigan, this 16 day of November, 2012

PRESENT: HONORABLE EDWARD J. GRANT, Circuit Court Judge

This Court, having convened in accordance with the provisions set forth in MCL 767, *et seq*, for the purpose of examining witnesses and taking testimony in the above titled cause to determine whether there is probable cause to believe that certain crimes, offenses, or misdemeanors set forth in the Petition and Order filed have been committed within the jurisdiction of this Court, and testimony of various witnesses having been taken, from which this Court does find and determine that the crime of Open Murder was committed in the death of Eshaum Dupree-Oneil Gant, date of birth: December 1, 1993, on or about December 23, 2011, within the City and County of Jackson, state of Michigan, by the use of a firearm and that there is probable cause to believe that Todd Douglas Robinson, date of birth: July 27, 1962 is guilty and should be apprehended by process of this Court and brought before the Court for trial upon the charges of Open Murder and Felony Firearm, and to be further dealt with in accordance with law;

(2)

IT IS THEREFORE ORDERED that an Indictment and warrant issue out of and under the seal of this Court on the charges of Open Murder on Eshaum Dupree-Oneil Gant for the arrest of Todd Douglas Robinson, date of birth: July 27, 1962; and that he be brought before this Court to be further dealt with according to law. The listed Defendant will be held WITHOUT BOND until further proceeding of this Court.

Dated: NOVEMBER 16, 2012

Edward J. Grant (P14272)
Circuit Court Judge
One Man Grand Juror

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Appendix B

Caseload Dsp: **JV**

CLOSE Pub

Crt: C 04 38 Jur: WILSON Ref:
Case: 2012 0000003652 FC STATE OF MI V TODD ROBINSON
Atty: DE YAMPERT Worker: CHR DNA CVA
File: 11/16/2012 Dispose: 5/01/2013 Reopen: Close: 6/13/2013
X-Reference: Microfilm Number:

D 001 TODD DOUGLAS ROBINSON
5818 WISE ROAD
LANSING, MI 48911
DOB: XX/XX/XXXX Gender: M

CTN: 381200317401 PIN: 3849700

OFFENSE DATE: 12/23/2011
ATTORNEY: JOHN H. JR. DE YAMPERT
P 65626 Ph#: 313/583-9529
PROSECUTOR: CHRISTOPHER J. DICKERSON P 72396

Charge History

NUM	TYPE	Offense	ASC	Description	DISP	DFR
01	CUR:	750.316-A		HOMICIDE-MURDER 1ST DEGRE	GTY	
02	CUR:	750.227B-A		WEAPONS FELONY FIREARM	GTY	

Financial Order History

Ct	Assessment Description	Payer	J/S	Order Amount	Paid Amount	FQ	Balance
	COURT COSTS	D	001	300.00	300.00		
	CRIME VICTIM RIGHTS	D	001	130.00	130.00		
	STATE MINIMUM COSTS	D	001	136.00	136.00		
		Totals:		566.00	566.00		.00

Events, Actions, and Judgments

NUM	Date	Jurist	Chg/Party	Clerk
1	11/16/2012		D 001	ALR
	INDICTMENT & ORDER AUTHORIZING ISSUANCE OF WARRANT			
2	11/16/2012		D 001	ALR
	FELONY WARRANT - DFT TO BE HELD WITHOUT BOND			
3	11/19/2012		D 001	LAD
	FELONY INFORMATION			
4	11/20/2012		D 001	NEM
	MISCELLANEOUS HEARING ARRAIGNMENT/BENCH WARRANT ATTY DICKERSON FOR THE PROS DFT PRESENT IN CUSTODY AND ADVISED OF CHARGES/INFORMATION DFT TENDERS A PLEA OF NOT GUILTY AND IS ENTERED BY THE COURT; COUNSEL TO BE APPOINTED			

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Caseload Dsp: JV

Crt: C 04 38 Jur: WILSON Ref: CLOSE Pur
Case: 2012 0000003652 FC STATE OF MI V TODD ROBINSON

FOR THE DFT; MATTER IS SET FOR
A PRETRIAL HEARING; DFT IS TO
BE HELD W/O BOND; DFT IS
REMANDED TO CUSTODY

5 11/20/2012 D 001 NEM
NOTICE SENT FOR
W/PROOF OF SERVICE
SET NEXT DATE: PTH 01/04/2013 8:30 AM WILSON COURTROOM: 401

6 11/20/2012 D 001 NEM
ORIGINAL BENCH WARRANT IS IN
THE COURT FILE - CANCELED

7 11/20/2012 D 001 MRS
ORDER FOR COURT APPOINTED ATTORNEY
ATTORNEY: DUNGAN

9 11/26/2012 D 001 LSA
REQUEST FOR DISCOVERY AND
PROOF OF SERVICE

10 11/26/2012 D 001 LSA
APPEARANCE
ATTORNEY: KIRKPATRICK
AND DEMANDS W/PROOF OF SERVICE

11 11/26/2012 D 001 LSA
FROM: DUNGAN,MICHAEL B.,
TO: KIRKPATRICK,ANDREW P.,

12 12/05/2012 D 001 NEM
APPEARANCE
ATTORNEY: HATCHETT
STIPULATION AND ORDER FOR
SUBSTITUTION OF ATTORNEY

13 12/05/2012 D 001 NEM
FROM: KIRKPATRICK,ANDREW P.,
TO: HATCHETT,ELBERT L.,

14 12/11/2012 D 001 LAD
DEMAND FOR PRELIMINARY
EXAMINATION OR ALTERANTIVELY
TO QUASH INFORMATION
W/PROOF OF MAILING

15 12/18/2012 D 001 LSA
RESPONSE TO DFTS DEMAND FOR
PRELIM EXAM OR ALTERNATIVELY
TO QUASH INFORMATION

16 01/03/2013 D 001 NEM
REMOVE SCHEDULED EVENT
JUDGE UNAVAILABLE
SET NEXT DATE: PTH 01/04/2013 8:30 AM WILSON COURTROOM: 401

17 01/03/2013 D 001 NEM
NOTICE SENT FOR
W/PROOF OF SERVICE
SET NEXT DATE: PTH 01/18/2013 8:30 AM WILSON COURTROOM: 401

18 01/18/2013 D 001 NEM
PRETRIAL HEARING
W/MOTION HEARING
ATTY DICKERSON FOR THE PROS
ATTY HATCHETT W/DFT IN CUSTODY

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Caseload Dsp: JV

Crt: C 04 38 Jur: WILSON Ref: CLOSE Pur
Case: 2012 0000003652 FC STATE OF MI V TODD ROBINSON

MOTION FOR A PRELIMINARY
EXAMINATION IS DENIED DUE TO
THE GRAND JURY; MATTER IS SET
FOR A JURY TRIAL; DFT IS RE-
MANDED TO CUSTODY; THE COURT
WILL RE-CONSIDER ISSUING A
BOND AMOUNT AFTER REVIEW OF
THE POLICE REPORT

19 01/18/2013 D 001 NEM
NOTICE SENT FOR
W/PROOF OF SERVICE
SET NEXT DATE: TRLJ 03/18/2013 8:30 AM WILSON COURTROOM: 401

20 01/24/2013 D 001 NEM
AFTER REVIEW OF POLICE REPORT
BY THE COURT, NO BOND REMAINS

21 02/11/2013 D 001 CMC
PEOPLE'S WITNESS LIST
W/ PROOF OF SERVICE

22 03/07/2013 D 001 LSA
PEOPLE'S WITNESS LIST
AMENDED W/PROOF OF SERVICE

24 03/15/2013 D 001 NEM
SET CASE ON CALENDAR
SET NEXT DATE: TRLJ 03/18/2013 8:30 AM WILSON COURTROOM: 401

25 03/18/2013 D 001 NEM
REMOVE SCHEDULED EVENT
NOT TO BE HELD, MATTER TO BE
RE-SCHEDULED
SET NEXT DATE: TRLJ 03/18/2013 8:30 AM WILSON COURTROOM: 401

26 03/18/2013 D 001 NEM
NOTICE SENT FOR
W/PROOF OF SERVICE
SET NEXT DATE: TRLJ 04/29/2013 8:30 AM WILSON COURTROOM: 401

27 04/02/2013 D 001 LAD
DFT'S WITNESS LIST
W/PROOF OF SERVICE

28 04/29/2013 D 001 NEM
JURY TRIAL WHOLE DAY
ATTY DICKERSON FOR THE PROS
DETECTIVE BRETT STILES
ATTY HATCHETT W/DFT IN CUSTODY
JURY CHOSEN/SWORN
OPENING STATEMENT HEARD OF
ATTY HATCHETT; SWORN WITNESS
TESTIMONY BEGUN; JURY TRIAL TO
CONTINUE 4-30-13 @ 2PM; JURORS
RELEASED FOR THE DAY; DFT IS
REMANDED TO CUSTODY

29 04/29/2013 D 001 NEM
SET CASE ON CALENDAR
SET NEXT DATE: TRLJ 04/30/2013 10:30 AM WILSON COURTROOM: 401

30 04/30/2013 D 001 NEM
JURY TRIAL WHOLE DAY
CONTINUED; ATTY DICKERSON FOR

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Caseload Dsp: JV

Crt: C 04 38 Jur: WILSON Ref: CLOSE Pur
Case: 2012 0000003652 FC STATE OF MI V TODD ROBINSON

THE PROS; DETECTIVE STILES;
ATTY HATCHETT W/DFT IN CUSTODY
SWORN TESTIMONY CONTINUED
CLOSING ARGUMENTS HEARD
JURY INSTRUCTIONS GIVEN
EXTRA JUROR DISMISSED
DELIBERATION TO BEGIN
WED MAY 1ST @ 8:30
DFT REMANDED TO CUSTODY

33 04/30/2013 D 001 NEM
EXHIBIT LOG

34 04/30/2013 D 001 NEM
JURY INSTRUCTIONS

31 05/01/2013 01 D 001 NEM
JURY TRIAL HALF DAY
DISP: GUILTY
ATTY DICKERSON FOR THE PROS
DETECTIVE STILES
ATTY HATCHETT W/DFT IN CUSTODY
VERDICT READ BY FOREPERSON
JURORS SWORN/DISMISSED
SENTENCING DATE SET
DFT IS REMANDED TO CUSTODY

32 05/01/2013 D 001 NEM
NOTICE SENT FOR
W/PROOF OF SERVICE
SET NEXT DATE: SENT 06/13/2013 8:30 AM WILSON COURTROOM: 401

35 05/01/2013 D 001 NEM
VERDICT FORM

36 05/01/2013 D 001 NEM
ORDER FOR DNA SAMPLE

37 05/01/2013 02 D 001 NEM
JURY TRIAL HALF DAY
DISP: GUILTY

38 05/03/2013 D 001 LSA
ORDER FOR DNA

39 06/13/2013 01 D 001 NEM
SENTENCING
ATTY DICKERSON FOR THE PROS
YOUNG FOR PROBATION
ATTY HATCHETT W/DFT IN
CUSTODY; VICTIM IMPACT
STATEMENT HEARD; SENTENCED TO
THE DEPARTMENT OF CORRECTIONS
ON BOTH COUNTS, ON CT 1 TO
LIFE W/O PAROLE, ON CT 2 TO
2 YEARS FLAT W/205 DAYS CREDIT
CONSECUTIVE TO EACH OTHER;
COSTS ASSESSED; NOTIE OF RIGHT
TO APPEAL SIGNED BY THE DFT;
DFT IS REMANDED TO CUSTODY
COURT COSTS 300.00
CRIME VICTIM RIGHTS 130.00
STATE MINIMUM COSTS 136.00

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Caseload Dsp: JV

Crt: C 04 38 Jur: WILSON Ref: CLOSE Pub
Case: 2012 0000003652 FC STATE OF MI V TODD ROBINSON

40 06/13/2013 02 D 001 NEM
SENTENCING
Consecutive BEGINS: 06/13/2013
Prison
MINIMUM TERM: 2 Years
CREDIT TERM: 205 Days

41 06/13/2013 D 001 NEM
FINAL ORDER/JUDGMENT
JUDGMENT OF SENTENCE
COMMITMENT TO DEPARTMENT
OF CORRECTIONS

42 06/13/2013 D 001 NEM
ORDER TO REMIT PRISONER FUNDS FOR FINES, COSTS AND ASSESSMENTS

43 06/13/2013 D 001 NEM
NOTICE OF APPEAL OF RIGHTS

44 06/13/2013 D 001 NEM
WARRANT FOR REMOVAL OF PRISONER TO ANY PRISON

45 06/13/2013 D 001 NEM
FROM: HATCHETT,ELBERT L.,
TO: PRO-PER

88 06/14/2013 D 001 CCStoTCS
ADD/CHANGE FIN ORDER DUE DATE
EVENT DUE DATE: 11/24/2014

46 07/18/2013 D 001 LAD
APPEAL FROM CIRCUIT
RECEIPT #: 356790 AMOUNT: $25.00
ATTORNEY: GOFFNEY
PROOF OF SERVICE

47 08/29/2013 D 001 LSA
NOTICE OF FILING OF TRANSCRIPT
AND AFFIDAVIT OF MAILING
TRANSCRIPTION OF JURY TRIAL
VOL 1 4/29/13,V VOL II 4/30/13
VOL III 5/1/13 TRANSCRIBED BY
THERESAS TRANSCRIPTION SERVICE

48 10/23/2013 D 001 LSA
MOTION FILED
RE:RESTITUTION
PROOF OF SERVICE
SET NEXT DATE: MOH 11/22/2013 8:30 AM WILSON COURTROOM: 401

49 11/22/2013 D 001 NEM
MOTION HEARING
ATTY DICKERSON FOR THE PROS
PRESENTS STIP/ORDER REGARDING
RESTITUTION IN THE AMOUNT OF
$9,942.22; COURT GRANTS/SIGNS

50 11/22/2013 D 001 SDC
ORDER
STIPULATION-REGARDING
RESTITUTION-SHOULD BE 9,942.00
TO BE PD TO TIENIKA ROCHESTER

51 01/23/2014 D 001 JLI
FILE SENT TO MICHIGAN COURT OF
APPEALS DETROIT OFFICE

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Caseload Dsp: JV

Crt: C 04 38 Jur: WILSON Ref: CLOSE Pur
Case: 2012 0000003652 FC STATE OF MI V TODD ROBINSON

52 03/03/2014 D 001 JLI
COURT ORDERED PAID
RECEIPT #: 363156 AMOUNT: $122.50
COSTS TR

53 06/27/2014 D 001 SDC
COURT ORDERED PAID
RECEIPT #: 366568 AMOUNT: $286.53

54 09/30/2014 D 001 JLI
COURT ORDERED PAID
RECEIPT #: 369338 AMOUNT: $112.50
COSTS TR

55 11/19/2014 D 001 LSA
COURT OF APPEALS,STATE OF MICH
REMAND

56 11/19/2014 D 001 AMP
ORDER
COURT OF APPEALS,ST OF MI
ORDER-REMAND MATTER TO TRIAL
COURT TO CONDUCT A HEARING

57 11/24/2014 D 001 JLI
COURT ORDERED PAID
RECEIPT #: 370826 AMOUNT: $44.47
CRT ORD TR

58 11/24/2014 D 001 PCL
SET CASE ON CALENDAR
W/PROOF OF SERVICE
SET NEXT DATE: EVH 12/19/2014 1:31 PM WILSON COURTROOM: 401

59 11/26/2014 D 001 AMP
WRIT OF HABEAS CORPUS
PROOF OF SERVICE

60 12/01/2014 D 001 PCL
FROM: GOFFNEY,LAWRENCE J.,JR.
TO: MORGAN,RICHARD H.,JR.

61 12/01/2014 D 001 PCL
REMOVE SCHEDULED EVENT
SET NEXT DATE: EVH 12/19/2014 1:31 PM WILSON COURTROOM: 401

62 12/01/2014 D 001 PCL
NOTICE SENT FOR
SET NEXT DATE: EVH 12/19/2014 1:30 PM WILSON COURTROOM: 401

63 12/18/2014 D 001 AMP
APPEARANCE
ATTORNEY: DE YAMPERT
W/PROOF OF SERVICE

64 12/18/2014 D 001 AMP
FROM: MORGAN,RICHARD H.,JR.
TO: DE YAMPERT,JOHN H.,JR.

65 12/19/2014 D 001 NEM
EVIDENTIARY HEARING
ATTY SCHROTENBOER FOR THE PROS
ATTY DE YAMPERT W/DFT IN MDOC
CUSTODY; SWORN WITNESS TESTI-
MONY HEARD; EXHIBITS ENTERED;
CLOSING ARGUMENTS HEARD; COURT
RULING PLACED ON THE RECORD;

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TRANSCRIPT TO BE PREPARED; DFT REMANDED TO MDOC CUSTODY
TRANSCRIPT ORDERED VIA EMAIL FROM THERESA'S TRANSCRIPT

66 02/10/2015 D 001 AMP
NOTICE OF FILING OF TRANSCRIPT & AFFIDAVIT OF MAILING

67 02/10/2015 D 001 AMP
TRANSCRIPT OF EVIDENTIARY HEARING 12/19/14
TRANSCRIBED BY THERESA'S TRANSCRIPTION SERVICE

68 03/18/2015 D 001 LSA
COURT OF APPEALS,STATE OF MICH
ORDER-REMAND TO TRIAL COURT SHALL FILE A COPY OF ITS OPINION AND ORDER WITH COURT OF APPEALS WITHIN 21 DAYS OF THE CLERK CERTIFICATION OF THIS ORDER

69 04/14/2015 D 001 LSA
ORDER
OPINION AND ORDER AFTER EVID HEARING W/PROOF OF SERVICE

70 04/16/2015 D 001 TSP
FILE SENT TO ST OF MICH COURT OF APPEALS

71 06/12/2015 D 001 LAD
ORDER
MI COURT OF APPEALS-AFFIRMED

72 02/09/2016 D 001 AMP
RECORD RECEIPT

73 02/09/2016 D 001 AMP
ORDER
MOTION TO AMEND APPLICATION FOR LEAVE TO APPEAL IS GRANTED
APPLICATION FOR LEAVE TO APPEAL THE JUNE 9,2015 JUDGMENT IS DENIED

74 09/01/2016 D 001 CSI
ENTIRE FILE MAILED TO STATE OF MICHIGAN DEPT OF ATTORNEY GENERAL:
525 W OTTAWA 4TH FLOOR
WILLIAMS BUILDING
LANSING MI 48933

75 09/02/2016 D 001 CSI
RECIEVED CONFIRMATION OF DELIVERY OF FILE MAILED TO THE ATTORNEY GENERAL DATED 9/2/16
VIA UPS

76 12/02/2016 D 001 LKK
FILES RETURNED FORM ATTY GENERALS OFFICE

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Caseload Dsp: **JV**

Crt: C 04 38 Jur: WILSON Ref: CLOSE Pur
Case: 2012 0000003652 FC STATE OF MI V TODD ROBINSON

77 08/02/2018 D 001 AMP
PRO PER MOTION FOR EVID HRNG
PRO PER MOTION FOR RELIEF FROM JUDGMENT
BRIEF IN SUPPORT
DFT'S EXHIBITS
PROOF OF SERVICE

78 10/03/2018 D 001 ASE
PEOPLES ANSWER TO MOTION FOR RELIEF FROM JUDGMENT

79 10/15/2018 D 001 ASE
DFT'S REPLY BRIEF
PROOF OF SERVICE

80 02/11/2019 D 001 ASE
ORDER
RE:RELIEF FROM JUDGMENT

81 08/19/2019 D 001 CKR
ORDER
COURT OF APPEALS, STATE OF MI
REMAND IS DENIED

82 09/13/2019 D 001 LSA
NOTICE OF FILING APPLICATION
IN THE MICHIGAN SUPREME CCOURT

83 09/20/2019 D 001 TSP
SENT ENTIRE FILE/TRANSCRIPTS
TO:MICHIGAN SUPREME COURT
RECORDS DEPT.

84 08/13/2020 D 001 EWA
ORDER
MICHIGAN SUPREME COURT-THE APPLICATION FOR LEAVE TO APPEAL THE AUGUST 16,2019 COURT OF APPEALS IS DENIED.
MOTION TO REMAND IS DENIED.

85 07/20/2022 D 001 CKR
MOTION FILED
RE: TO WAIVE FILING FEES

86 07/20/2022 D 001 CKR
MOTION FILED
RE: FOR RELIEF FROM JUDGEMENT
W/ PROOF OF SERVICE

87 07/20/2022 D 001 CKR
MEMORANDUM OF LAW

89 10/25/2022 MA
ANSWER TO MOTION
RE: MOTION FOR RELIEF FROM JUDGMENT
W/ PROOF OF SERVICE

90 11/29/2022 D 001 TC
REPLY
"PETITIONER'S REPLY TO PROSECUTORS ANSWER IN OPPOSITOIN TO MOTION FOR RELIEF FROM JUDGMENT.
WITH PROOF OF SERVICE

91 12/29/2022 D 001 MA
ORDER

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Caseload Dsp: **JV**

Crt: C 04 38 Jur: WILSON Ref: CLOSE Pub
Case: 2012 0000003652 FC STATE OF MI V TODD ROBINSON

FOLLOWING MOTION FOR RELIEF FROM JUDGMENT
W/ PROOF OF SERVICE

**** END OF SUMMARY ****

*** END OF REPORT ***

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Appendix C

(5)

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CTN: 38-12003174-01 CI1 VP
2012003174 Vicki Prescot

STATE OF MICHIGAN 12th JUDICIAL DISTRICT 4th JUDICIAL CIRCUIT	INFORMATION FELONY HON. THOMAS D. WILSON	CASE NO.: 2012003174 DISTRICT: CIRCUIT: 12-003652-FC

District Court ORI: MI- MI380025J
312 S. JACKSON ST. JACKSON, MI 49201 517-788-4260

Circuit Court ORI: MI- MI380015J
312 S. Jackson St. Jackson, MI 49201 517-788-4268

	Defendant's name and address	Victim or complainant
THE PEOPLE OF THE STATE OF MICHIGAN	V TODD DOUGLAS ROBINSON 5818 WISE RD. LANSING, MI , 48911	Complaining Witness
Co-defendant(s)		Date: On or about 12/23/2011

City/Twp./Village	County in Michigan	Defendant TCN	Defendant CTN	Defendant SID	Defendant DOB
	JACKSON		38-12003174-01		07/27/1962

Police agency report no.	Charge	DLN	Vehicle Type	Defendant DLN
38JCPD 3849700	See below			

Witnesses
BRETT STILES JOE KELLY TROY HEARD

STATE OF MICHIGAN, COUNTY OF JACKSON
IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described above, the defendant:

COUNT 1: HOMICIDE - OPEN MURDER - STATUTORY SHORT FORM
did murder Eshaum Dupree-Oneil Gant; contrary to MCL 750.316. [750.316-C]
FELONY: Life; DNA to be taken upon arrest.

COUNT 2: WEAPONS - FELONY FIREARM
did carry or have in his/her possession a firearm, to-wit: pistol, at the time he/she committed or attempted to commi a felony, to-wit: open murder; contrary to MCL 750.227b. [750.227B-A]
FELONY: 2 Years consecutively with and preceding any term of imprisonment imposed for the felony or attempted felony conviction; Mandatory forfeiture of weapon or device [See MCL 750.239]

Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling samples.

contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State of Michigan.

Date

By: 11/19/2012 3:14:55 PM
CHRISTOPHER DICKERSON P72396
ASSISTANT PROSECUTING ATTORNEY

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Appendix D

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR JACKSON COUNTY

PEOPLE OF THE STATE OF MICHIGAN,
(PLAINTIFF)

-V-

TODD ROBINSON,
(PETITIONER)

CASE NO: 12-3652-FC

HON: THOMAS D. WILSON

TODD ROBINSON
PRISON NO: 876426
GUS HARRISON CORR. FAC.
2727 E. BEECHER Rd.
ADRIAN, MICHIGAN
49221

"MOTION FOR RELIEF FROM JUDGEMENT"
PURSUANT TO MCR. 2.612 et seq.

NOW COMES the Petitioner, TODD ROBINSON, pursuant to MCR. 2.612(C)(1)(d), and hereby request this court to grant this motion. In support of this motion, the Petitioner states the following:

* * * * * *

1. On or about November 14-16, 2012, the Prosecutor convened a "one-man Grand jury," pursuant to MCL. 767.3 & MCL. 767.4. At this proceeding, the Prosecutor presented the testimony of Troy Heard and Joe Kelly, who allegedly had information about

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an unsolved murder that had occurred on December 23, 2011;

2. Following the testimony of Troy Heard and Joe Kelly, the Magistrate Judge issued a 'Criminal Indictment' charging the Petitioner with Open-Murder and Felony Firearms violastion. Due to the outstandsing Indictment against the Petitioner, an arrest warrant was authorized on November 16, 2012;

3. On November 18, 2012, the Petitioner was subsequently arrested and held without bond. On November 19, 2012, the Petitioner was taken before Jackson County Circuit Court Judge, Thomas Wilson, and arraigned on the Indictment charging him with Open Murder. The Petitioner tendered a plea of 'not guilty' and was remanded back to the Jackson County jail;

4. On or before December 5th, 2012, the Petitioner hired attorney, Elbert Hatchett, who made his first appearance on defendant's behalf on that day;

5. On December 11, 2012, attorney Hatchett filed a motion to the court, "...demanding a 'Preliminary Examination,' or alternatively, to have the Indictment Quashed;"

6. After the Prosecutor filed a response to the motion, the Trial Court denied the Petitioner's request for a 'Preliminary Examination' and the motion to Quash. **(See attached appendix "A", Page 1-2)** The basis of the court denial was predicated on the courts belief that, "...Once an accused was indicted on a criminal charge pursuant to MCL. 767.4, he was not entitled to a Preliminary Examination." **(See attached Appendix "A",**

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Page 2);

7. Following Pre-trial proceedings, the Petitioner's trial began on April 29, 2013. On April 30, 2013, the testimonial aspect of the trial concluded and 'oral arguments' began;

8. Early on the morning of May 1, 2013, the jury began deliberations. By mid-day, the jury returned a guilty verdict of first-degree murder and felony firearms. On June 13, 2013, the Petitioner was sentenced to the mandatory sentence of LIFE w/o parole for the First-Degree murder conviction. He also received a consecutive two-year sentence, for the felony firearm conviction;

9. On June 28, 2022, the Michigan Supreme Court ruled in a 'unanimous' majority decision that, "...MCL. 767.4 does not give statutory authority to a Judge to issue a 'criminal indictment'." **(See Attached Appendix "B", PEOPLE-V-PEELER, 2022 MICH LEXIS 1267);**

10. As such, the Petitioner submits that, "his subsequent trial and conviction of First-Degree Murder and Felony Firearm, is "null and void," where the Circuit Court never acquired "subject matter or inpersonam jurisdiction" over the case or the Petitioner.

The Circuit Court only acquires subject-matter jurisdiction over a criminal case when, "...a Magistrate Judge files a 'return' following a Preliminary Examination, which indicates that, 'Probable Cause' has been found and the accused has

therefore been bound over for trial in the Circuit Court." cf. PEOPLE-V-GOECKE, 457 MICH 442, 458-459; 579 NW2d 868 (1998) (See Attached Memorandum of Law for Argument)

"RELIEF REQUESTED"

WHEREFORE, for all the foregoing reasons, the Petitioner pray that this court will issue an ORDER that, the Petitioner's convictions and sentences are 'void' and are thereby vacated, because the Circuit Court never acquired jurisdiction over this case, and remand this matter back to the Trial Court for further proceedings consistent with this ORDER.

Respectfully Submitted,

Todd Kalunsa

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR JACKSON COUNTY

PEOPLE OF THE STATE OF MICHIGAN,
(PLAINTIFF)

CASE NO: 12-3652-FC

-V-

HON: THOMAS D. WILSON

TODD ROBINSON,
(PETITIONER)

TODD ROBINSON
PRISON NO: 876426
GUS HARRISON CORR. FAC.
2727 E. BEECHER Rd.
ADRIAN, MICHIGAN
49221

"MEMORANDUM OF LAW"
IN SUPPORT OF MOTION FOR RELIEF FROM JUDGEMENT

"RELEVANT STATEMENT OF FACTS"

On December 23, 2011, Eshaun Gant's body was found at 107 Mitchell St., in Jackson, Michigan. Troy Heard and the Petitioner were at the home of Joe Kelly where the body was found alongside the fence in the driveway. All three men were questioned by the police that night, and all three men denied any knowledge of who killed Eshaun. Although all three admitted to "hearing gunshots." The murder of Eshaun Gant went unsolved and was placed in the 'cold case file,' after

months had passed without a viable lead.

Approximately 11 months later, Troy Heard was arrested on an unrelated gun charged. During a police interview, he provided a 'new' account for the murder of Eshaun Gant. According to Troy's 'new' story, the Petitioner was responsible for the murder of Eshaun Gant. **(Hearing Trans. at 10)**

Based on the statement(s) of Troy Heard, the police decided to speak with Joe Kelly, who was the homeowner where Eshaun Gant's body was found. During this interview, Joe Kelly also implicated the Petitioner in the murder, although he admitted that, "he did not witness the crime or see the Petitioner with a gun on the day Eshaun was killed."

The police shared this information with the Prosecutor, and on November 15, 2012, the Prosecutor convened a "one-man Grand Jury" pursuant to **MCL. 767.3.** During this proceeding, Troy Heard and Joe Kelly provided testimony which implicated the Petitioner in the murder of Eshaun Gant. On November 16th, 2012, after their testimony was concluded, the judge, sitting as the "one-man Grand Jury," issued a 'criminal indictment,' pursuant to **MCL. 767.4,** charging the Petitioner with, "Open-Murder and Felony Firearms violations." **(Grand Jury Trans. 11-15-12)**

On November 18, 2012, the Petitioner was arrested and held in the Jackson County Jail without bail. On November 19th, 2012, the Petitioner was taken to the Jackson County Circuit Court, where the Honorable judge, Thomas Wilson, read the

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"indictment" to the Pititioner. At that time, the Petitioner entered a 'not guilty' plea.

After making an appearance, attorney Elbert Hatchett filed a 'Pre-Trial' motion demanding a 'Preliminary Examination' or alternatively, 'a motion to quash the indictment on December 11, 2012.' **(See Attached Appendix "A", Page 2)**

On January 18, 2013, the Trial Court denied the Petitioner's request for a 'Preliminary Examination and the motion to quash.' The court's denial was predicated on its belief that, "...once the Petitioner had been indicted by the one-man Grand Jury pursuant to **MCL. 767.4,** the Petitioner was not entitled to a Preliminary Examination." **(See Attached Appendix "A", Page 2)**

Following Pre-Trial proceedings, the Petitioner was subsequently tried and convicted on May 1, 2013, of First-Degree Murder and Felony Firearm violation. On June 13, 2013, he was sentenced to the mandatory term of LIFE w/o parole for the First-Degree Murder conviction. He was also sentenced to a two-year consecutive sentence for the Felony Firearm conviction.

The Petitioner now submits that, the subsequent trial and convictions, based on an "indictment" issued pursuant to **MCL. 767.4,** is 'null and void' where the Circuit Court never acquired jurisdiction over the case or the Petitioner.

L E G A L A N A L Y S I S

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"ISSUE"

The defendant's conviction is "invalid and void" as a matter of law, and must be vacated, where the Circuit Court did not acquire "Subject-Matter and Inpersonam Jurisdiction," over the defendant to have a criminal trial, when the charging 'criminal indictment' was issued by a judge sitting as a 'one man grand jury' pursuant to MCL. 767.4, which did not give statutory authority to the judge to initiate criminal proceedings by issuing an indictment. And there was no "Magistrates Return" finding Probable Cause after a Preliminary Examination because it was denied by the Circuit Court Judge.

This is not a typical case where the defendant's case began with the Prosecutor filing a complaint and then holding a Preliminary Examination. See, MCR. 6.110(A)

Instead, the Prosecutor opted to proceed under MCL. 767.3 and MCL. 767.4, which authorized the use of a "one-man grand jury for investigatory purposes." During the grand jury proceedings, the Judge heard the testimony of Troy Heard and Joe Kelly in a closed door session. After their testimony, the judge issued an "indictment" charging the defendant with 'Open Murder and Felony Firearms violation.

The case was assigned to Circuit Court Judge, Thomas Wilson. Attorney Elbert Hatchett immediately filed a 'pre-trial' motion, "demanding that the Petitioner be returned to the district Court for a Preliminary Examination," or alternatively, to have the indictment quashed for 'lack of jurisdiction.'

The Circuit Court Judge denied the motions, reasoning that, "...Once the Petitioner was indicted by the one-man grand jury pursuant to MCL. 767.4, the Petitioner was not entitled to a

Preliminary Examination." **(See Appendix "A", Page 2)**

As a threshold matter, subject-matter jurisdiction is a question of law that is review de novo. **WAYNE CO CHIEF EXECUTIVE-V-GOVERNOR, 230 MICH APP 258, 269; 583 NW2d 512 (1998)** Subject-matter jurisdiction refers to, "the power of a court to act and the authority a court has to hear and determine a case." **WAYNE CO CHIEF EXECUTIVE-V-GOVERNOR, 230 MICH ASPP 258, 269; 583 NW2d 512 (1998)**

It cannot be forfeited, waived, or 'given by consent.' **PEOPLE-V-MIERZAJEWSKI (In Re Return of forfeited goods). 452 MICH 659, 671 (1996),** quoting. **WARNER-V-NOBEL, 284 MICH 654, 656 (1938)** And, it can be challenged directly or collaterally at any time. Lastly, subject-matter jurisdiction is presumed unless "expressly denied by constitution or statute." **GOECKE,(supra) at 457 MICH...458**

In **PEOPLE-V-PEELER, 2022 MICH LEXIS 1267,** a case that was decided on June 28, 2022 in a 6-0 majority decision, the court clarified a longstanding statutory misunderstanding. The Court held that, "MCL. 767.4, 'does not' give the Magistrate Judge the authority to initiate criminal proceedings by issuing a criminal indictment." **Id. 2022 MICH LEXIX at *19 (See attached Appendix "B")**

Moreover, according to the historical context of the statute **MCL. 767.4,** since as far back as 1949, the Legislature had expressly rejected and removed the language, "allowing indictments to be issued by a judge sitting as a 'one-man grand

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jury'." (Appendix "B", at *13-15)

It was once opined that, "an indictment issued by a one-man grand jury was equivalent to the finding of probable cause at a Preliminary Examination." See, PEOPLE-V-GREEN, 322 MICH APP 676, 687; 913 NW2d 385 (2018) A case that was decided 6 years after the the procedure was used against the Petitioner, which has now been 'explicitly' overruled by PEELER. Id. at *12

In light of the Supreme Court's unanimous majority decision in PEELER, the Petitioner submits that, "since the indictment issued by the judge sitting as a "one man grand jury" in this case, was not "statutorily authorized," the Circuit Court never obtained 'subject-matter or inpersonam jurisdiction over the case or the Petitioner.' Thus, his subsequent trial and convictions are 'null and void ab initio, and must be vacated."

Secondly, It has been a longstanding principle of law under Michigan's state jurisprudence that, "An accuse has the statutory right to a 'Preliminary Examination,' established by the state Legislature." MCL. 766.1 et seq. See also, MCR. 6.110(A), PEOPLE-V-MCGEE, 258 MICH 683; 672 NW2d 191 (2003)

Following a Preliminary Examination, the Magistrate Judge must issue a 'return' certifying that, "...Probable Cause has been found that a crime has been committed and there is reason to believe that the defendant is responsible." Once the Magistrate Judge issues this 'return,' the Prosecutor is authorized to file an information in the Circuit Court. MCGEE,(supra), 258 MICH APP at 696

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More importantly, In the absence of a proper indictment issued pursuant to, MCL. 767.23 & MCL. 767.24(1), the Circuit Court could only have obtained, "...subject-matter and inpersonam jurisdiction," over the case and the accused, 'when the accused had been bound over by the Magistrate who has certified and filed the 'return.' See, PEOPLE-V-GOECKE, 457 MICH 442, 459; 579 NW2d 868 (1998)

In the present case, the evidence in Appendix "A", page 2, shows that not only did the defendant request a Preliminary Examination through his attorney, Elbert Hatchett. It was denied a month later by the Circuit Court Judge, Thomas Wilson.

Thus, even evaluating this jurisdictional issue from this perspective, the Circuit Court still did not acquired subject-matter jurisdiction over the case or inpersonam jurisdiction over the Petitioner because the court denied the Preliminary Examination and therefore, no Magistrate's 'return' was ever filed. cf. GOECKE,(supra), 457 MICH...459(holding, "Had no Magistrate's return been filed, the Circuit Court could not have acquired subject-matter or inpersonam jurisdiction over the case or the accused.)

Considering the facts of this case, the Petitioner is entitled to relief. MCR. 2.612 grants the authority of this court to declare the Petitioner's convictions and sentences 'void,' as a matter of law. Specifically, MCR. 2.612(C)(1)(d) states:

(C) Grounds for Relief from Judgement:

(1) On motions and on just terms, the court may

relieve a party or the legal representative of a party from a final judgement, order or proceeding on the following ground(s):

(d) The Judgement is void.

This rule which allows a court to draw on its power, is necessary in this case because the defendant is in Prison on a conviction and sentence that is void for "want of jurisdiction."

In **MADISON-V-AAA OF MICH, 2019 MICH APP LEXIS 5862; 2019 WL 4732676**, the Court defined a "void judgement," and stated, "a judgement is void when there is, '...a want of jurisdiction over the Parties or the subject-matter,' no matter what formalities may have been taken by the court, the action thereof is void because of 'want of jurisdiction'." A void judgement flows from a case in which the court had 'no power to adjudicate at all.' **Id. at *12-13**

MCR. 2.612 permits a court to declare a judgement 'void', if the court rendering it "...lacked personal or subject-matter jurisdiction, and to grant relief on those grounds." **Id. MADISON,(supra) at 2019 MICH APP LEXIS, *14;** See also, **WENDT-V-LEONARD, 431 F.3d 410, 412 (CA-4, 2005)**

In conclusion, since the 'indictment' that was issued by the judge sitting as a 'one-man grand jury' did not confer subject-matter jurisdiction on the Circuit Court because there was no authority to issue the indictment. And, since there was no Magistrate's 'return filed in this case because no Preliminary Examination was ever had.' The Circuit Court simply never

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acquired subject-matter jurisdiction over this case, and the subsequent trial, convictions and sentences are thereby 'null and void", for lack of jurisdiction to proceed in the Circuit Court.

Respectfully Submitted,

Todd Robinson

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Appendix E

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

TODD DOUGLAS ROBINSON, #876426,

Defendant.

Case No. 12-3652-FC

Hon. Thomas D. Wilson

JERARD JARZYNKA (P35496)
Jackson County Prosecutor
312 S Jackson St
Jackson, MI 49201

TODD DOUGLAS ROBINSON, #876426
Defendant in Pro Per
Guss Harrison Correctional Facility
2727 E. Beecher Rd.
Adrian, MI 49221

ORDER FOLLOWING MOTION FOR RELIEF FROM JUDGMENT

Defendant was convicted by a jury on May 1, 2013 of first-degree murder and felony firearm. Defendant was sentenced on June 13, 2013 to life without parole for count 1 consecutive to two years for count 2. An evidentiary hearing was held on April 8, 2015 and this Court denied a new trial. The Court of Appeals affirmed on June 9, 2015, which led to the Supreme Court denying leave to appeal on February 4, 2016. Defendant previously filed a Motion for Relief from Judgment on July 30, 2018, which was denied on February 8, 2019. Defendant has now filed his second Motion for Relief from Judgment on July 20, 2022.

Because this is Defendant's second Motion for Relief from Judgment, the defendant must show a retroactive change in the law or show that new evidence was discovered. MCR 6.502(G)(2). Defendant claims the retroactive change in the law was the Michigan Supreme Court decision in *People v. Peeler*, __ Mich __; __ NW2d __ (2022). In *Peeler*, the Supreme Court held that a defendant charged pursuant to a one-man grand jury is entitled to a preliminary examination. *Id.* at 10. The *Peeler* decision expressly overruled *People v. Green*, 322 Mich.App. 676, 913 N.W.2d 385 (2018). Defendant claims that because of the new law imposed by the *Peeler* decision, he is entitled to relief from judgment. This Court does not agree.

There is no case law that has decided whether *Peeler* is to be retroactive or prospective. Although it is true that the general rule is that judicial decisions are to be given complete retroactive effect, prospective application of judicial decisions are limited to decisions which overrule clear and

uncontradicted case law. *Hyde v. Univ. of Mich. Bd. Of Regents,* 426 Mich. 223, 240; 393 N.W.2d 847 (1986). Since the *Peeler* decision overruled *Green,* Defendant is not entitled to relief from judgment under MCR 6.502(G)(2).

Even if the *Peeler* decision could be applied retroactively, Defendant has still not met his burden for relief from judgment under MCR 6.508(D)(3)(b). Defendant has not established that if a preliminary examination had occurred, there would have been a reasonably likely chance of acquittal. Defendant was convicted by a jury and there is no evidence to show that a preliminary examination would have changed the outcome of the jury trial.

For all the reasons stated herein, Defendant's successive Motion for Relief from Judgment is **DENIED.**

IT IS SO ORDERED on this 28th day of December, 2022.

Hon. Thomas D. Wilson
Circuit Court Judge

Certificate of Service:

I hereby certify that a copy of this order was served on the parties by way of U.S. Mail on December 28, 2022.

Cory Carr, Law Clerk

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Appendix F

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v TODD DOUGLAS ROBINSON, Defendant-Appellant.	FOR PUBLICATION June 13, 2024 9:10 a.m. No. 365226 Jackson Circuit Court LC No. 2012-003652-FC

Before: CAMERON, P.J., and N. P. HOOD and YOUNG, JJ.

YOUNG, J.

In 2013, a jury convicted Todd Douglas Robinson on one count each of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b. As particularly relevant here, this case commenced in November 2012 when Robinson was charged of the aforementioned offenses via indictment by the presiding judge acting as a one-man grand jury, without any preliminary examination. A felony warrant was issued and the charges were filed in a felony information that same month. The trial court subsequently denied Robinson's request for a preliminary examination or, alternatively, to quash the information.

Robinson now appeals by delayed leave granted[1] the trial court's order denying his successive motion for relief from judgment. On appeal, Robinson contends that the trial court erroneously denied this motion because, after the Michigan Supreme Court's recent opinion in *People v Peeler*, 509 Mich 381; 984 NW2d 80 (2022), Robinson's charges and subsequent prosecution were void when the case commenced via indictment by a one-man grand jury, without a preliminary examination, thus depriving the trial court of subject-matter jurisdiction over the case. Robinson relatedly argues that *Peeler* applies retroactively, and the trial court committed

[1] See *People v Robinson*, unpublished order of the Court of Appeals, entered October 6, 2023 (Docket No. 365226).

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legal error by concluding otherwise.[2] Although the charging procedure here was improper under *Peeler* and the remaining subissues present a close call, we affirm because this error was harmless and did not deprive the circuit court of jurisdiction to proceed in the case.

I. BACKGROUND

In previously affirming Robinson's convictions, this Court summarized the underlying facts as follows:

> [Robinson] was convicted of shooting and killing the victim as part of a drug deal involving promethazine. The evidence against [Robinson] was both direct and circumstantial. Two witnesses—Joe Kelley and Troy Heard, both long-time friends of [Robinson]—testified that the three men were playing their regular game of dominoes at Kelley's house. Kelley testified that [Robinson] went to the kitchen to talk with someone, probably a man but Kelley did not know who it was, and went out the back door with the person. Minutes later, Kelley heard a gunshot from "out back." Heard went outside briefly, returned, and said he had to leave. Kelley saw [Robinson] looking in his truck, saw a man he did not recognize lying down by the fence, and called 911. On cross-examination, Kelley said that he did not see [Robinson] with a gun that night.
>
> Heard testified that someone knocked at the back door, and [Robinson] answered. Heard identified the victim as being the man at the door. [Robinson] and the victim were negotiating over the sale of promethazine. [Robinson] came back to the table, laid a gun on the table, and said "it ain't gonna go down like they think." There was another knock at the back door and [Robinson] answered. Heard then heard what sounded like a gunshot. Heard looked out the kitchen window and saw [Robinson] move the victim to the fence. As Heard was leaving, [Robinson] said that the victim drew a gun on him and walked him out of the house. The next morning Detective Stiles went to Heard's house and Heard told a different story. Later, Heard got arrested with a gun, and Stiles again came to see him. Heard testified that he had a gun charge pending but expected nothing in exchange for his testimony at [Robinson]'s trial. [*People v Robinson*, unpublished per curiam opinion of the Court of Appeals, issued June 9, 2015 (Docket No. 317282), pp 1-2.]

After this Court affirmed Robinson's convictions, he moved in propria persona for relief from judgment, making various arguments irrelevant here. The trial court denied the motion, and both this Court and the Michigan Supreme Court denied Robinson's applications for leave to

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[2] This Court recently decided in *People v Kennedy*, ___ Mich App ___; ___ NW3d ___ (2023) (Docket No. 363575) (*Kennedy I*), that *Peeler* does apply retroactively. *Id.* at ___; slip op at 2, 5, 7. However, the Supreme Court vacated this Court's judgment in *Kennedy I* on May 31, 2024. *People v Kennedy*, ___ Mich ___; ___ NW2d ___ (2024) (Docket No. 166594) (*Kennedy II*).

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appeal concerning the motion, *People v Robinson*, unpublished order of the Court of Appeals, entered August 16, 2019 (Docket No. 348424); *People v Robinson*, 505 Mich 1039 (2020).

Later, on July 20, 2022, Robinson filed a second pro se motion for relief from judgment, this time in light of the Michigan Supreme Court's recent decision in *Peeler*, 509 Mich 381. *Peeler* held that MCL 767.3 and MCL 767.4, the one-man grand jury statutes, do not allow a judge to issue indictments in criminal proceedings. *Id.* at 386-387, 395-400. The Court also held that defendants are entitled to a preliminary examination "if a criminal process begins with a one-man grand jury." *Id.* at 386-387, 400.

Robinson argued that relief from judgment was warranted under MCR 2.612(C)(1)(d) (judgment is void) because he was indicted by one-man grand jury and without a preliminary examination contrary to *Peeler*. Robinson asserted that the circuit court therefore never acquired jurisdiction in this case, rendering "his subsequent trial and conviction[s]" "null and void." Robinson emphasized that MCR 2.612(C)(1)(d) provides authority to declare a conviction void when—as here—the court lacked jurisdiction over the case. Robinson argued that relief was also warranted under MCR 6.502(G)(2) because *Peeler* effectuated a change in law after he first moved for relief from judgment, and because *Peeler* should have retroactive effect. He also alleged prejudice by the improper procedure.

Without holding a hearing, the trial court denied Robinson's motion. The court acknowledged the recent change in law under *Peeler*, but disagreed that this entitled Robinson to relief. It reasoned:

> There is no [caselaw] that has decided whether *Peeler* is to be retroactive or prospective. Although it is true that the general rule is that judicial decisions are to be given complete retroactive effect, prospective application of judicial decisions [is] limited to decisions which overrule clear and uncontradicted [caselaw]. *Hyde v Univ of Mich Bd Of Regents*, 426 Mich 223, 240; 393 NW2d 847 (1986). Since the *Peeler* decision overruled *Green*,[3] [Robinson] is not entitled to relief from judgment under MCR 5.502(G)(2).
>
> Even if the *Peeler* decision could be applied retroactively, [Robinson] has still not met his burden for relief from judgment under MCR 6.508(D)(3)(b). [Robinson] has not established that if a preliminary examination had occurred, there would have been a reasonably likely chance of acquittal. [Robinson] was convicted by a jury and there is no evidence to show that a preliminary examination would have changed the outcome of the jury trial.

Robinson now appeals.

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[3] See *People v Green*, 322 Mich App 676; 913 NW2d 385 (2018), overruled in part by *Peeler*, 509 Mich 381.

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II. STANDARD OF REVIEW

"We review a trial court's decision on a motion for relief from judgment for an abuse of discretion[.]" *People v Swain (On Remand)*, 288 Mich App 609, 628; 794 NW2d 92 (2010). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes, or [it] makes an error of law[.]" *Id.* at 628-629 (citations omitted).

III. ANALYSIS

Robinson contends that the trial court erroneously denied his successive motion for relief from judgment because, following *Peeler*, his charges and subsequent prosecution were void when the case commenced via indictment by a one-man grand jury, without a preliminary examination, thus depriving the trial court of subject-matter jurisdiction over the case. According to Robinson, this lack of jurisdiction renders the judgment here void, such that his requested relief was warranted. Robinson relatedly argues that *Peeler* applies retroactively, and the trial court committed legal error by concluding otherwise.

A. GENERAL LAW AND KEY CASES; *PEELER*'S RETROACTIVITY

"A defendant in a criminal case may move for relief from a judgment of conviction and sentence." *Swain (On Remand)*, 288 Mich App at 629, citing MCR 6.502(A). "Such motions are governed by MCR 6.500 *et seq*." *Id.* "A defendant has the burden to establish entitlement to relief." *Id.* at 630, citing MCR 6.508(D). Under MCR 6.508(D)(3), a court is precluded from granting relief if the motion

> alleges grounds for relief, *other than jurisdictional defects*, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates
>
> (a) good cause for failure to raise such grounds on appeal or in the prior motion, and
>
> (b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, "actual prejudice" means that,
>
> (i) in a conviction following a trial,
>
> (A) but for the alleged error, the defendant would have had a reasonably likely chance of acquittal[.]
>
> * * *
>
> The court may waive the "good cause" requirement of subrule (D)(3)(a) if it concludes that there is a significant possibility that the defendant is innocent of the crime. [Emphasis added.]

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"A defendant is only entitled to file one motion for relief from judgment." *Swain (On Remand)*, 288 Mich App at 631, citing MCR 6.502(G)(1). However, MCR 6.502(G)(2) permits the filing of a successive motion under two circumstances:

> A defendant may file a second or subsequent motion based on a retroactive change in law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion.

"Because a successive motion for relief from judgment may only be filed if, after the first motion, there is a retroactive change in the law or new evidence is discovered, the 'good cause' and 'actual prejudice' requirements of MCR 6.508(D)(3) are not relevant until, and are only relevant if, the trial court determines that the successive motion falls within one of the two exceptions of MCR 6.502(G)(2)." *Swain (On Remand)*, 288 Mich App at 632-633.

As an initial matter, we conclude that *Peeler* did not involve a retroactive change in the law, so Robinson is not entitled to relief from judgment on this basis. In Michigan, "the general rule is that judicial decisions are to be given complete retroactive effect." *League of Women Voters of Mich v Secretary of State*, 508 Mich 561, 565; 975 NW2d 840 (2022) (quotation marks and citation omitted). "However, where injustice might result from full retroactivity, this Court has adopted a more flexible approach, giving holdings limited retroactive or prospective effect." *Id.*; see also *People v Barnes*, 502 Mich 265, 268; 917 NW2d 577 (2018) ("[J]udicial decisions which express new rules normally are not applied retroactively to other cases that have become final. New legal principles, even when applied retroactively, do not apply to cases already closed[] because at some point, the rights of the parties should be considered frozen and a conviction . . . final.") (quotation marks and citation omitted; omission in original).

Therefore, in determining retroactivity, courts must first address "[t]he threshold question" of "whether a decision amounts to a new rule of law." *League of Women Voters of Mich*, 508 Mich at 566. "A rule of law is *new* for purposes of resolving the question of its retroactive application . . . either when an established precedent is overruled or when an issue of first impression is decided which was not adumbrated by any earlier appellate decision." *Id.* (quotation marks and citation omitted; omission in original).

Concerning the specific effect of *Peeler* at issue here, this Court's analysis in *People v Walker*, 328 Mich App 429; 938 NW2d 31 (2019), is insightful:

> A judicial decision's rule is considered to be new if it breaks new ground or imposes a new obligation on the States or the Federal Government. In other words, a case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final. [*Id.* (quotation marks and citations omitted).]

Importantly, *Peeler*'s holdings did not establish any new rule because the Court did not announce a new rule that was not dictated by precedent. Instead, *Peeler*'s decision was based on the proper interpretation of longstanding statutory authority in existence since well before Robinson's indictment and conviction in this case. See *People v Phillips*, 416 Mich 63, 67-75; 330 NW2d 366 (1982) (The Supreme Court's opinion in *People v Dunigan*, 409 Mich 765; 298

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NW2d 430 (1980), did not announce a new rule of law because "[t]he right to [a preliminary examination] enforced in *Dunigan* has existed since 1859 . . . "; therefore, the trial court properly granted the defendant a new trial "because this juvenile defendant was not given the examination he timely demanded," even though *Dunigan* did not explicitly apply this right to the class of juvenile defendants until after the defendant in *Phillips* was convicted.).

Given the foregoing, we cannot conclude that *Peeler* effectuated "a retroactive *change in law*" to warrant granting Robinson's successive motion for relief from judgment on this basis under MCR 6.502(G)(2) (emphasis added). Although Robinson was improperly subjected to indictment by a one-man grand jury without a preliminary examination, he could and should have challenged this procedure in his initial appeal before this Court. The questions remain, however, concerning whether the one-man-grand-jury procedure utilized here and contrary to *Peeler* necessarily deprived the circuit court of subject-matter jurisdiction over Robinson's case, and whether this provides an alternative basis to grant Robinson's successive motion for relief from judgment.

In *People v Washington*, 508 Mich 107; 972 NW2d 767 (2021), the Supreme Court addressed a claim of jurisdictional error raised in the defendant's successive motion for relief from judgment, which the trial court had granted. *Id.* at 113, 116. The Supreme Court first discussed whether the trial court having earlier erroneously resentenced the defendant while his appeal from a final order was pending "is an error of subject-matter jurisdiction." *Id.* at 121. "Subject-matter jurisdiction is a legal term of art that concerns a court's authority to hear and determine a case." *Id.* "This authority is not dependent on the particular facts of the case but, instead, is dependent on the character or class of the case pending." *Id.* (quotation marks and citations omitted). "The courts do not have inherent subject-matter jurisdiction; it is derived instead from [this state's] constitutional and statutory provisions." *Id.*

Under Michigan's 1963 Constitution, circuit courts have "original jurisdiction in all matters not prohibited by law . . . ." Const 1963, art VI, § 13. MCL 600.601 similarly states:

> (1) The circuit court has the power and jurisdiction that is any of the following:
>
> (a) Possessed by courts of record at the common law, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
>
> (b) Possessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
>
> (c) Prescribed by the rules of the supreme court.

The *Washington* Court stated, "In construing these provisions, we have recognized that circuit courts have subject-matter jurisdiction over felony cases." *Washington*, 508 Mich at 121-122, citing *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011) ("Michigan circuit courts are courts of general jurisdiction and unquestionably have jurisdiction over felony cases.") and

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MCR 6.008(B) ("The circuit court has jurisdiction over all felonies from the bindover from the district court unless otherwise provided by law.").[4]

Moreover, the *Washington* Court observed that "there is a widespread and unfortunate practice among both state and federal courts of using the term 'jurisdiction' imprecisely, to refer both to the subject-matter and the personal jurisdiction of the court, and to the court's general authority to take action." *Washington*, 508 Mich at 124. It also explained the type of language that Michigan courts use to discuss jurisdictional defects as compared to errors in the exercise of jurisdiction:

> Although the usage of these terms is not wholly consistent, generally, the terms "vest" and "jurisdiction" are used to refer to the existence of jurisdiction. See, e.g., *Paley v Coca Cola Co*, 389 Mich 583, 599[;] 209 NW2d 232 (1973) (discussing the subject-matter jurisdiction of the circuit court and using the terms "vest," "vested," and "jurisdiction" rather than "power" or "authority"); *Campbell v St John Hosp*, 434 Mich 608, 613-614[;] 455 NW2d 695 (1990) (same); *Davis v Dep't of Corrections*, 251 Mich App 372, 374, 378[;] 651 NW2d 486 (2002) (same). In contrast, the terms "power" and "authority" are generally used to refer to errors in the exercise of jurisdiction and other nonjurisdictional errors. See, e.g., *People v Comer*, 500 Mich 278, 292-293[;] 901 NW2d 553 (2017)[5] (discussing a trial court's nonjurisdictional error using the language "authorized" and "authority" rather than "vest" and "jurisdiction"). [*Id.* at 125 n 5.]

The Court ultimately concluded that the trial court lacked subject-matter jurisdiction when it resentenced the defendant while his appeal was pending. *Id.* at 129. Moving to what relief, if any, was warranted, the Court noted "a longstanding rule that defects in a court's subject-matter jurisdiction render a judgment void *ab initio*"—i.e., from the beginning. *Id.*; see also *In re Ferranti*, 504 Mich 1, 22; 934 NW2d 610 (2019) ("[W]hen there is a want of jurisdiction over the parties, or the subject-matter, no matter what formalities may have been taken by the trial court, the action thereof is void because of its want of jurisdiction, and consequently its proceedings may be questioned collaterally as well as directly."). "[T]his Court has also recognized that courts are bound to take notice of the limits of their authority and act accordingly." *Washington*, 508 Mich at 130. "Courts may take such action at any point in the proceedings—whether in the trial court,

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[4] See also MCL 600.151 ("The judicial power of the state is vested exclusively in 1 court of justice which shall be divided into 1 supreme court, 1 court of appeals, *1 trial court of general jurisdiction known as the circuit court*, 1 probate court, and courts of limited jurisdiction created by the legislature.") (emphasis added); MCL 767.1 ("[C]ircuit courts of this state . . . and any court of record having jurisdiction of criminal causes[] shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon informations for crimes, misdemeanors and offenses, . . . and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictments.").

[5] This case was superseded by statute on other grounds, as stated in *People v Pendergrass*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 362218); slip op at 4.

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on direct appeal, or on collateral attack—and by their own initiative or upon motion of the parties." *Id.*

Next, the *Washington* Court specifically rejected the prosecution's argument that such a jurisdictional defect cannot be raised in a successive motion for relief from judgment. *Id.* at 130-132. It reasoned:

> The prosecutor is correct that a lack of subject-matter jurisdiction is not encompassed by either of MCR 6.502(G)(2)'s exceptions to the successive-motion bar of MCR 6.502(G)(1). However, the restrictions on a trial court's authority contained in MCR 6.500 *et seq.* are not implicated here because these provisions only limit a court's ability to review a "judgment of conviction and sentence," and as already discussed, our caselaw establishes that the trial court's judgment of sentence, rendered when the trial court lacked subject-matter jurisdiction, was void *ab initio*. Thus, there was no valid sentence to review, and MCR 6.501 does not limit a trial court's ability to recognize a subject-matter jurisdiction error and remedy it.
>
> Rather, upon [the] defendant's raising of the issue, the trial court had the duty to recognize its lack of subject-matter jurisdiction and act accordingly. In light of these longstanding rules, the trial court did not err when it granted relief to [the] defendant. The trial court's judgment of sentence was void and [the] defendant's failure to raise the issue on direct appeal, on his first motion for relief from judgment, or in a habeas petition cannot render the judgment of sentence valid. Unlike other errors that a defendant eventually loses the ability to raise, the lack of subject-matter jurisdiction cannot be ignored for purposes of finality because the existence of subject-matter jurisdiction goes to the trial court's very authority to bind the parties to the action at hand. The trial court acted in accordance with its duty to recognize its lack of subject-matter jurisdiction. Therefore, although MCR 6.502(G)(2) does not contain an exception for jurisdictional errors, the trial court did not err when it vacated its earlier judgment of sentence and set the matter for resentencing. [*Id.* at 131-132 (citations omitted).]

Notably, the Supreme Court in *People v Scott*, ___ Mich ___; ___ NW3d ___ (2024) (Docket No. 164790), recently distinguished *Washington* to conclude that "interlocutory appeals do not divest the trial court of its subject-matter jurisdiction" and "[any] error arising during or from the taking of an interlocutory appeal is subject to subsequent appellate review following entry of the final order." *Id.* at ___; slip op at 2-3. In doing so, the Court reasoned that the trial court's failure to comply with an automatic stay during an interlocutory appeal was "a procedural error" that did not affect subject-matter jurisdiction because, unlike the right to appeal from a final order at issue in *Washington* and "expressly recognize[d]" in Michigan's constitution, "[i]nterlocutory appeals have no constitutional pedigree." *Id.* at ___; slip op at 18, 22; see also *id.* at ___; slip op at 18-29. "Interlocutory appeals simply do not implicate our Constitution and therefore remain outside the scope of jurisdictional concern." *Id.* at ___; slip op at 24.

As stated above and reinforced by the preceding authority, the key issue here is the effect of *Peeler* on Robinson's indictment and the subsequent proceedings that led to his conviction—

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specifically, whether the improper procedure utilized here necessarily deprived the circuit court of subject-matter jurisdiction in this case and rendered its judgment void. We must also decide whether Robinson is entitled to relief from judgment because of the improper procedure.

Here, Robinson does not provide any substantive argument on appeal regarding good cause or prejudice under MCR 6.508(D)(3), instead entirely basing his requested relief on the circuit court's purported lack of subject-matter jurisdiction and his charges and convictions therefore being void. Indeed, MCR 6.508(D)(3)'s requirements to show good cause and prejudice do not relate to jurisdictional errors. So *if* the one-man-grand-jury indictment did deprive the circuit court of subject-matter jurisdiction here, no showing of good cause or prejudice would be needed. And under *Washington* (and *Ferranti*), such a defect in the court's jurisdiction would render the restrictions of MCR 6.500 *et seq*. inapplicable and the judgment itself void, such that the trial court had the duty to recognize—and should have recognized—its lack of jurisdiction. See *Washington*, 508 Mich at 131-132. But the parties dispute whether the procedure deemed improper in *Peeler* implicates or affects jurisdiction. To resolve the jurisdictional issue, we first turn to *Peeler*.

Peeler, 509 Mich 381, involved three defendants—all state employees charged for their roles in the Flint water crisis—challenging in interlocutory appeals their indictments by a one-man grand jury. *Id*. at 386-389.[6] *Peeler* held that MCL 767.3 and MCL 767.4, the two one-man grand jury statutes, do not allow a judge to issue indictments in criminal proceedings. *Id*. at 386-387, 395-400. The Court also held that defendants are entitled to a preliminary examination "if a criminal process begins with a one-man grand jury." *Id*. at 386-387, 400.

On the first issue, the Court specifically addressed "[w]hether MCL 767.3 and MCL 767.4 confer charging *authority* on a member of the judiciary . . . ." *Id*. at 389 (emphasis added). After construing the statutory language, the Court concluded, "MCL 767.3 and MCL 767.4 authorize a judge to investigate, subpoena witnesses, and issue arrest warrants. But they do not authorize the judge to issue indictments." *Id*. at 400. "The trial court therefore erred by denying [the defendant] Lyon's motion to dismiss." *Id*.

The Court likewise interpreted the one-man-grand-jury statutes as providing a right to a preliminary examination. *Id*. at 391-394. In doing so, the Court stated that "judge[s] should treat the one-man-grand-jury-charged case the same as a case in which a formal complaint has been filed." *Id*. at 392. "We know how that process works too: When a formal complaint is filed, an arrest warrant is issued, the accused is apprehended, and the court holds a preliminary examination before an information may issue."[7] *Id*. "The circuit court [therefore] erred by denying [the defendant] Peeler's and [the defendant] Baird's motions to remand for a preliminary

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[6] As indicated by the circuit court's order on remand in *Peeler*, discussed next, the consolidated Flint water cases involved seven different defendants, but only the three mentioned were involved in the challenges on appeal.

[7] See also MCL 767.42(1) ("An information shall not be filed against any person for a felony until such person has had a preliminary examination therefor, as provided by law, before an examining magistrate, unless that person waives his statutory right to an examination.").

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examination." *Id.* at 395. The Court ultimately reversed the trial court's orders denying Peeler's and Baird's motions to remand and Lyon's motion to dismiss, and remanded "for further proceedings consistent with th[e Court's] opinion." *Id.* at 400.[8]

B. ADDITTIONAL CASELAW AND APPLICATION

It is admittedly a close call whether the improper indictment procedure here deprived the circuit court of subject-matter jurisdiction and necessarily rendered the court's judgment void, with related authorities seemingly diverging on—and not clearly addressing—this issue. To reach a conclusion on this matter, we rely on cases dealing with errors both in indictments and informations, the two analogous charging procedures provided by the Legislature. See *People v Glass (After Remand)*, 464 Mich 266, 276; 627 NW2d 261 (2001) ("Michigan law provides that criminal prosecutions may be initiated in the court having jurisdiction to hear the cause by either indictment or information.").

Well before it decided *Peeler*, the Michigan Supreme Court in *In re Elliott*, 315 Mich 662; 24 NW2d 528 (1946), stated that "[t]he circuit court does not lose jurisdiction[] where a void or improper information is filed." *Id.* at 675. More recently, the Supreme Court stated as follows:

> The circuit court is a court of general jurisdiction, having original jurisdiction in all matters not prohibited by law . . . . Subject matter jurisdiction is presumed unless expressly denied by constitution or statute. It is the right of the court to exercise jurisdiction over a class of cases, such as criminal cases. In personam jurisdiction is vested in the circuit court upon the filing of a return of the magistrate before whom the defendant waived preliminary examination, or before whom the defendant had been examined. Having once vested in the circuit court, personal jurisdiction is not lost even when a void or improper information is filed. *In re Elliott*, [315 Mich] at 675. [*People v Goecke*, 457 Mich 442, 458-459; 579 NW2d 442 (1998) (quotation marks and citations omitted; omission in original).]

The Supreme Court in a later case held that "the information filed in this case is null and void because it was filed pursuant to the invalid scheme set forth in MCR 6.112(B) that purported to allow an indictment to substitute for a complaint." *Glass (After Remand)*, 464 Mich at 283. Because the information was null and void, the Court declined to consider arguments related to harmless error. *Id.* at 283 & n 14. The Court never specifically addressed whether or how this

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[8] On remand, the circuit court in *Peeler* expressed some confusion regarding what the Supreme Court intended that it should do. The circuit court ultimately concluded that "[b]ecause the one-person grand jury does not have the power to issue indictments, the indictments [here] were void *ab initio*[, and] anything arising out of the invalid indictments are [sic] irreconcilably tainted from inception." The court stated further that "the charging process was invalid from its inception and issuance of an arrest warrant after an invalid indictment is irrelevant to our consideration. Because the charging procedure in this matter was invalid, remand for a preliminary examination would be improper. Simply put, there are no valid charges to remand for preliminary examination. Therefore, this Court must dismiss the charges against Defendants."

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error affected the circuit court's jurisdiction, however, and merely "remanded . . . for proceedings consistent with th[e Court's] opinion." *Id.* at 289.

In contrast, *People v Cherry*, 27 Mich App 672; 183 NW2d 857 (1970),[9] framed a challenge to an amended information, which this Court rejected, as specifically implicating the circuit court's jurisdiction. *Id.* at 675-676. We also acknowledge Robinson's reliance on *People v Curtis*, 389 Mich 698; 209 NW2d 243 (1973), which determined in relevant part that "the trial court could not gain jurisdiction over [a] higher charge based on [an] erroneous information" because "[t]he court's jurisdiction was limited to that offense specified in the return made by the examining magistrate." *Id.* at 708. Notably, neither case specifies whether they were addressing a lack of personal jurisdiction, a lack of subject-matter jurisdiction, or an error in the circuit court's exercise of jurisdiction.

Admittedly, *Glass (After Remand)* arguably supports that the improper charging procedure here, like that in *Glass (After Remand)*, rendered the indictment null and void, while *Cherry* and *Curtis* indicate that errors in an indictment or information implicate a court's jurisdiction in some way. But none of these cases clearly hold or otherwise indicate that such errors deprive the circuit court of jurisdiction, whether subject-matter or personal. Indeed, such would be contrary to our Supreme Court's prior declarations, at least with respect to informations, that jurisdiction is unaffected by a "void or improper" charging document. See *Goecke*, 457 Mich at 458-459; *In re Elliott*, 315 Mich at 675. With all that in mind, we now turn to the specific improper procedure at issue here and disallowed by *Peeler*.

As an initial matter, we are not bound by the circuit court's interpretation of *Peeler* on remand in that case, nor do we read our Supreme Court's opinion in *Peeler* as implicating subject-matter jurisdiction. First, both parties misconstrue *Peeler*. The *Peeler* Court neither specifically instructed for any preliminary examination on remand, nor did it indicate that dismissal in particular was warranted. Rather, the Court merely indicated that the trial court erred by denying one defendant's motion to dismiss, and two other defendants' motions for a preliminary examination. It provided no clear instruction for how the circuit court should address these separate errors on remand.

Importantly, *Peeler* includes no indication whatsoever that its holdings relate to a court's jurisdiction, whether subject-matter or personal. *Peeler* never uses the word jurisdiction except in quoting exact excerpts from MCL 767.3 and MCL 767.4 not relevant here, see *Peeler*, 509 Mich at 391-392, nor any other terms like "vest" or "vested" that would implicate reference to *the existence* of jurisdiction, see *Washington*, 508 Mich at 125 n 5. Instead, the Court referenced the trial court's charging *authority*, thus supporting that the improper charging procedure was an error

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[9] Although we are not required to follow cases decided before November 1, 1990, see MCR 7.215(J)(1), a published case decided by this Court "has precedential effect under the rule of stare decisis," MCR 7.215(C)(2). See also *Woodring v Phoenix Ins Co*, 325 Mich App 108, 114-115; 923 NW2d 607 (2018) (stating that although this Court is not "strictly required to follow uncontradicted opinions from this Court decided before November 1, 1990," those opinions are nonetheless "considered to be precedent and entitled to significantly greater deference than are unpublished cases.").

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in the exercise of jurisdiction or some other nonjurisdictional error. See *id.* And our Supreme Court never said that the improper procedure rendered the indictments in *Peeler* void. For the foregoing reasons, we conclude that an indictment via one-man grand jury, although erroneous under *Peeler*, does not deprive the circuit court of subject-matter jurisdiction. Therefore, the judgment here was not void for a lack of jurisdiction.

We also find that the error here did not deprive the trial court of subject-matter jurisdiction because it was "procedural." See *Scott*, ___ Mich at ___; slip op at 18. Like the issue in *Scott* and unlike in *Washington*, Michigan does not provide any *constitutional* right to a preliminary examination. *People v Hall*, 435 Mich 599, 603; 460 NW2d 520 (1990) ("[T]he preliminary examination is not a procedure that is constitutionally based."); *People v Johnson*, 315 Mich App 163, 200 n 7; 889 NW2d 513 (2016) ("[A] preliminary examination is not a constitutionally based procedure . . . ."). And the filing of an indictment, like the filing of an information after a preliminary examination, is governed not by any constitutional provision or right, but by statute. See MCL 767.45. Expanding on this analysis, we conclude further that reversal is unwarranted because the improper procedure utilized here constitutes harmless error. See *Hall*, 435 Mich at 612 (applying harmless error to prohibit automatic reversal for errors in preliminary examination proceedings); *Johnson*, 315 Mich App at 200 n 7 ("[A]ny errors that occur at a preliminary examination will be deemed harmless if the defendant is subsequently convicted at an otherwise fair trial."). Here, Robinson makes no argument regarding prejudice resulting from the error at issue, nor has he shown any errors that affected his actual trial. Because Robinson was also duly convicted by a jury in this case, any error in the indictment or preliminary examination process does not warrant reversal.

In sum, because the challenged error was harmless and did not deprive the circuit court of jurisdiction to proceed in the case, Robinson has failed to show entitlement to relief from judgment. As a final note, our conclusion that the improper procedure here did not deprive the circuit court of subject-matter jurisdiction is further supported by analogous authority from the United States Supreme Court and other states' courts. See *United States v Cotton*, 535 US 625, 630; 122 S Ct 1781; 152 L Ed 2d 860 (2002) ("defects in an indictment do not deprive a court of its power to adjudicate a case"); *State v Ortiz*, 162 NH 585, 589-590; 34 A 3d 599 (NH, 2011) ("[A] defective indictment does not deprive a trial court of its power to adjudicate a case. While a defect may be error—or even constitutional error, . . . the defect does not divest [a trial court] of the power to try the case.") (quotation marks and citation omitted; omission and alteration in original); *State v Maldonado*, 223 Ariz 309; 223 P 3d 653 (Ariz, 2010) ("We hold that the State's failure to file an information before trial did not deprive the superior court of subject matter jurisdiction or constitute fundamental error."); *Sate v Gentry*, 363 SC 93, 101; 610 SE2d 494 (SC, 2005) ("[S]ubject[-]matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject[-]matter jurisdiction to try criminal matters.").

Affirmed.

/s/ Adrienne N. Young
/s/ Thomas C. Cameron
/s/ Noah P. Hood

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Appendix G

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Michigan One-Man Grand Jury Is Nullified, 33 J. AM. JUD. Soc. 58 (1949).

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great deal of volume they are unable to secure as good a printing price as the clerk of the Court of Appeals, where the volume is great and the printers are anxious to secure the contract and consequently are willing to give a better page price.

"If designations are filed which only call for the material parts, a record printed under the supervision of the clerk of the Court of Appeals will not be any longer than the appendix record, and probably will be shorter due to his experience in eliminating repetition, duplication of titles and immaterial matter."

The committee cites a number of specific instances where savings could have been effected by eliminating immaterial matter.

"An examination of case No. 3744, Bradburn v. Shell Oil Company, discloses that the entire record was printed. There were at least seventy-five pages of testimony dealing with the competency of the plaintiff. On appeal his competency was not questioned, yet this evidence was designated for printing. If this evidence had not been printed, $200 of the cost of printing could have been saved.

"In many cases immaterial colloquy between court and counsel is designated for printing. In one printed record the following appeared: 'I am like the old woman that lived in a shoe, had so many children she didn't know what to do. I have got so many papers around here I get lost with them.' Counsel for one of the parties made this statement."

The appendix method originated in the Fourth Circuit a number of years ago and has saved litigants there and in other jurisdictions where it has been adopted hundreds of thousands if not millions of dollars. It is described in an article by Claude M. Dean, clerk of the Fourth Circuit, in the February, 1943, JOURNAL (26:148).

Michigan One-Man Grand Jury Is Nullified

The Michigan "one-man grand jury" has become a "three-man grand jury" as a result of legislation recently passed by the Michigan legislature drastically amending the thirty-two-year-old law creating the unique criminal investigative agency which has frequently been described and discussed in these pages. The power to grant immunity from prosecution as a result of information divulged also has been removed, and numerous other fundamental changes in its make-up and operation are included in the new statute.

This action of the legislature was the result of an intensive campaign against the institution largely by certain groups within the legal profession. The State Bar of Michigan a few years ago approved an amendment providing that the one-man grand juror should not be permitted to act as examining magistrate with respect to defendants he himself had sought out, but otherwise consistently advocated its retention. The effect of the amendments were appraised by Representative Louis C. Crampton in a speech before the House of Representatives as follows:

"The one-man grand jury system adopted in this state in 1917 to meet the demand of public-spirited citizens who sought an effective weapon to combat criminal rackets and official corruption which so seriously threatened good government has abundantly justified their hopes. In many spectacular instances and in hundreds of unpublicized inquiries it has accomplished results that have been vital to decent government in this state and that could not have been accomplished otherwise.

"The judges and the prosecutors who have made so effective use of this weapon against graft, official corruption, criminal conspiracy, legislative bribery, industrial terrorism, deserve and have the thankful appreciation of the people of Michigan for the splendid fights made and won. In these fights Ferguson, O'Hara, Dehnke, Carr, Sigler, Simpson and many others rendered services of the greatest value to the cause of democracy. State legislators, lobbyists for grasping private interests, a lieutenant-governor, sheriffs, high officials of state and local police, prosecuting attorneys, a mayor of our metropolis, top figures in the world of gambling and rackets, labor thugs and goons, the highest placed among criminals and recreant key men in public trust — they have reached and imprisoned such.

"Now this legislature lessens its record by wrecking the one-judge grand jury law. Not daring express repeal, the law is emasculated.

"Without the one-judge grand jury law of 1917 those many high-ups in civic crime could not have been reached and stopped in their nefarious practices. The legislature would still

smell to high heaven. What would Michigan be today if those men had not through their use of this weapon accomplished those things in the public interest?

"What, then, will be the future of Michigan when crooks need no longer fear this tested weapon?

"Notwithstanding the high standards for integrity and public service that have been so uniformly maintained by our judges, it is now urged that one judge cannot be trusted in judgment and impartiality. Three must act together hereafter in ordering and conducting these vital inquiries. The hundreds of minor inquiries that have so greatly aided the work of prosecutors will hereafter, in one-judge circuits, seldom be possible, and for the greater inquiries, it will be difficult to assemble three judges from various circuits for an inquiry that may last for months. When such a grand jury is assembled, much will be lacking in efficiency, speed, economy and determination through diffusion of authority and responsibility and handicaps on initiative, and through inevitable conflicts of several personalities. Nothing is gained by this complicating of authority, and the losses are beyond estimation. Difficult to assemble and maintain, uncertain in its operation, the idea has been eagerly grasped by those who desire destruction of the proven one-judge system.

"The attorney-general and prosecuting attorneys are to be barred from appointment or election to other office. Thus is to be prevented rewards by the electorate for duties well performed. An incidental effect is to bar the attorney-general from merited promotion to the supreme court, as has been customary for capable and proven men. Democracy is throttled by such devices.

"Through an unintended blunder in drafting, the new law will require every justice of the peace to refer to a circuit judge every criminal complaint.

"House Bill No. 287 is destructive of the most effective war on organized and entrenched crime and on criminal conspiracies involving those who betray official trust in the making and enforcing of the laws. If through referendum it is submitted to vote of the people it will be by them defeated. I want no part in this repudiation of law enforcement."

Columbus Lawyer Reference Statistics

Domestic relations problems were responsible for nearly a third of the cases handled by the Lawyers Reference Service of the Columbus Bar Association during the past year, according to the report of Joseph M. Harter, committee chairman. The 235 cases referred to lawyers for the first time consisted of 90 on domestic relations, 42 real estate, 34 contracts, 18 estate and probate matters, 12 personal injury and property damage, 8 criminal, and the rest a wide variety ranging from corporation law to workmen's compensation.

A total of 307 applicants were interviewed. In addition to the 235 references, 38 were sent back to lawyers they already knew, 27 to the Legal Aid Clinic, 6 were not referred, and one went to the Baltimore Bar Association.

Fees for first consultations totalled $509. 125 of the referred cases were known to have required additional services involving additional compensation. At least two of these ran up to $1,000, and one not yet concluded may pay as much as $8,000.

Paragraphs

NEARLY 150,000 MORE VOTES were cast on the Missouri non-partisan judicial ballot in 1948 than in 1944, according to a report of the Judicial Selection Committee of the Missouri Bar. Created a year ago to combat public lethargy which was felt to be endangering the successful operation of the Court Plan, the Committee engaged in an aggressive campaign throughout the state to see that the judicial ballots were distributed in all precincts and to urge voters to mark them in accordance with the bar's recommendations. Three-fourths of the additional votes were in favor ofthe judge running on his record.

THE LIBRARY OF CONGRESS now has 698,100 law books and pamphlets in addition to much material not in volume or pamphlet form.

COURT AND TRAFFIC LAW ADMINISTRATION CONFERENCES conducted by the Traffic Court Committee of the American Bar Association and the Traffic Institute of Northwestern University, will be held at the Yale Law School, New Haven, September 12 to 16, and at the Northwestern University Law School, Chicago, October 17-21. Further information and registration forms may be obtained by writing to the A. B. A. committee, 105 West Monroe St., Chicago 3, Illinois.

LAWYERS REFERENCE SERVICE, sponsored by the Bar Association of St. Louis, was inaugurated in that city at a special ceremony in the Circuit Court on April 29. The office is at 506 Olive Street, open from 2 to 4 p.m. daily, with Fred C. Schillinger, attorney, in charge. A similar service recently has been established in Akron, Ohio, by the Akron Bar Association, with Mrs. Marian Brock, executive secretary, in charge.

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Appendix H

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'Committee Reports' (1947) 26 Mich St BJ 11

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ing out of the purposes set forth in the articles of incorporation.

Report

During the year 1946 Ben O. Shepherd, then President of the State Bar of Michigan, appointed this committee to prepare and present plans for the establishment of a Michigan State Bar Foundation. For a number of years officers of the State Bar of Michigan had discussed the advisability of setting up such a foundation, and it was felt that some steps should be taken without further delay to present the proposal to the members of the association. The committee had before it plans which had been adopted by other state bar associations and by the American Bar Association, and, after careful consideration, incorporated the best features of each in a proposed draft of Articles of Incorporation and By-Laws, copies of which are attached as a part of this report.

The plan was submitted to the Treasury Department for its approval in order that gifts or donations to the foundation might be accepted without liability for Federal taxes. No action has been taken to the present time on the approval of the proposed plan, and the committee feels that the presentation of the plan for the approval of the membership of the State Bar of Michigan should not be further delayed.

It is apparent to all that the State Bar of Michigan will be unable to accumulate more funds than is necessary to carry on its ordinary functions. Present conditions have produced and are producing problems of a most serious nature, which challenge the very existence of our judicial system. These problems, which are peculiarly within the province of the members of the bar, must be met and solved. The Michigan State Bar Foundation will permit members of our profession and public spirited citizens to contribute to a fund which will enable our members to assume greater responsibilities and take effective leadership in the solution of these problems.

Upon the presentation of the foregoing report, we respectfully request that members of the State Bar of Michigan at the forthcoming annual convention adopt our recommendation.

Respectfully submitted,

GLENN C. GILLESPIE, Chairman
ROSCOE O. BONISTEEL
GEORGE J. BURKE
WILBER N. BURNS
ROY E. BROWNELL
NORMAN E. LESLIE
BURRITT HAMILTON
FRED M. BUTZEL

Special Committee to Study and Report Upon the One-Man Grand Jury Law

Recommendations

1. That the One-Man Grand Jury Law should, with certain appropriate amendments, remain a part of the system of criminal jurisprudence of the State of Michigan.

2. That an appropriate amendment should be made to the present law substantially as follows:

A. That every petition for a One-Man Grand Jury shall be filed in the Circuit or Municipal Court of record dealing with criminal offenses in the county, and shall be considered by and acted upon by at least three judges of such Court, provided, that if there are not three such judges in the county, then the presiding Circuit Judge of Michigan shall assign one or more circuit judges to the county for such purpose;

B. That every order authorizing and directing the calling of a One-Man Grand Jury, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted;

C. That every such order shall designate the Grand Juror to act.

3. The Committee condemns the practice by any officer of using a "forthwith" subpoena duces tecum as

though it were a warrant for arrest or for search and seizure. The Committee also recommends the following appropriate amendment to the present section relating to the use of a subpoena:

> That whenever a "forthwith" subpoena is served upon a witness to appear before a One-Man Grand Jury, and such witness arrives at the time and place stated in such subpoena, the Grand Juror shall be notified of such fact forthwith, and it shall be the duty of the Grand Juror to appear and take the testimony of such witness without unreasonable delay.

4. That the following appropriate amendments should be made to the present section relating to immunity:

A. That the grant of immunity shall be authorized to be made only by a Judge of a Court of Record, and in case the Grand Juror is not a Judge of a Court of Record, the order shall be issued only by a Circuit Judge or by a Judge of a Municipal Court of Record of the county where such petition is filed;

B. Whenever an order of immunity is made, it shall be entered upon the transcript of proceedings immediately and signed forthwith by the Grand Juror, and a copy of such order shall forthwith be delivered to one of the appointing judges to be suppressed and held by him until a warrant shall issue against the person granted immunity, provided that no journal entry of such immunity need be made thereof until the Grand Jury has completed its work;

C. That whenever a witness is granted immunity it shall not extend beyond the scope of the Grand Jury inquiry, and shall not extend beyond the particular questions called for by the Grand Juror, but when the grant of immunity is given, it shall thereafter extend to testimony given by such witness until the Grand Juror advises the witness that immunity no longer applies to any further testimony before such Grand Juror.

5. That the same provisions with reference to the granting of immunity which are contained in the One-Man Grand Jury Law, as amended, shall be used as the basis for an appropriate amendment to the Twenty-Three Man Grand Jury statute, so that the judge in charge of a Twenty-Three Man Grand Jury shall have the same powers and duties with respect to granting immunity.

6. The Committee condemns the practice of issuing promiscuous public statements by either the Grand Juror, Prosecutor or members of the staff and believes that the Grand Juror, Prosecutor and members of the staff should be strictly governed by rules of secrecy as well as the Canons of Professional and Judicial Ethics.

7. That the incoming President of the State Bar of Michigan shall appoint a Special 15-Man Committee to continue to study and report upon the One-Man Grand Jury Law during the next fiscal year with instructions to take steps to frame appropriate legislation so that suggested amendments will be properly presented to the next session of the Michigan Legislature.

Discussion of Findings and Reasons for Committee's Recommendations

At the last annual Meeting of the State Bar, President Varnum was directed to appoint a Special 15-Man Committee "to study and report upon the One-Man Grand Jury Law at the next Annual Meeting". President Varnum has asked the Committee to consider four specific questions:

First: Should the One-Man Grand Jury Statute be retained as a part of Michigan's system of criminal jurisprudence?

Second: If not, why not?

Third: If so, should it be amended or retained without amendment?

Fourth: If it should be amended, what specific amendments should be proposed by the State Bar of Michigan and for what purpose in each instance?

The Committee has held three all-day meetings at different times throughout the year. Its members have given considerable time and study to each part of

the Statute as well as to the administrative procedure followed by several One-Man Grand Juries in our State. The Committee has sought and obtained expressions from nearly all those who have participated as Grand Jurors or Prosecutors in conducting such an investigation. The Committee has also sought and obtained expressions from many of the lawyers who have had experience in defending persons against whom warrants have been issued by One-Man Grand Juries.

While the Committee was holding its April session, its attention was called to House Bill No. 130 pending in the 1947 session of the Michigan Legislature, with reference to the holding of the examination of persons accused of crime by the same justice or judge who conducted the One-Man Grand Jury inquiry. The Committee immediately contacted the Judiciary Committees of both the House and Senate, and worked with them in securing the proper amendment to provide that the justice or judge who conducted the One-Man Grand Jury inquiry shall not act as the examining magistrate in any criminal case resulting therefrom. House Bill No. 130 was passed by both houses of the Legislature with an immediate effect clause and was signed by Governor Kim Sigler. It is now known as Public Act 33, and the exact language of the amendment is as follows:

> ". . . Provided, That the justice or judge conducting the inquiry under section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment."

I.

Should the One-Man Grand Jury Statute Be Retained as a Part of Michigan's System of Criminal Jurisprudence?

Until 1859 the securing of an indictment against an accused was performed by a 23-man Grand Jury as a condition precedent to the commencement of every criminal prosecution in the State of Michigan. In that year the legislature provided that the prosecuting attorney of each county should make his own investigation upon receipt of complaint of crime and bring the matter before some justice of the peace or other magistrate who should conduct a preliminary examination to determine whether there was probable cause to believe that a crime had been committed and that the accused had committed it. Thereupon a warrant could be issued by him. Upon the apprehension of the accused a formal examination should be held to determine whether there was reasonable ground to believe that such offense had been committed and that the defendant was guilty thereof and should be bound over for trial to the Circuit Court or Municipal Court of Record having jurisdiction of criminal offenses. If the accused was bound over for trial, the Prosecuting Attorney was authorized to file an Information accusing the defendant of the crime. After 1859 the 23-man Grand Jury Statute was not repealed, but became an extraordinary instrument called into use only occasionally, and then for the purpose of investigating wide-spread corruption, usually of an official character.

In 1885 a Michigan Statute establishing the Detroit police court gave inquisitorial powers to police magistrates of a similar character to the One-Man Grand Jury. In 1915 a Committee on Law Reform of the Michigan State Bar Association recommended the appointment of a Special Committee on Criminal Law and Criminal Procedure. This Special Committee, under the chairmanship of Walter S. Foster, a member of our present Committee, concentrated its efforts

on certain specific improvements in criminal procedure, and recommended a bill for the institution of proceedings for the discovery of crime, which was published as a part of the proceedings of the Michigan State Bar Association in 1916.

In 1917 this bill was passed by the Michigan Legislature and became the present One-Man Grand Jury Law. It authorizes a single judge to act as a Grand Juror in place of the 23-Man Grand Jury.

The supporters of the present law point out: That the One-Man Grand Jury is a distinct improvement over the older methods of investigation of crime. That it is more flexible and is less unwieldy and cumbersome than a Grand Jury composed of 23 men. That the One-Man Grand Jury can meet at any convenient time and place to hear a witness, without waiting for 22 other men, and without publicizing who the witness is, so as to avoid danger or reprisal from those against whom such witness may testify. They also point out that the One-Man Grand Jury can work patiently for a year or more, recessing from time to time for one day or several weeks, during which time investigators can work, and then convene for an hour or a half day and recess again until more testimony is available. Such flexible procedure would be impossible for a large jury from scattered homes in different parts of the county.

Supporters of the present law also point out that prompt dispatch of business, immediate decisions, freedom of action and the ability to take advantage of sudden "breaks" or "tips" are characteristic of the One-Man Grand Jury to an extent never possible in a group of 23 men.

It is also pointed out that the One-Man Grand Jury has a further advantage in concentration of responsibility. It is felt that credit for success or censure for failure are powerful incentives to accomplishment, and are strongest when centered upon one person.

It is also urged that the One-Man Grand Jury increases the likelihood that the investigation will be placed in skilled and expert hands. An experienced judge, trained in the criminal laws, familiar with the worth and weight of various types of evidence, and with the art of dealing with witnesses and suspected criminals, is ideally equipped to do efficient, energetic and thorough work in investigating widespread crime and official misconduct.

In short, it is urged by the supporters of the present law that the One-Man Grand Jury is far superior to the 23-Man Grand Jury in every department of an investigation.

The opponents of the One-Man Grand Jury contend it is unconstitutional to have a judge act in this capacity inasmuch as it is an invasion of the executive branch of the government to attempt to delegate this power to a member of the judiciary. It is also contended that as a matter of policy it is improper to impose non-judicial duties on a judge. It is urged that some person who is not a member of the judiciary should act as the Grand Juror because such an investigation is primarily the work of prosecuting officers and not that of a judge. It is said that the continuance of the use of judges in this capacity may bring the judiciary into disrepute.

The Supreme Court of Michigan has many times during the thirty years the One-Man Grand Jury Law has been in force, upheld its constitutionality and always by a unanimous decision. It has declared that this Law serves a wholesome purpose, and that a judge assigned to such a task is acting within the powers and obligations placed upon him by our Constitution. The Supreme Court of the United States has, in effect, concurred in these holdings by refusing to entertain appeals based upon the contrary contention.

Our Committee concludes on this phase of the matter that the constitutionality of this Law has been settled by our Michigan Supreme Court beyond question. We also conclude (3 members dissenting) that there are cogent

and compelling reasons in favor of this modern, efficient and thorough method for the investigation of crime and criminals, and that it would be a backward step to repeal or substantially alter the One-Man Grand Jury Law. With reference to the suggestion that the Grand Juror should be some person other than a member of the judiciary, we have considered countless alternatives, but have finally concluded (3 members dissenting) that the Grand Juror should continue to be appointed from among the members of the judiciary.

The Committee believes that nearly every argument used against the One-Man Grand Jury can be used equally against the 23-Man Grand Jury.

The loose charge that "one man acts as investigator, accuser, prosecutor, judge and jury" is not by any means supported by the facts. Before there can be a trial there must be an accusation, and in Michigan this may come in either one of the following three ways:

a. An Indictment voted by a 23-Man Grand Jury; or

b. A complaint and warrant issued in the customary way by a justice of the peace or other magistrate; or

c. A complaint and warrant issued by a "One-Man Grand Juror".

In either of the last two instances the defendant is entitled to an examination before being bound over for trial. In both of the last two instances the prevailing practice has been to conduct the examination before the magistrate who issued the warrant. However, the One-Man Grand Jury Law has been amended by the 1947 Session of the Legislature to provide that some other magistrate shall conduct the examination and that the One-Man Grand Juror shall not do so.

Hence, the important thing to bear in mind is that the accused is entitled to a complete examination before some magistrate, other than the Grand Juror, before being bound over for trial, and that thereafter the accused is also entitled to a trial before a regular jury, presided over by a different judge.

We believe that a judge assigned to a One-Man Grand Jury investigation should be guided by the following fundamental principles:

1. To respect the legal rights of witnesses called before him, including that against involuntary self-incrimination. If criminal conduct cannot be detected and punished without violating these rights, it is the lesser evil to let it go undetected;

2. Within this limitation, it is the right and duty of the Grand Juror, as a representative of the people, in the field of law enforcement, to utilize every legitimate method and every lawful means of investigation and inquiry to ferret out, uncover and detect crime and criminals. The law does not contemplate that the public shall be powerless nor unarmed in the ceaseless effort necessary to combat crime.

The Committee answers the first question in the affirmative (3 members dissenting). Having answered the first question in the affirmative, it is not necessary to answer the second question.

III.

If It Should Be Retained, Should It Be Amended or Retained Without Amendment?

IV.

What Specific Amendments Should Be Proposed?

The Committee has next turned its attention to the question of possible amendments. In this connection we have considered the administration of the Law and numerous complaints against the manner in which the Statute is being used. We recognize that there are constructive criticisms of the

present Statute and the procedure thereunder from earnest and sincere citizens, animated by the best of motives. On the other hand, many complaints are made by those who are not in sympathy with law enforcement, and any kind of investigative process, any sort of grand jury, or any procedure which renders it more difficult for law violators to escape detection or punishment is bound to be wrong and called "un-American". The Committee has endeavored to consider all complaints which vitally affect the just rights of witnesses, persons accused of crime, and the public. Constructive criticisms of the Statute are found to group themselves around a few definite incidents of the Law and its operation:

A. *Should an appropriate amendment be made to the present Law with respect to the calling of a One-Man Grand Jury?*

The criticism has been made that the Statute is not sufficiently definite with regard to the Petition, its scope, the judicial personnel to consider the petition and nature of the order calling a One-Man Grand Jury. It is said that at least three judges sitting en banc should consider its calling and should select the Grand Juror, and the order should be more definite with respect to the scope of the inquiry.

Our Committee believes this a wise suggestion and a necessary safeguard which will strengthen the Law. We therefore recommend:

> That every petition for a One-Man Grand Jury shall be filed in the Circuit or Municipal Court of record dealing with criminal offenses in the county, and shall be considered by and acted upon by at least three judges of such Court, provided, that if there are not three such judges in the county, then the presiding Circuit Judge of Michigan shall assign one or more circuit judges to the county for such purpose;
>
> That every order authorizing and directing the calling of a One-Man Grand Jury, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted;
>
> That every such order shall designate the Grand Juror to act.

B. *Should there be an amendment with respect to the subpoena power?*

The Statute provides for the summoning of and compelling witnesses to testify as follows:

> ". . . the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, etc."

The criticism is not that the Statute itself goes too far but that there is an abuse in the administration of it by the use of the "forthwith" subpoena duces tecum. It is said that service of a "forthwith" subpoena duces tecum is frequently made by several investigators or officers who literally take possession of the person named in the subpoena and his private papers and return with witness and documents to the Grand Jury. In short, it is said that the investigators or officers have treated the process as though it were a warrant for arrest and also a search warrant. It is further said that service is timed to be made in the middle of the night, in order that the witness may be at a great disadvantage; and that the witness is sometimes required to spend the balance of the night, after responding to the subpoena, awaiting the arrival of the Grand Juror.

On the other hand it is explained that the element of time and surprise is a necessary weapon of law enforcement, and that unless a "forthwith" subpoena duces tecum can be used to produce persons and papers immediately, some of the most vicious criminals will be tipped off and the whole value of the inquiry will be destroyed.

The Committee believes the purpose of the "forthwith" subpoena duces tecum is justifiable and can be preserved without disregard of the just rights of wit-

nesses. We believe that the practice on the part of any officer to treat a "forthwith" subpoena duces tecum as a warrant of arrest or for search and seizure is wrong and should be condemned. On the other hand the officer has the right to see that the command of the process is obeyed. We believe the problem can be solved by providing that when the witness appears at the time and place mentioned in the subpoena, the officer should immediately notify the Grand Juror, who should without unreasonable delay take the testimony of the witness.

C. *Should amendments be made to the Act regarding the grant of immunity?*

The criticism has been made that a grant of immunity could be made under the present statute by a justice of the peace or other magistrate who is not a judge of a court of record. Most Justices of the Peace or other magistrates of inferior courts are laymen and the Committee believes they should not be entrusted with such an important and involved procedure as the application for and granting of immunity. We believe the criticism is sound and that the granting of immunity should be made only by a Judge of a Court of Record. This can be easily accomplished by having the witness taken before a Court of Record whenever the grant of immunity is made.

The next criticism is that the grant of immunity is not made in such a way as to give protection to the witness; that there is no contemporaneous record made thereof; that prosecuting attorneys have no way of knowing the exact nature, extent or number of offences for which a witness has been given immunity from prosecution; that even the individual cannot prove that he has been given immunity.

On the other hand it is explained that the grant of immunity is the forerunner of a confession of guilt whereby others are usually implicated in some crime or criminal conspiracy. Further, it is tremendously important to keep absolutely secret the fact that a witness has traded his testimony for immunity because if this fact becomes known to confederates, it will largely destroy its effect and usefulness in uncovering crime and criminals. If a grant of immunity is spread upon the Court Journal it becomes public property and confederates will immediately receive notice thereof with resultant disastrous effects.

After hearing both sides, the Committee believes that the grant of immunity is a serious matter to both the State and to the witness. It is in the nature of a contract and should be attended by every safeguard that can be extended to both parties to the transaction. To correct this possible abuse we believe there should be an immediate written order entered in the transcript of the witness' testimony and signed by the Grand Juror. For the further protection of the witness, a copy of such order of immunity should be made and sent to one of the appointing judges to be suppressed and held by him until or unless a warrant issues against the person granted such immunity. We believe that it should not be necessary for the Court to make any journal entry in the daily court journal until the work of the grand jury is completed.

The next criticism relates to the scope and extent of the immunity. It is complained that some witnesses are given immunity as to one crime but have the understanding that such immunity has been granted them against all crimes testified to by them. The witness may find himself later subject to prosecution because his immunity was limited to only one crime and no farther. The Committee believes this could be corrected by providing that whenever the witness is granted immunity —

(a) It shall not extend beyond the scope of the Grand Jury inquiry; and

(b) It shall not extend beyond the questions called for by the Grand Juror;

(c) But when such immunity is given, it shall thereafter extend to testimony given by such witness until the Grand Juror advises the witness that immunity no longer applies to

any further testimony before such Grand Juror.

D. *Should the 23-Man Grand Jury Law be amended to grant powers of immunity?*

The next criticism relates to the fact that the 23-Man Grand Jury Act has no section nor clause providing for the grant of immunity. We believe this should be remedied, and that provisions similar to the One-Man Grand Jury Law with respect to immunity should be placed in the 23-Man Grand Jury Act.

E. *Should public statements be issued by the Grand Juror, Prosecutor and Staff while the Grand Jury is in progress?*

There has been severe criticism of the issuance of public statements by any person connected with the Grand Jury, whether it be to the Press or private persons regarding the work of the Grand Jury. It is charged that many statements have been issued to the Press that are calculated to further some political motive rather than a law enforcement motive. It is also charged that statements have been made to private individuals regarding the progress of the Grand Jury work which breach the secrecy of the inquiry.

On the other hand it is explained that the public is entitled to some statement from time to time about matters connected with the inquiry, and particularly in reply to criticism.

The Committee believes that one of the greatest handicaps that can attend the work of the Grand Jury is the making of public statements which can be construed as having a political motive. We realize that there are occasions when the Grand Juror, Prosecutor and Staff may need to express something in the interest of law enforcement and they should not be prevented from speaking. But other than such need, we believe the Grand Jury can speak best through its own acts. The Committee condemns the promiscuous issuance of public statements and believes the Grand Juror, Prosecutor and Staff should be strictly governed in this respect by the Canons of Professional and Judicial Ethics.

Conclusion

The Committee therefore believes that certain specific amendments should be made to the present One-Man Grand Jury Law and has indicated the same in its recommendations at the head of this report, thus answering questions III and IV.

Although we have devoted a great deal of time and study to this Act, the Committee was unable to conclude all of the matters presented and believes a Committee of 15 members should be appointed by the incoming President to continue this study and report next year; also that the Committee should prepare appropriate legislation for the next session of the Michigan Legislature.

Respectfully submitted,

WILBER M. BRUCKER, Chairman
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STUART B. WHITE

Minority Report

The one-man grand jury system, as it has developed in Michigan, has been made the subject of investigation by the State Bar because of widespread criticism of its conduct in an increasing number of instances. Detailed accounts of abuses by one-man grand jurors have been submitted to this Committee. The Committee has agreed that such abuses exist and are widespread.

The majority of the Committee has concluded that these abuses are of a

serious nature, many of them affecting the basic rights of citizens and that they should not be permitted to continue.

The majority report has been drafted on the assumption that these abuses can be corrected by amendments to the law. We do not disagree with the object of these amendments, particularly if they were to include a proposal to deal with the abuse of the contempt power. But it is our belief that these abuses are the inevitable by-product of the one-man grand jury system, and that they cannot be eliminated except by elimination of the present one-man grand jury system wherein the one-man grand juror combines the power of the judicial and executive branches of government. After all, if grand jurors ignore the Constitution they will hardly deem themselves bound by legislative enactments.

Proponents of the one-man grand jury system rely principally upon the argument that the system is highly effective in uncovering crime. But, of greater importance to us as lawyers, is the fact that the degree of effectiveness of the one-man grand jury appears to depend upon the extent to which the grand juror disregards constitutional rights. At a meeting of our Committee one of the proponents of the one-man grand jury described the technique by which it makes witnesses "talk" in approximately this language: "On the one hand you hold out the promise of immunity if the witness confesses. On the other hand, you threaten him with contempt if he fails to testify correctly. Thus, you have him in a nutcracker with which to squeeze the truth out of him."

This calls to mind Chief Justice White's condemnation of the practice of employing contempt proceedings to compel a witness to give testimony which will satisfy the judge.*

This technique of the "nutcracker squeeze" to obtain confessions may be highly effective in obtaining convictions, but it is a practice which can swiftly undermine our entire system of justice.

Mere efficiency is not the true measure of the value of a crime detection agency. If it were, we should adopt the medieval inquisition or the German gestapo system. Both were highly successful in obtaining confessions and quick convictions. Our primary concern as lawyers must be to make sure that agencies for crime detection and law enforcing, function without infringing upon the rights and liberties of our citizens. Once we embark on a course whereby the main object is punishment of conduct, and the protection of the individual becomes only incidental, we have turned our back upon our democratic heritage.

We believe the present One-Man Grand Jury Act is contrary to fundamental American principles of government and that in practice it has exemplified the evils which our form of government was designed to avoid.

The basic vice consists in combining in one individual the highest judicial powers and the highest executive powers of each county. Possessed of these powers, the average one man grand juror has been guilty of the very practices which inspired the American division of the powers of government.

In actual practice the one man grand jury has justified Montesquieu's warning that where the judicial power is joined "to the executive power, the judge might behave with all the violence of an oppressor."

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*"If the conception (that a judge may jail a witness of suspected perjury) were true, it would follow that when a court entertained the opinion that a witness was testifying untruthfully, the power would result to impose a punishment for contempt, with the object or purpose of exacting from the witness a character of testimony which the court would deem to be truthful; and thus it would come to pass that a potentiality of oppression and wrong would result, and the freedom of the citizen, when called as a witness in a court, would be gravely imperilled . . .

The impression necessarily arises that it was assumed that the power existed to hold the witness in confinement under the punishment until he consent to give a character of testimony which, in the opinion of the court, would not be perjury." *In re Hudgings, 249 U.S. 378.*

We are not unmindful that our Supreme Court has ruled that the Act is constitutional. But the original ruling on this serious question comprises 7¼ lines and was the opinion of one half of the court. This decision has been steadfastly adhered to but never with the citation of a single authority on constitutional law.

We prefer the reasoning, buttressed by the authorities which he cites, of Justice Cardozo in In re Richardson, 247 N.Y. 401. In considering the constitutionality of a similar law he observed:

> "The judge is made a prosecutor. He is to have his counsel and assistant counsel and experts and detectives. He is to follow trails of suspicion to uncover hidden wrongs, to build up a case as a prosecutor builds one. If he were the district attorney of the county he would do no more and no less. What he learns is not committed to a record available to all the world. It is locked within his breast to be withheld or disclosed as his discretion shall determine. No doubt he is to act impartially, neither presenting from malice nor concealing from favor. One might say the same of any prosecutor. The outstanding fact remains that his conclusion is to be announced upon a case developed by himself. *Centuries of common-law tradition warn us with echoing impressiveness that this is not a judge's work.*"

And even though the Michigan Supreme Court were right in ruling that the activities of a one man grand juror are a proper exercise of judicial powers, then the law is unconstitutional as conferring judicial powers on *judges* and not upon *courts. Risser vs Hoyt, 53 Mich. 185.* This argument has been advanced to the Michigan Supreme Court, which has chosen to ignore it rather than attempt to answer it.

The statement in the majority report that the U.S. Supreme Court has in effect concurred in holding the Act constitutional betrays a misconception of both law and fact. That court's appellate jurisdiction over State Supreme Courts is limited to Federal questions. It has no power to review a State court's adjudication that an act of its legislative conforms to the State constitution. Hence there never has been an application to the U. S. Supreme Court to review the decision of the Michigan Supreme Court on this question.

If a one man grand jury is deemed necessary to enforce the criminal laws, then he should be chosen from the Attorney General's staff, from the Prosecutor's staff, or from the Bar at large. Then, if there be an invasion of a citizen's rights, he could make direct application to his local court for relief instead of being required to petition the Supreme Court for leave to appeal, as is now the case.

The following facts show that men who are eminent as judges lose their sense of propriety when they take over the role of prosecutor.

(a) The Bar and the Press have been unanimous in condemning the practice of a juror acting as examining magistrate. Yet eminent judges have insisted upon doing so over the objection of defendants.

(b) The Bar is unanimous in condemning the practice of grand jurors acting upon motions addressed to their actions as grand jurors, such as motions to quash warrants, etc. Yet judges have persisted in so acting over objections.

(c) Grand jurors have issued warrants without factual or legal basis. It matters little whether these be inspired by ambition, a craving for publicity, or for political advantage or revenge.

(d) Our constitution provides that witnesses shall not be "unreasonably detained" (Art. 2. Sec. 15). Yet witnesses have been detained after the heat was turned off in a building and it got so cold the judge had to don his overcoat; they have been kept in rooms without sanitary facilities; and in numerous cases they have been detained in actual physical custody in "hideouts" for as much as three days at a time.

(e) In most early grand jury proceedings the judge conceived it to be his duty to advise witnesses of their constitutional rights. A long line of decisions holds it is their duty to do so. In recent years, however, no such warning has been given witnesses.

(f) Witnesses have been advised that they had been granted immunity when actually the statutory steps requisite therefor had not been complied with. We feel no witness should be compelled to testify under an alleged grant of immunity without such grant either being spread upon the records of the court or a copy thereof signed by a judge being given to him.

(g) There is a flagrant violation of the rights of citizens in the public pronouncements emanating from the grand jurors and their staffs respecting the alleged guilt of persons to be charged both before and after the issuance of warrants.

(h) Witnesses have been required to take an oath of secrecy. This is not authorized by statute and attempts have been made by grand jurors to require witnesses to refrain from counselling with their attorneys under threat of prosecution for violation of secrecy.

(i) Witnesses are commonly subpoenaed to appear forthwith when there is no necessity or occasion for forthwith appearance. They are then kept waiting for hours or over the day.

(j) Subpoena duces tecum are substituted for search warrants and are made the basis of seizing citizens' files and records.

The foregoing are some of the more common vices incident to the operation of the one man grand jury system. It is by no means a complete catalog.

* * * * *

The development of the law of contempt in connection with one-man grand jurors is one of the most dangerous aspects of the one-man grand jury system. It involves a clear disregard of the Constitutional right to a trial on any charge of contempt not committed in the presence of a court.

This development springs basically from the Supreme Court's failure to distinguish between the character of a Circuit Judge sitting in his court room and his character as a grand juror sitting in jury's chambers. In the former he is acting as a *court* and the rules of contempt of *court* clearly apply. In the latter he is acting at best as a grand juror, and not as a judge of a court; his court actually is not in session. For it takes more than a judge to make a court.*

The one man grand jury statute itself recognizes that a grand juror is not acting as a court and hence has no power to punish for contempt of court as such. It therefore confers upon him limited contempt powers, giving him power to punish for contempt only for refusal to obey a subpoena and for refusing to answer a question.

Almost from the very start, however, grand jurors have assumed that they function as courts and therefore have the full power of contempt which a court has. In the early cases this assumption of authority was not challenged, and this assumption of power became so ingrafted upon grand juror's proceedings that when it later was challenged, the Supreme Court failed to see the force of the objection. Today the practice is firmly intrenched of permitting a grand juror to punish summarily and without trial for any alleged contempt committed in his presence.

This summary judgment by a grand juror is a clear violation of the right of due process.

Summary judgment of contempt of court is an exception to the rule of due process. It is the only case in which one may be jailed without notice and a trial. This exception has been permitted because it was deemed necessary to sustain the dignity of the court before the public. Unless the Court has

*"A court is not a judge, nor a judge, a court. A judge is a public officer, who, by virtue of his office is clothed with judicial authority. A court is defined to be a place in which justice is judicially administered. It is the exercise of judicial power by the proper officer or officers, at a time and place appointed by law." *(Todd vs U.S., 158 U.S. 278; 39 L. ed. 892.)*

authority instantly to suppress an attempt to interrupt its proceedings, its ability to function might well terminate.*

The language of the Michigan Contempt Statute reflects the same principle. Section 13910 C.L. 1929, gives the court power to punish for "disorderly, contemptuous or insolent behaviour committed during its sitting, in its immediate view and presence and directly tending to interrupt its proceedings, or to impair the respect due its authority," and for "any breach of the peace, noise or disturbance directly tending to interrupt its proceedings." Section 13911 then provides that such misconduct if "committed in the immediate view and presence of the court may be punished summarily." But if a contempt be committed out of the presence of the court, and not during its sitting, even though it be in the presence of the judge, the filing of a charge, a notice of hearing and a trial are requisites of due process of law.**

When we apply this principle of due process to a grand juror, it becomes apparent that since he never functions as a court, he has no power to punish summarily for any contempt, and in every case of alleged contempt the citizen is entitled to the filing of charges, a notice, a trial and the assistance of counsel. There is thus a violation of due process every time a grand juror summarily commits a witness for contempt and this has developed to a point where now this continued disregard of due process is a veritable institution.

Even tho grand jurors be deemed to be holding court, they still have no power to jail a witness for alleged perjury, except in the rare instances where it is evident on the face of the witness's testimony. Thus, were a witness to state that he had no hands, when the court could see the very flesh himself, he would obviously be making light of the court's dignity and be punishable for contempt. But when he states as a fact a thing of which the court has not personal knowledge, the court has no right, because it thinks differently, to impose summary punishment. A long line of cases holds that in such a case due process requires notice and a trial of the issue of the alleged falsity of the witness's statement. Illustrative cases are *Blim vs U.S., 68 Fed. 2nd, 484; Bowles vs U.S., 44 Fed. 2nd, 115; In re Gottman, 118 Fed. 2nd, 425.*

Another vicious aspect of contempt proceedings under our one-man grand-jury system is the practice on appeals to the Supreme Court which permits a grand juror to return such portions of a transcript of a witness's testimony as he thinks supports the conclusion of the falsity of a witness's statement and to delete such portions as may establish its truth. The case then goes to the appellate court upon a record made by the prosecutor and the citizen is denied the right to present to the court any facts which may tend to rebut the case made by the prosecutor.

A further vicious aspect is indicated by *In Re Slattery, 310 Mich. 458,* in which the grand juror returned that he was convinced of the falsity of the testimony of the witness by *other evidence* taken before him. Here we have a witness convicted upon testimony of a

---

*This is pointed out in Cooke vs U.S., 267 U.S. 517, 45 S. Ct. 290, 69 L. Ed. 767, in the following language:

"We think the distinction finds reason not any more in the ability of the judge to see and hear what happens in the open court than in the danger that unless such an open threat to the orderly procedure of the court and such a flagrant defiiance of the person and presence of the judge before the public in the 'very hallowed place of justice,' as Blackstone has it, is not instantly suppressed and punished, demoralization of the court's authority will follow. Punishment without issue or trial was so contrary to the usual and ordinarily indispensable hearing before judgment constituting due process that the assumption that the court saw everything that went on in open court was required to justify the exception; but the need for immediate penal vindication of the dignity of the court created it."

**"Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. This includes the assistance of counsel if requested, and the right to call witnesses to give testimony." *Cooke vs U.S. Supra.*

third person by whom he is not confronted!

* * * * *

Under a recent decision of the U. S. Supreme Court every commitment by a grand juror for alleged perjury is void. Courts have always assumed that perjury constituted contempt, punishable summarily if obvious or after due notice and trial if not obvious. But in *In Re Hudgings, 249 U.S. 378, 63 L. ed. 656, 30 Sup. Ct. 337,* it was held that to be punishable as contempt, perjury must have "the further element of obstruction to the Court in the performance of its duty."

And in *In re Michael, 326 U.S. 224, 66 S. Ct. 78, 98 L. ed. 30 (1946),* the Court held that perjury before a grand jury does not obstruct the judicial process and may not therefore be the basis of conviction of contempt of court. This is a square holding that the scores of contempt convictions for alleged perjury that have occurred in Michigan at the hands of one-man grand-jurors were without authority in law.

Conclusion

We believe that if the division of powers ordained by our Constitution be respected, the evils which now persist would be eliminated. We therefore recommend in addition to the recommendations of the majority report, that the statute be amended so as to provide:

1. That the present one-man grand jury system be abolished.
2. That the one-man grand juror be a member of the bar other than a member of the judiciary.
3. That grants of immunity clearly specifying the extent and the limits of the immunity be either placed on record or delivered to the witness before he be required to testify under them.
4. That the contempt powers granted to the grand juror be limited as now provided by the present statute, to punishing for refusal to appear or refusal to answer.

WM. HENRY GALLAGHER
ERNEST GOODMAN

I concur in the foregoing excepting the wholly inadequate paragraphs of recommendation. Unnecessary and menacing evils in our laws should not be refined, but should be condemned and removed by lawyers. We should not be parties to whittling down and weakening the rights of citizens or casting our constitutional principles into confusion. I favor the repeal of the One Man Grand Jury Act.

WALTER M. NELSON

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Appendix I

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THE MICHIGAN

One-Man Grand Jury

By Robert G. Scigliano

Foreword by
C. Herman Pritchett
Professor of Political Science
University of Chicago

Governmental Research Bureau
Michigan State University
East Lansing

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Foreword

The notion that the courts are a part of the political process no longer shocks or even surprises anyone in these sophisticated times. It has been repeatedly demonstrated that the classic conception of the separation of powers results in an utterly false idea of what officials actually do in different branches of the government. For the conceptualism of an earlier day we have substituted a behavioristic analysis which reveals that in all three branches, in somewhat varying degrees, policy-making, administrative, and adjudicative activities are going on.

One of the effects of this discovery, so far as the courts are concerned, has been to encourage political scientists to apply their techniques to the study of judicial behavior. Courts and judicial administration have of course been of perennial interest to political scientists, but for the most part there was little that was distinctively political in their approach. They have examined the constitutional decisions of the Supreme Court just as lawyers would, though often handicapped by the lack of legal training. They have written biographies of justices, but where these have been significant works, it was more likely the literary skill of the author rather than his political science training that was responsible.

But this situation has been changing. Professor Scigliano's study is typical of a latter-day approach to the judicial process which gives it new meaning by placing it in the main stream of political relationships. The contours of judicial activity are more significantly revealed by this situational treatment. Judicial policy-making is seen as a major and proper function, not as incidental or the work of the wrong kind of judges. Judicial decisions are frankly admitted to be influenced by the same sorts of pressures and motivations that bear in on legislators or administrators.

Scigliano has undertaken this type of study in an examination of the relative roles played by courts and legislatures in the formulation of public policy over a period of time with respect to the Michigan One-Man Grand Jury Law. The experience with this novel method of securing information about suspected wrong-doing makes an interesting story simply as narrative. But when set in the context of the author's purposeful approach, it becomes a real contribution to political understanding.

One danger of discarding the separation of powers conceptualism is that of going to the opposite extreme and refusing to concede

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any distinctive characteristics to the judicial process. Fortunately Scigliano avoids this pitfall. He knows that there is a difference between legislative and judicial lawmaking. Judges do operate within certain protections denied to other policy makers. The basic conditions of litigation mean that policy issues come before the courts in a more structured, less hectic form than legislators usually encounter.

The publication of Professor Scigliano's study will make generally available his important analysis of Michigan's experiment with an investigative device which has twice been the subject of consideration by the U. S. Supreme Court. It may thus serve as a guide to public policy in other states. Perhaps more important, it should serve the scholarly purpose of stimulating further studies of the interrelations between courts and legislatures in the policy-forming process.

C. Herman Pritchett

Acknowledgments

The execution of this research was aided by the resources of the Governmental Research Bureau of Michigan State University. Special mention is due to Miss Beverly Fairchild, who assisted me throughout the research, and Miss Margaret Fuller, both of whom were graduate students in the Department of Political Science. They collected much of the newspaper data and competently carried out other time-consuming assignments.

I leaned on many sources in putting this study together, including the one-man grand jury files of the Governor of Michigan, of the State Library, of the Detroit Citizens League, and of the *Detroit News*. The *News* files were particularly helpful in tracing the judge-jury system through newspaper history. Finally, I must give general thanks to the many persons—legislators, attorneys, law enforcement officials, newspapermen, and others—who rounded out my education on this unique and engrossing governmental institution.

What appears here is the descriptive part of the dissertation written for the doctoral degree at the University of Chicago. I should like to express my appreciation to the members of my dissertation committee, and especially to Professor C. Herman Pritchett for his guidance and encouragement.

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Chapter 1

Background and Origins

The Grand Jury, the Information, and the Judicial Inquiry

AMONG our hallowed British inheritances is the grand jury, the consecutive history of which extends at least from the Twelfth Century[1] and whose common law features entered into American jurisprudence first through Colonial usage and then through the Fifth Amendment to the United States Constitution.[2] As it generally functions today, the grand jury may be described in the following terms:

> The grand jury as known to the common law is a body composed of from twelve to twenty-three freeholders, to which is committed the duty of inquiring into crimes committed in the county from which its numbers are drawn, the determination of the probability of guilt, and the finding of indictments against supposed defendants. . . . A grand jury is a part of the machinery of government, having for its object the detection and punishment of crime; it is an appendage of the court under whose supervision it is impaneled, having no existence aside from the court which calls it into existence and upon which it is attending.[3]

As part of this governmental machinery, the grand jury is eminently a "people's institution," entrusting to rotating groups of the citizenry

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[1]Lester B. Orfield, *Criminal Procedure from Arrest to Appeal* (New York: New York University Press, 1947), p. 137. Frederick Pollock and Frederic W. Maitland, *The History of English Law* (2nd ed.; Cambridge: University Press, 1923), I, 140-43, trace the English jury to the *inquisitio* of the Frankish kings adopted and used by the Frankish church. Early Tenth Century records relate the selection by the bishop of a number of men who were sworn to tell the truth and conceal nothing. According to Pollock and Maitland, those against whom tales were told were put to the compurgation. If this procedure did not spread to England through the Church, the authors believe the Normans implanted it at the time of the Conquest.

[2]"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger."

[3]"Grand Jury," *American Jurisprudence*, ed. editorial staff of the publishers, XXIV (San Francisco: Bancroft-Whitney Co.; New York: The Lawyers Co-operative Publishing Company, 1939), 832.

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responsibility for initiating criminal prosecutions. Specifically, the grand jury performs three functions: it is an accusative body, it is an inquisitorial body, and it is a protective body.

In common law, and since the earliest days of American Colonial history, criminal prosecutions have required a formal accusation.[4] One of the functions of the grand jury is to make such accusations. Upon indictment, the accused is arraigned in open court and his plea is taken. In most indictments the grand jury plays a passive role. The prosecuting attorney produces witnesses and evidence before the grand jurors along with a bill of indictment. In fact, the initiative so clearly lies with the prosecutor that he generally questions all witnesses extensively in advance of bringing them before the grand jury and uses only those witnesses and draws forth only that testimony which he deems expedient.[5] [6]In most instances, the accused party has been arrested and is either in jail or on bail at the time the grand jury considers his case. In a small portion of the cases, the prosecutor will seek action by the grand jury before making an arrest; this is particularly true where the grand jury is used in its inquisitorial capacity. At least twelve members of the common law grand jury must concur that sufficient evidence has been presented to justify making a person stand for trial.[6] If concurrence is achieved, the grand jury finds a "true bill"; in more common parlance, it hands down an indictment. Where the accusation has originated with the grand jury and not with a bill of indictment drawn by the prosecutor, the grand jury's action technically is called a "presentment." A presentment is an informal accusation by the grand jury, to be used as the basis for a bill of indictment and submitted as such by the prosecuting attorney.[7] No person can be brought to trial for a serious offense in federal court and in the courts of a number of states without an indictment by grand jury.

The accusative function of the grand jury is the most ancient of the grand jury's three functions. Before the era of specialized law enforcement and crime detection, the grand jury had responsibility for informing the king's agents about crimes committed in its area.[8] In the famous Assizes of Clarendon (1164) and Northampton

[4]"Indictments and Informations," *American Jurisprudence*, XXVII, 584.

[5]Lewis Mayers, *The American Legal System* (New York: Harper & Bros., 1955). p. 126.

[6]"Grand Jury," *American Jurisprudence*, XXIV, 842.

[7]Orfield, p. 157. The distinction between an indictment and a presentment has its historical origin in the presentment being a notice taken by a grand jury from its own knowledge or investigation, without any bill having been laid before it at the suit of the king. (William Blackstone, *Commentaries on the Laws of England* [13th ed.; Dublin: Printed by P. Byrne, 1796], Book IV, p. 301).

[8]The grand jury actually informed the king's agents about a number of things in its early days. The jurors might be asked what rights the king enjoyed within a district or which of two disputants had the greater claim to a piece of property, as well as informing about crimes against the king. (Pollock and Maitland, I, 189).

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(1176), for example, it was provided that certain classes of crime-doers were to be put to the ordeal when accused before justices by a group of twelve knights or other freemen of the 104 men of each township.[9] The accusations made were based upon personal knowledge of the grand jury and information acquired from other persons. The practice gradually evolved whereby the sheriff called up twenty-three men from the county.[10]

The modern evolution of the grand jury required two further developments. First, so long as the ordeal, generally by fire or water, was the follow-up to the grand jury accusation, accusation was practically the same as conviction, for even those who succeeded in the ordeal suffered banishment.[11] The ordeal appears to have fallen into disuse during the Thirteenth Century.[12] Second, into early in the Fourteenth Century, it was the practice for all or some of the grand jury to form the trial jury. "The separation of grand jury from petit jury revealed the true function of the grand jury as being merely to say whether from the evidence for the prosecution there was probable ground for suspicion."[13]

The grand jury also functions as an inquisitorial body. It can conduct investigations into wrongdoing generally or investigate specific offenses. It can investigate under the direction of the prosecuting attorney, which is usual form, or it may operate under its own head. In most jurisdictions, the grand jury is not under the prosecutor's control any more than it is limited to considering charges of the court.[14] Thus, the grand jury might make its own investigations where it, or any of its members, obtains information of wrongdoing, or where the prosecuting attorney refuses to take desired action.

Special inquisitorial powers are vested in the grand jury. It may subpoena witnesses and compel testimony. It may grant immunity in exchange for possibly incriminating testimony. While the grand jury cannot itself punish for contempt, it can have the contemptuous party brought before the court to which it is attached for punishment. Further, the investigation carried on by the grand jury is secret and *ex parte*. All persons connected with it are sworn not to reveal what occurs within the privacy of the grand jury room, and the accused has no right to present his evidence or answer

[9]The Assize of Northampton, incorporating the earlier assize, is printed in James F. Stephen, *A History of the Criminal Law of England* (London: Macmillan and Co., 1883), I, 251-52.

[10]*Ibid.*, pp. 253-54.

[11]*Ibid.*, p. 252.

[12]*Ibid.*, p. 253.

[13]Orfield, p. 139.

[14]*U. S. v. Thompson*, 251 U. S. 407, 413-14 (1920).

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charges. The grand jury today seldom makes general investigations into wrongdoing, since other methods of criminal investigation now perform this function, but the power, though seldom used, serves as a stick behind the door. The broad inquisition is particularly effective where widespread public corruption is involved. The result of a grand jury investigation may be the issuance of indictments or presentments or a general report on the state of law and order in the community.[15]

The grand jury functions not just to accuse and to investigate but also to protect the rights of individuals. In the days when the British crown exerted strong control over the judicial process, the grand jury often was a bulwark against royal power. In the day of democracy, the grand jury still serves a protective function — against the haste, the malice, the zeal, and the ambition of government officials. In the words of the United States Supreme Court, the grand jury secures individual citizens "from an open and public accusation of crime, and from the trouble, expense, and anxiety of a public trial before a probable cause is established."[16]

While it is the most renowned agency in the United States for accusing persons of crime, the grand jury is not the only agency, nor is it the most prevalent. Competing with it is the information system. The information is "a written accusation of crime preferred by a public prosecuting officer without the intervention of a grand jury."[17] In prevailing practice, the information is filed by the prosecuting officer when the accused has been bound over for trial following preliminary examination.[18] Since many American legal reformers regard the information as an advance over the indictment, the fact tends to be lost sight of that the information is about as old as the indictment.[19] The historical difference between the two forms of accusation is that the information commonly was employed against offenses which disturbed the peace and order of the community.[20] The royal use of the information in England was so repugnantly political in the Seventeenth Century that the information was subjected to very strong criticism.[21]

The information system fills one function of the grand jury: that of accusation. There is a difference, however, in the way in

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[15]A grand jury cannot impugn the motives and conduct of particular individuals in a report unless the report is followed by formal accusation. Glenn C. Gillespie, *Michigan Criminal Law and Procedure* (2nd ed.; Chicago: Callaghan and Co., 1953), I, 153-54.

[16]*Ex parte Bain*, 121 U. S. 1, 12 (1887).

[17]"Indictments and Informations," *American Jurisprudence*, XXVII, 587.

[18]*Ibid.*, pp. 596-97.

[19]Blackstone, Book IV, p. 309, states that the information is as old as the common law.

[20]Stephen, p. 296.

[21]Orfield, pp. 197-98.

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which accusations are made under the two systems. In a way, the examining magistrate performs the same task as the grand jury when the grand jury passes upon a prosecutor's bill of indictment, since in most jurisdictions an information can be filed only after preliminary examination finds probable cause. The preliminary examination is not *ex parte*, as is the grand jury deliberation, and the accused has the right to appear before the magistrate, to be represented by counsel, to cross-examine witnesses, and to produce his own witnesses. Also, while the grand jury proceeding may precede arrest, the preliminary examination follows arrest.

The use of the grand jury in Great Britain was abolished, with insignificant exceptions, in 1933.[22] In the United States, indictment by grand jury is required in federal offenses where the crime is of a "capital or otherwise infamous" character.[23] The information may be employed in federal prosecution of all other crimes.[24] An "infamous" crime is defined both in terms of the offense and in terms of the penalty. Thus, felonies fall under the definition; so do crimes punishable by incarceration in prison; and so do offenses for which the court may sentence to hard labor.[25]

The grand jury requirement of the Fifth Amendment is not binding upon the states.[26] They may modify the powers, the size, or other features of the common law grand jury,[27] or they may, if they choose, abolish the grand jury entirely, substituting the information for the grand jury indictment.[28] Many of the states have taken advantage of this constitutional flexibility. In the early Nineteenth Century almost all, if not all, the state constitutions contained the grand jury requirement of the federal Constitution.[29] In the last century, however, the grand jury has been largely replaced by the information in felony prosecutions in a number of states. The most detailed study of the use of the indictment and information in American states was probably that reported upon by Wayne Morse in 1931.[30] Twenty-two states were found to rely exclusively upon the indictment, nineteen states permitted either the indictment or the information, and the remaining eight states

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[22] *Ibid.*, p. 140.

[23] U. S. Constitution, Amendment V.

[24] *Ex parte Wilson*, 114 U. S. 417 (1884).

[25] *Wong Wing* v. *U. S.*, 163 U. S. 228 (1896); U. S. v. *Moreland*, 258 U. S. 433 (1922); *Brede* v. *Powers*, 263 U. S. 4 (1923).

[26] *Hurtado* v. *California*, 110 U. S. 516 (1884).

[27] *Talton* v. *Mayes*, 163 U. S. 376 (1896).

[28] *Hurtado* v. *California*, 110 U. S. 516. Justice Frankfurter, in a concurring opinion, *In re Oliver*, 333 U. S. 257 (1948), has said that a state might reduce the size of its grand jury to a single person.

[29] "Indictments and Informations," *American Jurisprudence*, XXVII, 589.

[30] Wayne L. Morse, "A Survey of the Grand Jury System," *Oregon Law Review*, X, Part I (Feb., 1931), 101-60; Part II (Apr., 1931), 217-57; Part II (contd.), (June, 1931), 295-365.

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required the indictment for certain offenses and permitted the information for all other offenses.[31] Where prosecutors have been given their option, they have selected the information in an overwhelming number of cases.[32] This greater use of the information is largely attributed to its advantages in speed, economy, and efficiency.[33]

In summary, the grand jury requirement of the United States Constitution, although it basks in the splendor of the Bill of Rights, exercises no constitutional authority over the states and little practical influence in about one-half of the states. This fact assumes momentous import when it is recalled that the great bulk of criminal cases come up in the state, not the federal, courts. The trend of the past one hundred years has been in the direction of greater use of the prosecutor's information at the expense of the grand jury indictment.

Michigan furnishes an excellent example of the decline of the grand jury. It was one of the first, if not the first, state to reform its accusative procedure. Indictment by grand jury had been required in the first state constitution, established in 1835. The drafting of a new constitution, in 1850, witnessed the first movement to combat the grand jury in a constitutional convention. The opponents of the grand jury were unsuccessful in an attempt to insert a provision in the 1850 constitution abolishing the grand jury outright.[34] Instead, the question was left open, with the constitution carrying the simple guarantee that "the accused shall have the right . . . to be informed of the nature of the accusation" against him.[35] In 1859, the Legislature dispensed with the regular calling of grand juries and simultaneously provided for the use of the preliminary examination and information.[36] The information so thoroughly vanquished the indictment by the 1930's that the statement could safely be made that "in most Michigan counties no persons now living can remember the calling of a grand jury."[37]

The grand jury in Michigan comprises sixteen to twenty-three jurors, twelve of whom must concur in the finding of an indict-

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[31]*Ibid.*, Part I, 122, Table A.

[32]Raymond Moley, "The Initiation of Criminal Prosecutions by Indictment or Information," *University of Michigan Law Review*, XXIX (Feb., 1931), 412-13. In Missouri, for example, Moley states that 12 per cent of the prosecutions were initiated by indictment, these generally being the important and the doubtful cases (*Ibid.*, p. 413).

[33]*Ibid.*, p. 404.

[34]Richard D. Younger, "The Grand Jury Under Attack," *Journal of Criminal Law*, XLVI (May-June, 1955), 33.

[35]Michigan, *Constitution* (1850), Art. VI, Sec. 28.

[36]Michigan, *Public Acts* (1859), Public Act No. 138.

[37]"Grand Jury Encumbers Justice in Many States," *Journal of the American Judicature Society*, XXIII, (June, 1939), 26.

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ment.[38] Although it meets only at the call of the circuit court, the grand jury is not limited to crimes placed before it by the court, nor to the bills of the prosecuting attorney. The prosecuting attorney may appear before the grand jury at any time in order to present information, but neither he nor any other person may be present when the grand jurors discuss a matter or take votes. Unless it is followed by an indictment, a report which reflects on the character of any person may not be filed by the grand jury.[39] A person indicted by the grand jury is not accorded a preliminary examination before going on trial.

Where the information is used, on the other hand, a preliminary examination is required.[40] Unless the accused waives examination or is a fugitive from justice, the prosecuting attorney may not file an information until the accused is bound over for trial after examination. The examination follows arrest, and arrest, except where impracticable, must be based on a warrant issued upon complaint of a law enforcement officer or private citizen. While the prosecuting attorney may recommend to the court, consequent to the preliminary examination, that an information not be filed, it lies within the power of the court to require the prosecutor to file and to take the case to trial.

The grand jury and the information as established in Michigan law are fairly typical of what other states provide. The grand jury enjoys inquisitorial powers not given to the prosecutor, who relies upon his own staff and that of other law enforcement agencies for investigative work. The prosecutor is not encumbered by twenty-two other persons in determining whether to accuse someone of crime. Both systems as they exist in the English-speaking world thus have their advantages and disadvantages. There is, however, a third method of criminal investigation and accusation, one which combines the advantageous features of the information and the grand jury.

This is the judicial inquest. The most famous use of this is in the French judicial system, in the *juge d'instruction*. The *juge d'instruction* is a combination judge and police officer, and there is considerable conflict of opinion concerning his role when conducting an investigation,[41] which may be at instigation of the procureur (prosecutor), the injured party, or the *juge* himself in

[38]Except where otherwise noted, information on the Michigan grand jury system is taken from Michigan, *Compiled Laws* (1948), Secs. 767.7-767.25.

[39]*Bennett* v. *Kalamazoo Circuit Judge*, 183 Mich. 200 (1914).

[40]Discussion of the information system is based upon Michigan, *Compiled Laws* (1948), Secs. 766.2, 767.40-767.42, 774.4.

[41]E. R. Keedy, "Preliminary Investigation of Crime in France," *University of Pennsylvania Law Review*, LXXXVIII (Feb., 1940), 409.

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case of a *flagrant délit*.[42] The oldest and most characteristic part of the investigation is the interrogation of the accused, but the *juge* also may visit the crime scene, if the offense is serious; he may detain the suspect; and he may summon and interrogate witnesses.[43] In conducting his inquisition, the *juge d'instruction* operates within the secrecy of the judicial chamber. Under the old system, which has given the judicial inquest its rather awesome reputation, the accused was put under oath; he was not informed of the charges against him; frequently he could not communicate with others; and he was not given the right to counsel. These features have been changed and, furthermore, the accused is now told that he need not testify and he is allowed to make a statement in his own defense.[44] The *juge d'instruction* determines, on the basis of his examination, whether the accused should be brought to trial.

In this country, something on the order of the *juge d'instruction* has been used in several states.[45] The "one-man grand jury," as it is often called, is used for limited purposes in most of the jurisdictions in which it exists, such as violations of liquor laws, and it probably is actively employed in only about three states.[46] In Connecticut, superior court judges as well as justices of the peace are empowered to conduct judicial inquiries. When an investigation is conducted by justices of the peace, three justices function as the grand jury. By either method, the magistrates act in secrecy, employ their judicial powers in support of their investigation, and are not confined to specific charges of wrongdoing.[47] In Kansas, judges may conduct investigations either into alleged violations of anti-monopoly statutes or into wrongdoing generally. The system consists of a single judge operating in grand jury secrecy, with full powers of subpoena, immunity, and contempt.[48] A case involving use of the Kansas statute against the Teamsters Union was recently before the United States Supreme Court.[49]

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[42]*Ibid.*, (April., 1940), p. 692.

[43]*Ibid.*, p. 693.

[44]*Ibid.*, pp. 706-708.

[45]Mayers, p. 130. Glenn R. Winters, "The Michigan One-Man Grand Jury," *Journal of the American Judicature Society*, XXVIII (Feb., 1945), 139-41, discusses judicial inquiries in nine states, in three of which the systems have been repealed. Winters' discussion is based on examination of relevant state laws and court cases, and correspondence with state officials.

[46]Winters, *ibid.*, mentions that the one-man grand jury, in 1945, existed or had existed in about a dozen states. (141). In that same year, it was stated at the annual meeting of the Michigan State Bar that the inquisitorial system was being actively employed only in the state of Michigan. (State Bar of Michigan, *Proceedings, Tenth Annual Meeting*, [Detroit, Michigan, Oct. 31, 1945], p. 64).

[47]Winters, *Journal of the American Judicature Society*, XXVIII, 139; *McCarthy* v. *Clancy*, 110 Conn. 482 (1930).

[48]Kansas, *General Statutes Annotated* (1949), c. 50, Sec. 153; c. 56, Sec. 156. *Courtney* v. *Lockett*, *Brief for Respondent*, In the Supreme Court of the United States, Oct. term, 1954, Docket No. 179.

[49]*Courtney* v. *Schroeder*, 348 U. S. 933 (1955).

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The most significant use made of the judicial inquisition as an alternative to the grand jury has occurred in Michigan. The Michigan one-man grand jury has overshadowed similar experiments in other states to the extent of earning from the United States Supreme Court the designation "unique."[50] The history of the Michigan system has been filled with controversy and hope. The controversy has stemmed from a number of the investigations conducted under the law, and the hope from the belief that the Michigan one-man grand jury offers a model for imitation by other crime-wearied states. It is with this unique system — Michigan's *juge d'instruction* — that the following pages are concerned.

The Legislature Makes a Law

On May 10, 1917, Governor Albert E. Sleeper approved a bill passed by the Michigan Legislature "to authorize proceedings for the discovery of crime, and to provide penalties for a violation of such procedure."[51] This enactment, Public Act No. 196, was brief and consisted of but four sections. For the next thirty-two years it existed without change — at least by legislative action, except for two minor amendments attached in 1921 and 1947. The system established by this statute became immediately known, and has continued down to this day to be referred to, as the Michigan one-man grand jury.

The law provided that any person, whether public official or private citizen, could file a complaint with a magistrate. The magistrate was to determine whether there was probable cause to believe that some offense had been committed and that evidence could be given about it. If he found probable cause, his next action was conditioned by whether the complaint had been filed by a county or city prosecutor, or by anyone else. If by either of the former, he was required to institute proceedings; if by the latter, he might or might not, as he wished.

If, after inquiry, the magistrate concluded that any crime had been committed and if he suspected the guilty party, he could then proceed as he would on a regular complaint, issuing warrants and conducting the preliminary examination. The secrecy requirement imposed on members of grand juries was made applicable to the magistrate, the prosecuting attorney, and others admitted to the inquiry at the discretion of the magistrate. Refusal of a witness to

[50] *In re Oliver*, 333 U. S. 257, 261.
[51] Michigan, *Public Acts* (1917), Public Act No. 196. The act is reproduced in Appendix A.

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appear or to answer relevant questions constituted contempt, punishable by fine and/or imprisonment. The magistrate, upon written motion of the prosecuting attorney, could grant immunity against prosecution in exchange for answers to specified questions.

Public Act No. 196 was enacted by the Legislature at the behest of, and in nearly the same language recommended by, the Michigan Bar Association.[52] However, the Association, as its Special Committee on Criminal Law and Procedure reported to the membership in 1916, borrowed its proposal from a provision of an earlier Michigan statute which authorized the two Detroit police justices to require persons to appear in secret proceedings and answer questions concerning any offense that they had reason to suspect had been committed.[53] Amendments made to the charter of Bay City in 1887, two years after the enactment of the Detroit statute, contained a provision identical to that in the other law.[54] However, it does not appear that any other major city in Michigan adopted this investigatory procedure. There were no Michigan Supreme Court decisions involving the inquisitorial procedure established in either of the two jurisdictions and it is probable that it was not much used.

The only conflict over the Bar Association bill came in the House of Representatives. The House eliminated the power of a magistrate to institute proceedings on the basis of information other than that contained in the complaint filed with him,[55] thereby foreclosing a judge from initiating his own investigation. Thus amended, the bill became law, the governor signing on May 11.

In view of the significance and controversial nature of the one-man grand jury system in subsequent Michigan politics, it is more than a little surprising that enactment of Senate Bill No. 117 was attended by such public apathy. There does not appear to have been any press reporting, and there certainly was no editorial comment, on the legislation as it passed from hurdle to hurdle in the law-making process.[56] There was opposition to the bill only in the House of Representatives. That this opposition had a partisan basis is indicated by the party breakdown on the fifty-nine to twenty-four vote. Republicans approved the bill fifty-six to seventeen, or by a 76 per cent to 24 per cent ratio; Democrats opposed it seven to three or by a 70 percent to 30 per cent margin. There was also a

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[52]Pliny W. Marsh, "Michigan's 'One-Man Grand Jury,'" *Journal of the American Judicature Society*, VIII (Dec., 1924), 122.

[53]Michigan, *Public Acts* (1885), Public Act No. 161, Sec. 20.

[54]Michigan, *Local Acts* (1887), Local Act No. 435, Sec. 167.

[55]Michigan, *House Journal, Regular Session*, 1917, II, 1491.

[56]The *Detroit Free Press*, Sept. 5, 1917, p. 1, remarked—after the law had become operative—on the law's "quietly passing" through the Legislature.

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professional alignment on the issue. There were twenty-three lawyers in the House in the 1917 session, of whom twenty-one voted on Senate Bill No. 117. Twenty of the twenty-one voted for passage, and only one lawyer opposed passage. Thus, in the Michigan Legislature, the one-man grand jury was mainly a Republican-supported and a lawyer-supported measure.[57]

Why was so little attention given this important piece of legislation? Two reasons may be suggested. First, there was the stage-stealing by two dramatic issues. One of these was the prohibition struggle. During the 1917 session of the Legislature, several bills were under consideration for implementing the prohibition amendment to the Constitution just adopted by the voters. Another issue of importance was the deepening crisis of war in the early months of 1917, followed by the first hectic months of hostilities. Placed against this kind of competition, it is understandable that the One-Man Grand Jury Law might fail to create much excitement.

A second suggested explanation of the almost unobserved passage of Public Act No. 196 is that the legislation was not seen for what it later became.[58] This might have been due either to the fact that the figurative small print in the law was not seen or that the small, but vital, print was not in the act as legislated but was written in later. Neither explanation necessarily contradicts the other.

Was it a One-Man Grand Jury Law that the Legislature enacted in 1917? Investigations of wrongdoing can be carried out by a number of agencies. What distinguishes investigations made by the conventional grand jury is the general power of inquest – the authority not only to indict but to exercise broad inquisitorial power. The exercise of this power is not confined to the charge of the court holding jurisdiction over the grand jury nor to matters presented to the grand jury by the prosecutor.[59] "The proceedings of a grand

[57]Michigan, *House Journal*, 1917, II, 1492, contains the vote. Political and professional affiliations of members were obtained from the biographical sketches in the *Michigan Manual*, 1917, pp. 785-807. In the 1917 House of Representatives, there were eighty-eight Republican and twelve Democratic members. The Senate division was twenty-seven to five in favor of the Republican party.

[58]Even the prosecuting attorney of Wayne County seemed to be caught unaware by the new law. During the winter, spring, and summer of 1917 he was engaged in legal action to prevent a judge of Recorder's Court of Detroit from ordering a twenty-three man grand jury investigation. (The two wore opposing political insignia.) Having finally won his battle, in July, 1917, in the Michigan Supreme Court, Jasnowski, the public prosecutor, soon realized that he had lost the war, for Recorder's Court Judge Connolly proceeded to have his grand jury investigation, with himself composing the jury. (Cf. *Jasnowski* v. *Connolly*, 197 Mich. 257 (1917); and the *Detroit Free Press*, March 3, 1917, pp. 1, 3; March 15, 1917, p. 3; Sept. 5, 1917, p. 1).

[59]Cf. "Grand Jury," *American Jurisprudence*, XXIV, 856-57: "Generally, the grand jury has power to investigate any crime over which the supervising court has jurisdiction"; and Glenn C. Gillespie, *Michigan Criminal Law and Procedure*, I, (Chicago: Callaghan and Co., 1953), Ch. VIII, Sec. 126: "A grand jury has power and is at liberty, under its oath, to inquire into matters within the whole county. The scope of the inquiry is not limited by the court's charge." While in most American jurisdictions the power of investigation is virtually unlimited, in some states grand juries are narrowly limited in investigating matters concerning which no formal charge has been laid before them. ("Grand Jury," *American Jurisprudence*, XXIV, 858).

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jury," runs a New York decision, "constitute the only general criminal investigation known to the law."[60] If the Michigan statute conferred this kind of power upon judges and justices, then the epithet "one-man grand jury," however ungrammatical, would be particularly appropriate.

Indeed, the epithet would be more than appropriate; it would be an understatement, for no regular grand jury enjoys some of the powers held by magistrates under Public Act No. 196. No grand jury punishes summarily and in secrecy for contempts committed in its presence; the witness must be taken before the judge in open court. Judges under the 1917 act could punish summarily and in secrecy. No grand jury, or any of its members, may participate at the trial of a person indicted by it; a judge under Public Act No. 196 was empowered to issue warrants, to bind over for trial, and to preside at the trial itself.[61] And, of course, no common law grand jury can dispense with all but one of its members.

Public Act. No. 196 did not explicitly give to judges the inquisitorial power of the grand jury, or, for that matter, other attributes that attach to the operations of the common law grand jury. The words "grand jury" appeared nowhere in the law. There was a single reference to "grand jurors" but this applied a restraint upon inquiring magistrates.[62] The question whether the 1917 act vested general inquisitorial power in judges depends, rather, upon the interpretation of certain language in the law.

The relevant language, drawn together, runs as follows:

> When "any" magistrate has probable cause to suspect that *"any* crime" has been committed and that "any person" may be able to testify about *"such* offense," "such" magistrate can institute proceedings in which he may require *"such* person" to answer questions about *"any* violation of law" concerning which he may be questioned; if satisfied that *"any* offense" has been committed, the magistrate may have the suspected party arrested.[63]

It is clear that before a magistrate could establish an inquiry, he had to find probable cause that a specific offense had been com-

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[60] *Ward Baking Co.* v. *Western Union Tel. Co.*, 205 N. Y. App. Div. 723, 728; cited by George H. Dession and Isadore H. Cohen, "The Inquisitorial Functions of Grand Juries," *Yale Law Journal*, XLI (Mar., 1932), 689.

[61] In its early history, the grand jury, or part of it, was often employed as the trial jury as well, but one would have to trace far back into the history of English jurisprudence to find this commingling of functions. (Cf. "Grand Juries," *Corpus Juris Secundum*, XXXVIII, 980).

[62] The relevant passage stated that "the provisions of law relative to grand jurors" shall govern the divulging of testimony of witnesses by the judge, prosecutor, and others admitted by the judge to proceedings under the law. The provisions of law relating to grand jurors require that a grand juror keep secret "your own counsel, and the counsel of the people, and of your fellows," and that he not disclose that a felony indictment has been found against anyone not under arrest or bail until process has been served. (Michigan, *Compiled Laws* (1915), III, Secs. 15,703 and 15,713, respectively).

[63] Emphasis supplied.

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mited. Further, he had to believe that some specific person or persons could give evidence about that specific offense.[64] It is not so clear, however, that Public Act. No. 196 required a judge to confine himself to that specific offense in conducting his investigation. The reason for this uncertainty lies in the ambiguous use of the word "any." If the word "any" meant that a magistrate could investigate broadly into crime once an inquiry was established, then Public Act No. 196, in its most important respect, was intended to establish a one-man grand jury system. For even the slightest relaxation in restricting judicial inquiries to the confines of a specific charge, as has been observed, "amounts to authorization for a 'one-man grand jury.'"[65]

The evidence seems to be against the interpretation of Public Act No. 196 which would have judges empowered to conduct general investigations. The wording of the law itself would appear to be opposed to this interpretation. Furthermore, comparison with the procedure used in ordinary complaint proceedings bolsters this conclusion. With respect to the law itself, it should be remembered that a magistrate was not to institute an inquiry unless he was able to find probable cause that a specific crime had been committed and that testimony could be given about the crime. This requirement would have little meaning if a magistrate could then ignore the narrow conditions under which he was to launch his inquiry and could embark upon a "fishing expedition."

The complaint procedure provided for in Public Act No. 196 evidently was adopted from the procedure used in ordinary complaints. In ordinary proceedings, a complaint is made before a magistrate alleging some criminal offense. The magistrate examines the complainant and any witnesses which the complainant may produce. The purpose of the examination is to develop particulars of an offense in order to discover whether a crime has in fact been committed and whether a warrant should issue for the arrest of the accused. If the magistrate makes such determination, he issues a warrant for the accused charging him with a specific offense, and this action specifies and limits the subsequent proceedings.[66] Under Public Act No. 196, too, a complaint was to be made before a magistrate, and the law indicated that it was to be a written com-

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[64]It is not irrelevant to point out that when a magistrate acting on an ordinary complaint finds that "any offense" has been committed, he issues warrants charging a specific crime. (Michigan, *Compiled Laws* [1948], Secs. 766.2, 766.3, 774.4; *Yaner v. People*, 34 Mich. 286 [1876]).

[65]Dession and Cohen, *Yale Law Journal*, XLI, 689-90.

[66]Michigan, *Compiled Laws* (1948), Secs. 766.2, 766.3. (These provisions of law have remained unchanged since 1917.) *Yaner* v. *People*, 34 Mich. 286; *Turner* v. *People*, 35 Mich. 363 (1876); *People* v. *Kahler*, 93 Mich. 625 (1892).

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plaint. Though the law did not say so, presumably the magistrate would examine the complainant and his witnesses on the complaint. As in ordinary complaints, the magistrate had to make a determination, but here the similarity ends. In ordinary complaints, it had to appear to a magistrate that a crime had been committed and there had to be reasonable cause to suspect the accused. Under Public Act No. 196, the judge had to have probable cause to suspect that a crime had been committed and that material evidence could be obtained. The 1917 law was applicable to situations in which insufficient knowledge was had to issue criminal warrants. What the law did was put the judge actively to work; equipped with special authority, he was to see if he could develop the incomplete complaint to the standard required for issuing a warrant. His job, it seems, was to inquire into a specific offense, not to conduct a grand jury investigation.

A final question remains: what were the reasons behind the enactment of the 1917 law? One reason is suggested in the report of the Bar Association Committee which first proposed the legislation. The report expressed dissatisfaction with existing criminal procedures on the ground that they constituted obstacles to the administration of justice. "We must realize," the report stated, "that technical procedure arose as a safeguard against tyranny and inhuman punishment." However, "such days are past and the need of extreme safeguards for the accused no longer exists. Rather have we gone to the opposite extreme."[67] This imbalance between the rights of the accused and the needs of law and order was felt to justify the proposed legislation for judicial investigations into crime.

Perhaps the reason for Public Act No. 196 lies more in the demise of the grand jury in Michigan. By 1916 the grand jury had all but disappeared in state prosecutions, having been superseded by the information system. The information, however, is defective in that it does not perform some of the functions performed by the grand jury. Prosecuting attorneys do not in Michigan, and rarely in other states, have the power to subpoena witnesses and put them under oath. They cannot compel testimony and punish for contempt. They cannot grant immunity. Nor can prosecuting attorneys always be depended upon to launch investigations when it would mean stirring up a nest of political hornets. The prosecuting attorney is an elective officer and is often closely connected with political interests in the community. Resolute action on the prosecutor's part might be difficult to obtain when that action would be against

[67]Michigan State Bar Association, "Report of Special Committee on Criminal Law and Procedure," *Proceedings, Twenty-sixth Annual Meeting*, p. 102.

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political corruption or politically supported wrongdoing. The judicial method of inquiry, while retaining the advantages of the information would also regain some of these lost advantages of the grand jury.

Finally, the enactment of Public Act No. 196 of 1917 might have been in some general way connected with the temper of the times. Roscoe Pound, a few years after the law was placed on the statute books, noted: "The over-technical tenderness for the offender in the nineteenth century is giving way to an over-callousness, to violation of the constitutional rights of accused persons in the supposed interest of efficient enforcement of the penal laws."[68] This depiction may be too strong, but it is true that the report of the Bar Association committee in 1916 reflects a "get tough" attitude towards criminal wrongdoing.

The First Investigations

This and the succeeding three chapters will trace the development of the Michigan one-man grand jury system between 1917 and 1946, as the law was put to use in specific instances, particularly in those investigations which brought it a mixture of fame and notoriety and which involved it in the warp and woof of state politics. The principal investigations that will be examined in some detail are: the inquiry into charges of immorality and fraud involving the House of David religious colony in 1923; the investigation of the state election recount, made in 1935; the Ferguson-O'Hara investigation, running from 1939 to 1942, into corruption in Detroit and Wayne County government; and the Carr-Sigler probe into legislative bribery and graft, extending from 1943 to 1946. Each of these investigations marked a progression over its predecessor in duration, scope and political ramifications. We shall also be concerned with what happened to the law, as it was applied with increasing frequency and to situations at the same time more diffuse in scope and more political in character.

For a law that had been so inconspicuously born, Public Act No. 196 was not slow or unobstrusive in receiving its baptism. Its first application was attention-drawing and provocative, and prophetic of its unfolding history. It was invoked within three weeks of its taking effect by a judge of Recorder's Court in Detroit for the wholesale investigation of corruption in city government; the

[68]Roscoe Pound, "The Future of the Criminal Law," *Columbia Law Review*, XXI (Jan., 1921), 9.

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investigation at hand was associated in many minds with partisan politics, and it gave rise to legal proceedings which brought to the Michigan Supreme Court the job of determining the limits of judicial discretion under the law.

The investigating magistrate was Judge William F. Connolly, who also happened to be a recognized leader of the Democratic party in Michigan, and a member of the party's national committee.[69] Before instituting the proceedings under Public Act No. 196, and, in fact, before that law had been enacted, Connolly had ordered the calling of a twenty-three man grand jury to investigate corruption and vice involving Detroit officials.[70] The prosecuting attorney of Wayne County, Charles H. Jasnowski, who was also a prominent Republican leader in the county, blocked Connolly's investigation by court action, on the ground that the Detroit Recorder's Court was without power to invoke a grand jury.[71]

The Supreme Court's decision was handed down on July 26, 1917. On August 11, Public Act No. 196 went into effect. On September 5, the *Detroit News* reported that Judge Connolly was, under the new law, going ahead with his investigation after all.[72] Jasnowski was at that same moment undertaking a conventional grand jury inquiry.[73] The Connolly inquiry was immediately given the label "one-man grand jury" by the Detroit press,[74] and it operated in the manner of a conventional grand jury. The investigation was requested by a member of the Detroit Common Council – the same individual who had petitioned for the calling of a regular grand jury in Judge Connolly's court a few months earlier – and it was begun on September 6, 1917.[75]

The scope of the order establishing the inquiry is not known, though it is apparent that Judge Connolly did not consider himself confined to the investigation of a specific offense. Before the inquiry got underway, his list of matters included city and county building affairs, the Board of Education, electoral contests of recent years, illicit liquor sales in Wayne County, and the lack of arrests and prosecutions in criminal offenses.[76] Indeed, before he was through,

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[69]*Detroit News*, Sept. 6, 1917, p. 4; *Michigan Centennial History*, V (Chicago: Lewis Publishing Company, 1939), 161.

[70]*Jasnowski* v. *Connolly*, 197 Mich. 257, 258; *Detroit Free Press*, Mar. 3, 1917, pp. 1, 3.

[71]*Jasnowski* v. *Connolly*, 197 Mich. 257.

[72]*Detroit News*, Sept. 5, 1917, p. 1.

[73]The *News*, for one, approved the idea of dual investigations since, in its opinion, the public would be assured thereby that there would be no political covering-up. (Sept. 6, 1917, p. 4).

[74]The first mention of the Connolly investigation as a "one-man grand jury" occurred in both the *Detroit News* and *Detroit Free Press* on Sept. 5, 1917, p. 1.

[75]*Detroit Free Press*, Sept. 7, 1917, p. 1.

[76]*Detroit News*, Sept. 5, 1917, p. 1.

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Judge Connolly had investigated practically every department of Detroit and Wayne County government, ranging from the Detroit police force, fire marshall, and engineering department to the Wayne County sheriff and treasurer's offices. Connolly inquired into purchasing of property, building construction, and public contracts, and also into illicit liquor traffic, embezzlement of public moneys, gambling, and — this was during the war — the coal situation. He summoned a large number of city and county officials before him, including the mayor and chief of police, and he himself was called as a witness before the Jasnowski Wayne County grand jury. By the time he was finished, and this was not until January 8, 1918, when his term of office expired, Judge Connolly's one-man grand jury had roamed widely through the political vistas, it had received good coverage in the Detroit newspapers, and it had come up with about two dozen indictments.[77]

Despite the broad sweep of its activities, the Connolly one-man grand jury has come to be associated with one specific investigation, which instigated the single Supreme Court case that resulted from the probe: the inquiry into the operations of the Detroit Water Board. The investigation, which had as its target the president of the Board, Robert Oakman, an important politician in the Republican party, quickly deteriorated into a public brawl. On October 8, 1917, Connolly filed a "presentment" with the Recorder's Court, charging Oakman with having used his position as president of the Water Board to benefit his real estate speculations and, in so doing, with having engaged in improper and profit-seeking actions.[78]

In a page-one story which proclaimed "Oakman Hits Back at Judge," the *Detroit News* reported on October 17 that the Water Board official was seeking to have the presentment expunged from the files of Recorder's Court and that Connolly retort had been: "let 'em rave."[79] On October 25, Judge Connolly, in open court, took under advisement Oakman's arguments that One-Man Grand Juror Connolly had no authority to file his presentment with the Recorder's Court.[80] No decision by Judge Connolly was soon forthcoming and so Oakman a few weeks later, perhaps to speed the process of judicial decision-making, brought a libel suit for $250,000

[77]Cf. *Detroit News*, Sept. 8, 1917, p. 2; Sept. 11, 1917, p. 2; Sept. 13, 1917, p. 19; Sept. 14, 1917, p. 1; Sept. 19, 1917, p. 15; Oct. 17, 1917, p. 1; Nov. 8, 1917, Part II, p. 19; Dec. 21, 1917, p. 1; Dec. 26, 1917, p. 8; Dec. 27, 1917, p. 1; Dec. 29, 1917, p. 1; Jan. 1, 1918, p. 1; Jan. 7, 1918, p. 1.

[78]*Oakman* v. *Recorder of Detroit, Record*, In the Supreme Court of Michigan, Jan. term, 1919, Motions and Rehearings, 24-27.

[79]*Detroit News*, Oct. 17, 1917, p. 1.

[80]*Oakman* v. *Recorder of Detroit, Brief for Relator*, In the Supreme Court of Michigan, Jan. term, 1919, Motions and Rehearings, 3.

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damages against Connolly for attempting to injure his good name through the presentment.[81] It is not known, though doubted, whether this suit ever was tried in court.

Despite these promptings, Connolly refrained from making a decision, and Oakman tried another gambit, this one in the Michigan Supreme Court, where, on December 28, he sought legal aid to compel Connolly to expunge the presentment. Under this legal barrage Connolly finally acted; on January 7, 1918, the next to final day of his term of office, he issued two warrants commanding Oakman's arrest.[82] One of the warrants charged that Oakman had attached a water pipe to a main on July 15, 1915 – over two years previous – and that the pipe had not been regulated by a meter and had run an uncharged expense of $47.10. The other warrant accused Oakman with wilful neglect of duty to the benefit of himself and others.[83] It is not known, though doubted, whether this proceeding ever reached trial stage.

Having thus strengthened his position, Connolly finally acted on Oakman's petition of mid-October, 1917. His action was taken on January 8, his last day of office, and he denied the petition to strike the presentment for the reason that it had been superseded by the warrants.[84] Connolly was off the stage when the Supreme Court ordered the Recorder of Detroit to show cause why he should not be compelled to strike the presentment from the files of Recorder's Court. Connolly's successor formally opposed the granting of the writ. The court's task was to decide whether the instant case fell within the ruling of *Bennett* v. *Kalamazoo Circuit Judge,*[85] in which it was determined that a grand jury was without power to make presentments unless followed by indictments.

The Supreme Court decided that, under the reasoning contained in *Bennett* v. *Kalamazoo Circuit Judge,* it had no choice but to find that the tardy issuance of warrants could not rectify the unauthorized presentment of three months earlier.[86] Oakman thereby derived the somewhat dubious satisfaction of having the court records, but not the public mind, cleared of the allegations filed by Judge Connolly a year and a half previous. These charges, moreover, had re-entered the court records through the warrants issued in early January, 1918.

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[81] *Detroit News*, Nov. 8, 1917, Part II, p. 19; Dec. 21, 1917, p. 1.

[82] *Oakman* v. *Recorder of Detroit, Brief for Relator*, 3-4; *Oakman* v. *Recorder of Detroit, Record*, 18.

[83] *Oakman* v. *Recorder of Detroit, Record*, 20-38. The warrants, particularly the second warrant which was quite lengthy, incorporated the charges made in the presentment.

[84] *Oakman* v. *Recorder of Detroit, Brief for Relator*, 4.

[85] 183 Mich. 200.

[86] *Oakman* v. *Recorder of Detroit*, 207 Mich. 15 (1919).

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What strikes one as particularly interesting about this first investigation under Public Law 196, in addition to the political baptism that the law received, was the immediate and easy way in which the new system of judicial inquiry assumed the appellation, movements, and legal trappings of a grand jury. Judge Connolly, from the very beginning, conceived of his role as something much broader than that of a magistrate investigating a specific offense or specific offenses, the press applied the soubriquet "one-man grand jury" as though the name naturally belonged, and the Michigan Supreme Court instinctively applied the precedent and ground rules governing grand juries to the alleged injuries done Robert Oakman. The Connolly investigation by no means settled the question as to what the law was to look like in operation, but it did establish a precedent that was to become more solid with the passage of time.

Lest it be too quickly concluded that the precedent established by the Connolly inquiry was that a judge using Public Act No. 196 functioned as a grand jury, it might be instructive to examine another early case, remarkably similar to the *Oakman* affair in all but its conclusion. This affair concerned Robert V. Mundy, mayor of Bay City. In November and December of 1920, a committee of the Bay City Common Council, of which Mundy was chairman, conducted public hearings into charges made by certain members of the police department that other police officers and their superiors were derelict in enforcing the law. At one of these meetings, attended by about a thousand persons, a clergyman charged that the mayor was guilty of bribery and malfeasance in office — that Mundy had protected illicit liquor traffic within the city and had accepted a case of whiskey as pay-off. Mundy's reaction was a libel suit for $25,000.[87]

The one-man grand jury entered the fray about March 6, 1921, upon the petition of the assistant prosecuting attorney of Bay County.[88] The probe, conducted by an outside judge, was of short duration and was concluded on March 26. The judge-juror found no grounds for issuing criminal warrants, but instead filed a "presentment" with the clerk of the court, charging Mundy, the chief of police, and a police captain with "wilful misfeasance in office and wilful neglect of duty."[89] The particulars of the accusation were that these persons had refused to suppress prostitution and gambling and had not strictly enforced the liquor laws. His purpose in making

[87] *Mundy* v. *Hoard, Record,* In the Supreme Court of Michigan, Oct. term, 1921, Docket No. 42, 2-8.

[88] *Mundy* v. *McDonald,* 216 Mich. 444, 448 (1921).

[89] *Mundy* v. *McDonald, Record,* 8.

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his presentment was that a hearing might be had before the Common Council on the question of removing the named parties from office. At the time the presentment was made, Mundy was seeking re-election to the Bay City Commission.[90]

Mundy's reaction to this state of affairs was another libel suit, this one for $50,000, but, unlike Oakman, he did not accompany it with a motion to have the presentment stricken from the court records as being beyond the authority of the investigating magistrate. As he lined up his major precedents, Mundy might have been understandably confident. The Michigan Supreme Court, in *Bennett* v. *Kalamazoo Circuit Judge*, decided in 1914, had declared that a presentment not followed by an indictment was improper and should be stricken; *Bennett* v. *Stockwell*, decided in 1917, held the members of the grand jury which released this document liable to civil action for libel;[91] and *Oakman* v. *Recorder of Detroit* had assumed that a judge acting under Public Act No. 196 was functioning in a way analogous to a grand jury.

The circuit court in which Mayor Mundy brought his suit disagreed with him, however, and its dismissal of his complaint was supported by the Michigan Supreme Court in an opinion from which there was no dissent. The basic question for the Supreme Court was whether a judge conducting an investigation under Public Act No. 196 was operating in a judicial capacity. If he were, then the precedents unambiguously protected him from private suit for his actions, even when such actions were in excess of jurisdiction. If he were not operating in a judicial capacity but in the capacity of a grand jury, then *Bennett* v. *Stockwell* would be controlling. The Court's answer to this question was emphatic:

> That defendant acted in a judicial capacity cannot, we think, be questioned. What he did, he did as a circuit judge. The statute gave him power to conduct the proceedings.[92]

What were the implications of the holding in *Mundy* v. *McDonald* that a judge conducting an investigation was still acting as a judge? The decision meant that *Bennett* v. *Stockwell* could not be considered an applicable precedent, since that decision had to do with the liability of grand jurors who acted in excess of authority

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[90]Mundy actually was seeking election to the new governing body which was to replace the Common Council when the home-rule charter adopted by the voters in November, 1920, went into effect (on April 4, 1921). Cf. *Charter of the City of Bay City, Michigan*, Printed by Authority of the City Commission (Bay City: A. E. Ripley Printing Co., 1939).

[91]197 Mich. 50.

[92]*Mundy* v. *McDonald*, 216 Mich. 444, 454. The last sentence is meaningless, since there was no dispute that the statute gave circuit judges power to conduct proceedings, unless the statement is intended to read: "the statute gave him power *as a circuit judge* to conduct the proceedings."

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by issuing an improper report. But it did not mean that *Bennett* v. *Kalamazoo Circuit Judge* was also inapplicable, since the specific holding in Mundy did not determine whether Mayor Mundy might have had Judge McDonald's presentment stricken from the record. Indeed, inasmuch as Section 2 of Public Act No. 196 imposed grand jury secrecy upon investigating judges, it could be consistently maintained that a judge could not divulge what transpired in a proceeding through issuing a "presentment," and also that he could not be sued for issuing one. It follows from this that the Court's holding in *Oakman* v. *Recorder of Detroit* was not repudiated by *Mundy* v. *McDonald.*

There is, nonetheless, an important difference between the *Oakman* and *Mundy* cases. In *Oakman* the Supreme Court treated the one-man grand juror's behavior as that, or analogous to that, of a grand jury; in *Mundy* it was that of a judge acting in a judicial capacity. The implication of *Oakman* would have made a judge-juror, in view of *Bennett* v. *Stockwell,* liable to private action. The *Mundy* ruling diverted the logic of that decision. It is ironic that the Court in *Oakman,* while treating a judge conducting an inquiry under Public Act No. 196 as a grand jury, actually did not give him as much power as a grand jury enjoyed, since it declared that an action, which under *Kalamazoo Circuit Judge* would have been valid, was improper; while the Court in *Mundy,* while denying that a judge was a grand jury, gave him more power than a grand jury by insulating his behavior from civil suit. In its *Mundy* opinion, the Court stated what needed proving – that a judge acting under the One-Man Grand Jury Law was functioning in a judicial capacity, and it proved at length what needed only to be stated – that a judge functioning in a judicial capacity was immune to civil action. It was not until 1945 that the Supreme Court dropped its invocation that a one-man grand juror was functioning in a judicial capacity and examined the question at length.

The political context of the two early investigations should not be understressed. The Connolly-Oakman episode had the markings of a political feud, with the major antagonists holding leading positions in their respective political party organizations. The Mundy investigation was also involved in a political situation. Mundy was in the middle of an election campaign for municipal office when the one-man grand jury probed his behavior. The presentment, which was issued shortly before the city election, undoubtedly had some part in Mundy's defeat, which was by a

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narrow margin.[93] What these initiatory investigations indicated, and what was to be corroborated by future judicial inquiries, was that the One-Man Grand Jury Law not only was peculiarly adapted to cases of political corruption and conspiracy but that it was also susceptible of being used for purposes of political advantage.

[93] *Detroit Free Press*, Apr. 5, 1921, p. 3.

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Chapter 2

The Big Investigations

The House of David

On April 23, 1923, in response to a petition filed by the prosecuting attorney of Berrien County that same day, a one-man grand jury inquiry was ordered into charges that one John Doe had compelled a woman to marry one Richard Roe on April 20, 1923.[1] The investigation into this seemingly insignificant offense led to further legal proceedings, concerning which the Attorney General of Michigan stated: "Undoubtedly few, if any, cases in the history of jurisprudence have had more publicity than the instant case."[2] Allowing for the possible exaggeration of fact, the House of David case was still, from several points of view, a most extraordinary affair. To understand the significance of the investigation conducted by the judge-jury during four months of 1923, and the nature of the problem with which he had to deal, it is necessary to have some historical perspective on the Israelite House of David and its founder, Seventh Messenger, and guiding genius, Benjamin F. Purnell.

Benjamin Purnell, a broommaker by trade and of little education, had led a rather uneventful life up to the time he was 34 years old. But in the year 1895 the "graft" – the spirit of Shiloh – lighted upon him, and gave his life a special direction.[3] Armed with his celestial credentials and with the first of a number of books expounding his views, Benjamin, as he was called, established his own colony at Benton Harbor, Michigan, with half a dozen persons, including his wife, Mary, in 1903. These few souls comprised the first wave of a proposed "ingathering" of 114,000 persons of each sex who would, by adhering scrupulously to certain principles,

[1]The petition and order are reproduced in *People* v. *Israelite House of David, Record,* I, In the Supreme Court of Michigan, Oct. term, 1928, Docket No. 52, 338, 340.

[2]*People* v. *Israelite House of David, Brief for Plaintiff and Appellee,* In the Supreme Court of Michigan, Oct. term, 1928, Docket No. 52, 24.

[3]*People* v. *House of David, Record,* I, 589; VI, 4084.

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achieve immortality of the body.[4] The basic principle was that of total abstinence from sexual relations, or the keeping of the "virgin law," which was supposed to effectuate the cleansing of the blood.[5] The faith also taught that it was wrong to eat meat, trim the beard, or touch a dead body.

The achievements of the House of David over the next twenty years were remarkable by any standard. The colony was established on a communistic basis: persons entering it turned over all their possessions; work was performed without pay and without coercion; and family life was discouraged to the extent that husbands, wives, and children were generally separated and meals were taken communally.[6]

At the time of the one-man grand jury probe in 1923, the House of David contained about 500 persons. This ingathering had come from various parts of the United States, from England, and from Australia. The Australian group was recruited on a special trip made by Benjamin and Mary.[7] The colony had prospered financially as well as numerically under Benjamin's benevolent despotism. By 1923, it had property assessed at about $375,000; its members were engaged in farming, fruit raising, and lumbering; it operated an amusement park, a hotel, a miniature railway, a machine shop, and a zoo; and its bearded baseball team and its vaudeville band travelled to many parts of the country. During the summer months, some 200,000 visitors came to amuse themselves on its grounds.[8] The House of David was considered to be the showplace of Berrien County.

It is probable that not too many respectable people placed much stock in the charges which were made from time to time of Benjamin's allegedly immoral behavior.[9] Both the state and federal authorities attached sufficient merit to the stories, nonetheless, to do some checking into their validity. The offices of the U. S. district attorney at Chicago and Grand Rapids conducted investigations in 1910, 1914-1917, and in 1921, and a warrant was actually issued in 1914 charging violation of the Mann Act, though no further processing was had upon it.[10] The state carried on its investigations, though seemingly without any great earnestness, throughout the entire period, 1910-1922. There were, in addition,

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[4]*People* v. *Israelite House of David, Opinion of the Circuit Court,* In the Supreme Court of Michigan, Oct. term, 1928, Docket No. 52, 11-12.

[5]*Ibid.*, 39.

[6]*Ibid.*, 30-31.

[7]*Ibid.*, 2.

[8]*Ibid.*, 3.

[9]See, for example, the *Detroit News*, Dec. 17, 1915, p. 1; Nov. 10, 1915, p. 1.

[10]*People* v. *House of David, Record,* I, 107-109.

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a few private suits brought against Benjamin in this period, but none was of any importance.

Whether the ability of the House of David to stave off serious legal action for the first twenty years of its existence was due more to the known virtuousness of its ordinary members or to the ingenuity of its leader, is a matter of conjecture. But the measures which Benjamin Purnell employed to – in the words of a Michigan judge, who presided over a later trial involving the colony – "impeach and confound his accusers"[11] were truly remarkable, and they form the necessary backdrop to the maneuvering Benjamin engaged in during the one-man grand jury investigation of 1923. When investigations or court actions threatened Benjamin in 1910, in 1914, and in 1917, he disappeared from view, in the same manner, he told his followers, as did Jesus hide from his persecutors. Each time charges of immorality rose to threaten invasion of the colony's privacy, group affidavits signed by girls and young women were produced denying the least *soupcon* of immorality on the part of Benjamin and within the colony generally, and it was the policy of the sect to obtain such testimonials from individuals leaving the association.

In 1910 and 1914, when the colony was under investigation, group marriages were entered into. The couples generally did not know each other well beforehand and had almost nothing to do with each other afterwards. The loss of virginity revealed by any physical examination would thus not be incriminating for Benjamin, since the women were all married.[12] It was also claimed that Benjamin, to protect himself, taught perjury to be a justifiable and necessitous weapon against the "Gentiles,"[13] framed charges against troublemakers,[14] and had an elaborate signal system installed in his headquarters.[15]

This is the background from which the one-man grand jury investigation emerged in April, 1923. That the House of David ever was investigated was due, not to the crusading enterprise of the Attorney General of Michigan or the prosecuting attorney of Berrien County, but to the successful prosecution of a civil suit in federal court against the House of David by former members who charged that they had been defrauded out of property and earnings.[16] This case was prosecuted in March, 1923, and according to

[11] *People* v. *House of David, Opinion,* 127.
[12] *People* v. *House of David, Opinion,* 81ff, 91ff, 104ff.
[13] *Ibid.,* 127.
[14] *Ibid.,* 128.
[15] *People* v. *House of David, Record,* I, 354.
[16] Cf. *Hansel* v. *Purnell,* 1 F(2d) 266 (1924).

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an authoritative source, "the wide publicity given the case and the character of the charges caused the Attorney General and prosecuting attorney to institute the grand jury probe.[17] Immediately after this trial, the plaintiff's attorney, Walter M. Nelson, was requested by the Attorney General to outline the testimony produced in the trial and to advise whether there was any testimony upon which a criminal warrant against Purnell might be based. In a conference with state officials, part of which the Governor attended, Nelson explained that the evidence used in his suit fell outside the period allowed by the statute of limitations, but he indicated that there were other persons who could testify to immoral conduct on the part of Benjamin.[18] Nelson was at the time engaged in further litigation against the religious leader.

The one-man grand jury investigation of the House of David was launched on April 23, 1923, when the Berrien County circuit judge approved the request of the prosecuting attorney of that county. It seems clear that the responsibility for starting and providing the resources for the inquiry lay with the state. The stated cause of the inquiry was the allegation that a woman had been forced into matrimony. Actually the state was more interested in the charges of immorality made against Benjamin Purnell, and its specific objective, as indicated by the pre-investigation conference with Nelson, was to determine whether sufficient evidence could be obtained upon which it might base a criminal warrant charging the cult leader with statutory rape.

No information on this subject was to be forthcoming from the Seventh Messenger himself. Since the beginning of 1923, Purnell had been unavailable to the public at large. He had disappeared from view on the eve of a civil suit being filed against him. He did not reappear until seized in a raid by the state police almost four years later. A young woman wanted by the state as a witness also disappeared just prior to the opening of the investigation.[19]

In addition to the hide-and-seek gambol, the House of David indulged in other strategies employed in earlier years against threatened incursions of the law. The one which received widest attention was the group marriage. In fact, it was the collective wedding of April 20 that provided the formal basis for the investigation. On April 19 and 20, on the very eve of the announced

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[17]*People* v. *House of David, Opinion,* 104. The attorney in the civil suit testified under oath that the Attorney General's office had known about the scandal for two years, but had up to that time done nothing. (*People* v. *Doe* [*In re Nelson*], *Record,* In the Supreme Court of Michigan, Oct. term, 1923, Docket No. 82, 74).

[18]*People* v. *House of David, Record,* VI, 4452-4455; *People* v. *Doe, Record,* 44, 112-113.

[19]*People* v. *House of David, Opinion,* 109.

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investigation, the House of David, according to its press release, "was the scene of a happy marriage ceremony. . . . Many of these couples had been engaged for a long time."[20] These group affairs were matched by single marriages on April 19, 21, 24, 27, and 28.[21] The coincidence of timing, the obvious haste, and the known disapprobation of wedlock by the sect all made this announcement seem suspicious,[22] and the young ladies involved were immediately summoned before the judge-jury for the purpose of ascertaining whether coercion had taken place. This line of inquiry did not get the investigation very far, however. None of the newlyweds admitted that wedlock had been forced upon her, and all of them avowed strong feelings for their husbands. Judge Harry J. Dingeman, the grand juror, was not able to make any finding to support the charge. Nor was material information obtained from any other source within the colony. Mary Purnell claimed her privilege not to be compelled to testify against her husband.[23] Three years later, one of the girls who had denied all knowledge of immorality on the part of Benjamin directed state police to his hideout and was a leading witness in the state's subsequent attempt to prove that Purnell had debauched young women.

It was soon clear that if the state was going to learn anything — and there was some doubt as to whether there was anything to be learned — this information would have to come from outside the colony. The state apparently had difficulty in persuading ex-members living outside Michigan to agree to testify before the one-man grand jury. In seeking to obtain such testimony, a crucial link was Walter M. Nelson, the attorney for the Hansels in their successful civil suit against the House of David and the legal confidant of a small group of female ex-members. At the Attorney General's conference, he had mentioned some girls who could testify that Benjamin Purnell had had sexual intercourse with them within the time required by the statute of limitations, but he declined to produce them for the state. An assistant attorney general had sought to persuade him to bring him in contact with these young ladies, but Nelson refused. As a means of extracting information as to their whereabouts, the grand jury subpoenaed Nelson to testify before it on April 27 and once thereafter; at the second appearance he was summarily, and in secret, sentenced to thirty days in the county jail on the ground that his testimony had been

[20] "Cult Members Flock to Altar," *Detroit News*, April 22, 1923, p. 1.

[21] *People v. House of David, Opinion*, 104.

[22] *Ibid.*, 104-107.

[23] *People v. Israelite House of David, Brief for Part of Defendants and Appellants*, In the Supreme Court of Michigan, Oct. term, 1928, Docket No. 52, 55.

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false and evasive.[24] Nelson, on his part, claimed that either he had misunderstood the questions of the prosecutor or the latter had misinterpreted his responses, but that he had not, as had been alleged, changed his story between appearances.

The Michigan Supreme Court upheld Nelson's conviction by a split four-to-four decision.[25] The justices who voted to uphold supported Judge Dingeman's finding. The other four justices would have discharged Nelson because he had properly claimed the information sought by the grand jury to be privileged, dealing as it did with an attorney-client relationship.[26] The charge of falsely testifying was not mentioned by them.

In his appeal to the Michigan Supreme Court, Nelson had raised certain other questions, which the justices who would have reversed Judge Dingeman did not consider, but which were taken up by the other four members of the bench. To his contention that he was entitled to a jury trial on the contempt charge, the four upholding justices quoted an earlier decision of the court to the point that the Michigan Constitution left untouched the common law power of judges to punish insulting or degrading acts which tend to obstruct justice.[27] To the contention that, inasmuch as Public Act No. 196 authorized judges to punish as contempt refusal to appear or answer questions before a judicial inquiry, this power could not be extended to alleged cases of evasively or falsely testifying,[28] the four justices replied that "the power to punish for contempt is inherent in the court" and, consequently, like any other judicial power, its exercise "can not be taken away from constitutional courts by the legislature."[29] The justices did not say that the provision of Public Act 196 which limited the contempt power to instances of refusal to appear and testify was unconstitutional, though this would seem to be the plain inference of their remark.

Nelson's final contention, and his most important, was that the One-Man Grand Jury Law was unconstitutional in that it conferred non-judicial duties on circuit judges.[30] The four justices who dealt with this question quickly dismissed it by reference to the Michigan Supreme Court's statement in *Mundy* v. *McDonald*[31]

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[24]*People* v. *Doe, Record,* 38.

[25]*People* v. *Doe* (*In re Nelson*), 226 Mich. 5 (1924).

[26]*Ibid.,* 10.

[27]*Ibid.,* 19, citing from *In re Chadwick,* 109 Mich. 588 (1890).

[28]*People* v. *Doe, Record,* 25.

[29]*People* v. *Doe,* 226 Mich. 5, 19.

[30]This contention is stated in *People* v. *Doe In re Nelson, Brief for Petitioner,* In the Supreme Court of Michigan, Oct. term, 1923, Docket No. 82, 7-9.

[31]216 Mich. 444.

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that it could not be doubted that a judge acting under the 1917 statute was acting in a judicial capacity.[32] The Court in the case referred to had not considered the constitutionality of the law, but had determined whether a circuit court judge conducting an inquiry was acting in the capacity of a judge or a grand jury for the purpose of determining his liability to civil suit.[33] Thus, the Court, in effect, avoided a frontal consideration of the validity of the law.

The one-man grand jury inquiry into the House of David lasted about four months, during which period some one hundred witnesses spread their testimony over thirteen volumes of record.[34] The only information upon which the state was able to proceed against Benjamin Purnell was not given before the grand jury and it was already available in a bill filed in court in January, 1923. However, the coercion of Nelson did apparently impel him to bring his clients into contact with state officials, although it seems not improbable that access to important witnesses would have been obtained without such extreme resort, either with or without the cooperation of Nelson, and if the grand juror's purpose in committing Nelson was to make him talk then the contempt power was being exercised for an improper end — compelling an attorney to divulge information of a privileged character.[35] The warrants issued against Benjamin in the fall of 1923 were not executed until three years later, and Benjamin was never brought to trial. Hence, so far as criminal prosecution is concerned, the one-man grand jury's efforts led to naught.[36]

Although it did not lead to any criminal prosecution, the investigation into the affairs of the House of David did result in another kind of legal action, albeit one not contemplated by the grand jury statute. The voluminous testimony given before the one-man grand jury provided part of the foundation for the equity action in abatement of a nuisance brought by the attorney general against the House of David, in July, 1924. The bill of complaint filed by

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[32] *People* v. *Doe*, 226 Mich. 5, 18.

[33] *Mundy* v. *McDonald*, 216 Mich. 444, 454.

[34] *People* v. *House of David, Brief for Defendants and Appellants*, 129-130.

[35] In his testimony before the grand jury, Nelson promised that "just as soon as our necks are saved (i.e., judgment in the successful Hansel suit obtained and motions against him and his clients dismissed), we want this fellow (Purnell) gone after." (*People* v. *Doe, Record*, 77). This does not, of course, justify Nelson's "treating the scandal of the House of David as his property, and attempts of the state as trespass upon it." (*People* v. *Doe*, 226 Mich. 5, 16).

[36] To be sure, the one-man grand jury did satisfy the public need for investigation of serious charges of impropriety in the colony. There is no evidence from which it may be inferred that public confidence in the inquiry was lessened because of the absence of twenty-two other persons from the grand jury. But the inquiry created at least one strong and enduring critic: Walter M. Nelson. Two decades later, Nelson introduced the resolution which initiated the study of the One-Man Grand Jury Law by a committee of the Michigan Bar and, as a member of that committee, he strongly urged the abolition of the system.

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the state reflected testimony given before Judge Dingeman,[37] and it charged that the voluntary association was a religious fraud and it sought its dissolution. The case was finally brought to trial in May, 1927.[38]

The rest, so far as the one-man grand jury is concerned, is epilogue and may be briefly narrated. The circuit court which tried the equity proceeding did not grant the state the full relief prayed for. Benjamin Purnell died eleven days after the decree was signed, on December 16, 1927. The Michigan Supreme Court, in June, 1929, ruled that since "the facts and circumstances giving rise to the alleged public nuisance were almost inseparably connected with the life of Benjamin Purnell," the *raison d'être* of the state's case had been weakened by Benjamin's demise.[39] The Court modified the circuit court's decree to the considerable extent of finding unnecessary the appointment of a receiver for the colony and it deemed it improper for the state to adjudicate claims against the religious group. In addition, the injunction issued by the circuit court against Mary Purnell was removed.[40] Otherwise stated, the Supreme Court's decision in effect eliminated the equity relief provided by the circuit court.

Subsequent to the Court's action, the religious colony split into two factions,[41] and after a brief flurry of litigation[42] the sect's property was evenly divided between the followers of Mary and the successors to Benjamin.[43] At the time of Mary's death in 1953, her City of David had about 200 members and the House of David had about 300 members.[44] Thus, the Israelites have continued and prospered, and have had no further negative experiences with the law. Nor have they had another Benjamin F. Purnell.

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[37]*People* v. *House of David, Record*, I, 2-32.

[38]That the long delay in bringing the case to court might have been due to the reluctance of the state authorities was suggested by House of David counsel. (*People* v. *House of David, Brief for Defendants and Appellants*, 12.) According to them, the ascension of a new administration in Lansing was the occasion for pushing ahead with the case.

[39]*People* v. *Israelite House of David*, 246 Mich. 606, 613.

[40]*Ibid.*, 619.

[41]The division actually began in the last years of Benjamin's life, and it was reflected in the separate appellant briefs to the Michigan Supreme Court filed by the two defense counsel in the equity trial.

[42]Cf. *Detroit News*, Nov. 27, 1929, p. 22.

[43]Cf. *Detroit News*, April 2, 1930, p. 15.

[44]*Detroit News*, August 22, 1953, p. 3.

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The Legislative Recount of 1934

The return of the Democratic party to power in Michigan in 1932 followed a separation of forty years from political office. Since 1891-92, when they controlled both chambers of the Legislature, the Democrats had been wholly unused to the responsibility for running the legislative branch of state government, and if one were to search for the next previous year of Democratic legislative hegemony, he would have to look to the period prior to the formation of the Republican party in Michigan.[45] Inside the Legislature the party of Democracy's minority role was generally as insignificant as it was unvarying. In the seven legislatures elected between 1918 and 1932, the year of the Democratic tidal wave, the Democrats contributed an average of 1.1 out of the 132 legislators that went to Lansing.[46]

The year 1932 witnessed a sudden and severe change in the political power-alignment in the state. The Democrats came from near-oblivion to capture both houses of the Legislature, to win the governorship, and to take every other state office up for election except that of Secretary of State.[47] The sudden upheaval introduced to office a large number of inexperienced persons. None of the state-wide elected officers, for example, had had any familiarity with public office beyond the county level,[48] and only eight of the fifty-five House Democrats and none of the seventeen Senate Democrats had served in the Legislature within the previous fifteen years.[49] The Republicans must have been considerably shocked by such unaccustomed defeat, but, if so, they showed remarkable recuperative power for in the 1934 elections they regained everything they had lost except the House of Representatives and the state treasurership. The secretary of stateship, however, was taken by the rather close margin of 10,538 votes out of a total vote of 1,161,700 ballots cast for the office, and the defeated Democratic candidate, after consulting with party leaders, petitioned the State Board of Canvassers for a recount of certain Wayne County precincts.[50] The authority of the Board to conduct a recount involving

[45] *Michigan Manual*, 1933, pp. 90-92.

[46] Based on figures given *ibid.*, p. 92.

[47] Failure to win the office of Secretary of State must have dampened the joy of victory somewhat, for this position carried with it about 2800 good spoils appointments. To the patronage-starved Democrats, such a prize was not lightly valued. Indeed, the question of patronage should be kept in mind as a strongly motivating force behind the struggle over the legislative recount of the Secretary of State election of 1934.

[48] Cf. *Michigan Manual*, 1933, pp. 627-29. Governor-elect William A. Comstock had been a sort of perennial Democratic candidate for the office, having sought it in 1926, 1928, and 1930.

[49] Cf. legislative biographies, *ibid.*, pp. 639-71.

[50] *People* v. *O'Hara, Record on Appeal*, II, In the Supreme Court of Michigan, Oct. term, 1936, Docket No. 136, 68-71.

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a state office was successfully challenged in the Michigan Supreme Court. Under Article XVI, Section 4, of the Michigan Constitution, the Court said, this responsibility rested exclusively with the Legislature acting in joint convention.[51]

The opinion of the Supreme Court was made public on December 5, 1934. The term of the current Legislature had only until December 31 to run. Upon the formal petition of Guy M. Wilson, the Democratic contender for the secretary of stateship, the outgoing Democratic Governor, William A. Comstock, summoned the outgoing Democratic Legislature into special session for December 10, 1934. In his message to the legislators, Governor Comstock suggested that the Legislature appoint "a small, bipartisan committee of its members to conduct such investigations and recounts as may be necessary"; if this were done, the Governor stated, with what proved to be singularly inaccurate foresight, "the ends of justice and fairness will be served."[52] By the time the special session met, a second recount request had been made, this one by the defeated Democratic candidate for the attorney generalship.[53]

In 1932, the Democrats had captured the state Senate by a majority of seventeen to fifteen and the House of Representatives by a majority of fifty-five to forty-five.[54] By the time of the special session, the Senate power-balance stood at fifteen Democrats and thirteen Republicans; deaths and illness were responsible for the equal decrease of strength in the two parties. Immediately after the convening of the special session, the Democrats lost another senator, in a hotel fire in Lansing. This left the Senate Democrats with a single-vote majority, which turned out to be insufficient in the partisan voting that subsequently occurred, due to Democratic inability to keep their ranks intact. The focus of controversy in the Senate was whether to meet with the House in joint convention. Since the Wilson and O'Brien recount petitions could be considered only by joint convention, this issue was crucial.

The Republicans in both chambers were opposed to having the lame-duck — and, in joint convention, clearly Democratic-controlled — Legislature conduct a recount at all. In the House, the Democrats were able to push through the concurrent resolution establishing the joint convention,[55] but they lacked one vote of achieving this in the Senate.[56] Beneath the considerations of time and legality

[51] *Behrendt* v. *State Canvassers*, 269 Mich. 247 (1934).
[52] Michigan, *Senate Journal*, Second Extra Session, 1934, 4.
[53] In this second contested election, Patrick H. O'Brien had lost to Harry S. Toy by about 58,000 votes. *Michigan Manual*, 1935, p. 259.
[54] Michigan, *Legislative Handbook*, 1933-1934, pp. 131, 180.
[55] Michigan, *House Journal*, Second Extra Session, 1934, 16-17.
[56] Michigan, *Senate Journal*, 1934, 28.

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raised by them, the Republicans were clearly suspicious of Democratic motives, and these suspicions were hardly disguised in some of the debate that took place.[57] It appeared in the days just before Christmas that the legislative stalemate would result in no recount being held during the special session.[58]

The impasse in the Senate, however, was finally and suddenly resolved by fiat. On December 27, the Lieutenant Governor, as the Senate's presiding officer, announced the Senate to be in joint convention and directed its members to the House chambers.[59] The joint convention, with the Republican legislators in boycott, immediately authorized its chairman to appoint a five-man committee to conduct a recount of the ballots cast for the two offices in controversy and four Democrats and one Republican were appointed.[60]

The recount committee, under the chairmanship of Senator Anthony J. Wilkowski, proceeded to Detroit and from about 3 a.m., December 28, to about 8 a.m., December 31, it directed a total of between 400 and 500 persons recruited at short notice, working in continuous shifts, in the job of recounting ballots. The recount was carried out on one of the floors of a downtown Detroit office building, and it ran nearly concurrently with a recount of the Wayne County sheriff's race, carried out on the floor below in the same building.[61]

On New Year's Eve, Senator Wilkowski made his report to the joint convention. In a recount of 628 precincts in the Secretary of State race, he said, the Democrat, Wilson, had made a net gain of 13,774 votes, "I did not think it was possible," Wilkowski told the session, "for us to make up so much."[62] The recount results showed Wilson with about 3,000 more votes than Atwood. Lack of time evidently prevented an adequate recount of the other office involved, though Wilkowski stated that if all of Wayne County and half of the remainder of the state had been subjected to the recount, the Democratic candidates for attorney general and lieutenant governor – a recount had not been asked for this second office and the victory margin had been over 34,000 votes – would also have come out ahead.[63]

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[57]Michigan, *House Journal*, 1934, 15, 17.
[58]*Detroit News*, Dec. 22, 1934, p. 1.
[59]Michigan, *Senate Journal*, 1934, 54.
[60]Michigan, *House Journal*, 1934, 38-39.
[61]*Ibid.*, 49; *People* v. *O'Hara, Brief for the People*, In the Supreme Court of Michigan, Oct. term, 1936, Docket No. 136, 16-19. In the sheriff's recount, it was the Democrat again who was seeking to overturn the election result. The reason for the legislative recount was due, incidentally, to the Republican candidate for sheriff, who had initiated the court action which prevented the State Board of Canvassers from acting on Guy M. Wilson's petition.
[62]Michigan, *House Journal*, 1934, 48.
[63]*Ibid.*

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The single Republican member of the recount committee, Representative E. F. Fisher, from Wayne County, contradicted the findings presented by Senator Wilkowski. He alleged that the undertaking had been accompanied by such illegal procedure and fraudulent marking and counting of ballots as to make the results invalid.[64] Democratic members of the recount committee denied any impropriety in the handling of ballots.[65] Some Democrats thought it preferable to place the contested election above any charge of partisan politics by trusting its determination to the incoming legislature, but a majority preferred immediate action. The motion to direct the State Board of Canvassers to certify the election of Guy M. Wilson as Secretary of State was approved, twenty-six to thirteen;[66] since only two Republican legislators had been present at the proceedings a short time before the vote was taken, most of the opposition evidently came from Democrats. The special session, its work completed, then adjourned, just four hours before the advent of the New Year.

The Michigan Supreme Court dealt harshly with the Legislature's handiwork. When Wilson initiated legal action in that Court in order to gain legal access to his office, he was informed that the legislative proceedings had been fatally defective.[67] The Court's action, from which there was no dissent, was taken on February 8, 1935. But the Democrats' problems had been mounting before then, and, indeed, they began immediately after the Republican administration took over in Lansing at the beginning of the year. The Attorney General's office had launched an investigation of the circumstances of the recount, and by January 14, Attorney General Harry S. Toy was ready to tell the Legislature: "I am convinced from investigation that a gigantic fraud has been perpetrated on the voters of Michigan, not by the election boards but by some of the recount officials."[68] The Senate, now comfortably in Republican hands, willingly took up a suggestion made by Toy and, through a special committee, investigated the recount itself, focusing upon the Attorney General's charge that one of its members was implicated in the fraud.[69] The special committee, which

[64] *Ibid.*, 61-65. The allegations of abuse were: "widespread confusion, absence of challengers, utter disregard of established law and statutes relative to election recounts, the partisanship of the members of the recount committee, the majority partisanship of the so-called legislative committee, the partisanship of the legal advisers, and the reckless disregard of law and order." (*Ibid.*, 65).

[65] *Ibid.*, 65-68.

[66] *Ibid.*, 22.

[67] *Wilson* v. *Atwood*, 270 Mich. 317 (1935).

[68] Michigan, *Senate Journal*, Regular Session, 1935, I, 57.

[69] In the 1935 Legislature, the Republican party had 21 of the 32 Senate seats, while the Democrats kept a slim hold—49 to 47—on the House of Representatives. (Michigan, *Legislative Handbook*, 1935-1936, pp. 131, 178).

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reported on February 6, agreed with Toy and added its own embellishment to the Attorney General's story of ballot-marking and tally-sheet changing.[70]

The Attorney General did not, however, wait for the Senate to complete its investigation before he took further action. On January 26, he petitioned Judge Thomas M. Cotter, of Detroit Recorder's Court, for a one-man grand jury investigation, charging that ballots and tally sheets used in the 1934 election had been destroyed, mutilated, and changed.[71] Toy requested that Duncan C. McCrea, Wayne County prosecuting attorney, be excluded from participation in the grand jury investigation because of his service as special counsel to the legislative recount committee, and that a Friend of the Court be appointed in his place.[72] Judge Cotter granted the petition, over McCrea's objections, and Cotter appointed the president of the Detroit Bar Association as Friend of the Court.[73] The investigation was ordered to begin February 7.[74]

Before the recount investigation could get moving, it was caught in a legal mesh thrown up by McCrea, who maintained that the prosecuting attorney could not be kept out of any judicial inquiry within his jurisdiction.[75] The Supreme Court quickly cleared this obstruction in a *per curiam* opinion, handed down on February 15, in which it summarily dismissed McCrea's argument.[76] Proceedings under the One-Man Grand Jury Statute, said the Court, were under the control neither of the prosecuting attorney nor the Attorney General. The judge conducting the inquiry was in full control and he could appoint whatever assistance he needed.

The recount one-man grand jury ran from February into August, 1935. About 175 persons were summoned to testify before it and two and one-half million words of testimony were received. Most, if not all, of those connected with the recount were brought before the grand jury, and this group contained most, if not all, of those convicted for fraudulent behavior in the ballot-counting. At least four persons were summarily punished for contempt and five per-

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[70]Michigan, *Senate Journal*, 1935, I, 157-60. The two Democratic members of the committee dissented from the majority report on the technical ground that the Senate should not discuss a matter which was at that time the subject of litigation before the Michigan Supreme Court. (*Ibid.*, 160-61).

[71]*Detroit News*, Jan. 27, 1935, p. 1.

[72]The petition which appears in the court records is dated Jan. 30, 1935. It makes a lengthy and detailed presentation of the allegations of fraud. ("In re Investigation of Recount, Petition for Investigation into the Conduct of the Recount and Investigation of the November, 1934, Election in Wayne County by a Committee of the State Legislature," In the Supreme Court of Michigan, Jan. term, 1935, Calendar No. 38,339½.) (Typewritten).

[73]*Detroit News*, Feb. 4, 1935, p. 2.

[74]*Ibid.*, Feb. 5, 1935, p. 1.

[75]"In re Investigation of Recount, Brief on Behalf of Duncan C. McCrea, Prosecuting Attorney for Wayne County," In the Supreme Court of Michigan, Jan. term, 1935, Calendar No. 38,339½. (Typewritten).

[76]*In re Investigation of Recount*, 270 Mich. 328 (1935).

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sons had perjury charges lodged against them because of their testimony before Judge Cotter. Senator Wilkowski, one of those punished for contempt, appealed his conviction to the Supreme Court, contending that his legislative membership gave him immunity from grand jury processes during session. The Court, dealing as summarily with Wilkowski as it had with McCrea, ruled in another *per curiam* opinion that the proceedings conducted by Judge Cotter were criminal, and not civil, in nature and hence that Senator Wilkowski had no immunity to its processes.[77]

Despite this and other efforts to oppose the one-man grand jury investigation,[78] Judge Cotter had, by July 17, 1935, obtained sufficient evidence to conclude the inquiry and he issued warrants against fifty-four persons for their part in the recount affair.[79] The leading figures in the recount fraud were Senator Wilkowski, chairman of the legislative recount committee and, in addition, secretary to the Wayne County Democratic Committee and a member of his party's State Central Committee; Elmer B. O'Hara, chairman of the Democratic State Central Committee and Wayne County Clerk; and Franklyn K. Morgan, O'Hara's deputy clerk and general manager of the recount.

The one-man grand jury unearthed a wholesale attempt to defraud the public in the recount. Outsiders were systematically excluded from the area where the tabulating took place. The press and challengers for the parties were kept out. The sole Republican member of the recount committee learned that a recount was about to be held through private sources. The recount workers were nearly all Democrats and they were largely recruited through party channels. Blue leads and blue pencils were widely used in remarking ballots, ballots were miscounted, and ballots were voided – all on a broad scale and uniformly in favor of the Democrats. The Republican member of the recount committee was not exaggerating too much when he expressed his surprise that Wilson had gained only 13,000 votes.[80]

What is nearly as surprising as this attempt to steal an important election was the hope which presumably was entertained that the

[77] *In re Wilkowski*, 270 Mich. 687 (1935). The Michigan Constitution, Art. V, Sec. 8, provides that legislators "shall not be subject to any civil process" during session of the Legislature.

[78] Wilkowski, for example, failed to produce 680 tally sheets which had been used to tote the recount votes, claiming that he had lost or mislaid them. (*Detroit News*, Feb. 27, 1935, p. 1.) Also, there were attempts to intimidate witnesses, some witnesses were elusive, and there was some destruction of ballots. (*Detroit Free Press*, Feb. 26, 1935, p. 1; Feb. 27, 1935, p. 1; Feb. 28, 1935, p. 1).

[79] *People v. Wilkowski. Brief for the People*, In the Supreme Court of Michigan, Oct. term, 1936, Docket No. 132, 39-40.

[80] Michigan, *House Journal*, 1934, 61. The above facts are summarized from *ibid.*, 61-65, from stories in the *Detroit News* over the period, and from the massive record and people's brief in the court proceedings that followed the recount.

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thing could be pulled off. In retrospect, such a hope would seem preposterous, and it certainly did not take a one-man grand jury, equipped with the powers of subpoena, contempt, and immunity, and operating under secrecy, to ferret out the crime. The Republican legislators, it will be remembered, were suspicious before the recount started, and they could not but be dubious about the possibility of Wilson making a net gain of 13,774 votes in 628 precincts recounted. Moreover, there was the presence of the Republican representative at the recount, and efforts to conceal the fraud from him were impossible. It was also impossible to prevent the news reporters and other interested parties from learning what was going on. Too many persons were privy to the secret, and not all of them were kindly disposed towards the Democratic party or some of its leaders. The recount leaders should have known that the Republicans, once they assumed control over the administration and Senate in Lansing, would investigate. Finally, there were the tampered ballots. As Chester P. O'Hara, the assistant attorney general, said at the time of the recount trial, these ballots constituted the best evidence the state had.[81]

Judge Cotter transferred the examination and trial of those accused by him to other hands, although the law did not require that he do this. In this voluntary separation of functions, Cotter anticipated legislative separation of a decade later. The grand jury stage of the proceedings was now over. Judge Cotter had accused fifty-four persons of crime. The number of persons actually brought to trial came to twenty-six. Of these, eighteen were found guilty.[82] The guilty included the leaders in the conspiracy. In December, 1936, the Michigan Court upheld the convictions, without dissent, and the convicted recounters went to jail. There had been strong pressure upon Governor Fitzgerald for executive leniency, but he refused to take any action in the final days of his term of office.[83] It was left to the incoming Democratic governor, Frank Murphy, to commute the sentences of minor participants in the fraud, this being done in July and December, 1937.[84] O'Hara and Wilkowski were finally granted clemency in February, 1939, just a few weeks prior to their scheduled release from prison.[85]

[81] *Detroit News*, Nov. 17, 1935, p. 20.

[82] *People* v. *O'Hara*, 278 Mich. 281, 288-89 (1936).

[83] *Detroit News*, Dec. 29, 1936, p. 4. Fitzgerald, a Republican, had evidently given consideration to extending leniency to some of the minor offenders. (*Ibid.*, Dec. 26, 1936, p. 18).

[84] *Ibid.*, July 8, 1937, pp. 1-2.

[85] *Ibid.*, Feb. 24, 1939, p. 1. The subsequent history of Anthony J. Wilkowski is sufficiently interesting to warrant a postscript. In 1936, while awaiting Supreme Court action

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The Cotter grand jury did not cause the outcry of criticism that has attended inquiries of similar magnitude and political sensitivity. The legal objections raised were few, minor, and weak. It was repeatedly declared at the time that the recount business was not a political issue but concerned the actions of a number of individuals. This attitude was based upon expediency, not fact. The Democrats were understandably anxious to keep the party label off the recounters, and the Republicans were in the enviable position of making political capital by simply being on the side of justice.

But the accused recounters were not only Democrats, but included Democratic leaders. The recount occurred through action of a Democratic-controlled joint convention of the Legislature, and the special legislative session itself had been called as a result of a party decision. A humorous remark by Judge Cotter is revealing. At the arraignment on his warrants, Cotter, just prior to calling the courtroom to order, whispered in an aside: "The Democratic convention will come to order."[86] Also, it should not be forgotten that the office for which the recount was had was the biggest patronage plum in the state.[87]

The desire of the Michigan Senate Republicans to investigate the 1934 recount might have been motivated by a desire to redress a wrong, but the decision was made in caucus.[88] Toy, the Republican Attorney General, and his assistant, Chester P. O'Hara, had conducted their own investigation; they also served as special counsel to the Senate investigating committee,[89] and they petitioned for the Cotter inquiry. It appears that Duncan McCrea was a special object of Toy and O'Hara's activity. McCrea, a Democrat,

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on his appeal, Wilkowski got himself reelected to the Michigan Senate. His enforced absence from the Senate floor during the 1937 session reduced Democratic strength from 17 to 16 senators—just one vote short of the constitutional majority required to pass legislation. The Democrats tried to have Wilkowski's seat declared vacant so a special election could be held, but this motion lost, 16 to 13—17 votes being required for adoption, with the parties cleanly divided on the question. (Michigan, *Senate Journal*, Regular Session, 1937, I, 28.) In 1951, however, the Senate Republicans decided that Wilkowski should not be permitted to sit as a state senator because of his 1934 embarrassment, and he was denied his seat—despite the fact that, following his release from prison, he had been received in the Senate for several sessions. Again in 1955, Wilkowski was considered unworthy of a Senate seat by the Republicans. (Michigan, *Senate Journal*, Regular Session, 1951, I, 5-6, 80-81; *ibid.*, Regular Session, 1955, 6-9, 62.) The Wilkowski problem was conclusively solved when the voters adopted a constitutional amendment in November, 1956, to exclude from membership in the Legislature persons convicted of a felony involving breach of the public trust.

[86]*Detroit News*, July 25, 1935, p. 1.

[87]Wilson, the Democratic candidate for Secretary of State, had agreed to turn over to the party organization all but one of the 2800 patronage positions appended to the office. (*People* v. *O'Hara*, *Record on Appeal*, IV, 116-17).

[88]*Detroit News*, Jan. 18, 1935, p. 4.

[89]*Ibid.*, Jan. 15, 1935, pp. 1, 4.

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had succeeded Toy as Prosecuting Attorney of Wayne County, and there was little friendship lost between them. In opposing Toy's petition for a recount investigation, McCrea informed Judge Cotter that he was preparing a petition of his own for a grand jury investigation, which would cover all criminal activities in Wayne County involving official misconduct during the preceding two years (the period of Toy's tenure as prosecuting attorney). McCrea also speculated whether Toy had acted so quickly in asking for a one-man grand jury because of his fear of McCrea's purported planned investigation.[90] O'Hara and McCrea were bitter rivals; O'Hara was known to be interested in McCrea's position, and he was taunted with this knowledge during the trial of the recounters.[91]

Thus, partisan politics did enter into the Cotter inquiry and related activities having to do with the legislative recount issue. Not all the political conflict was interparty, however; a struggle between factions of the Republican party also underlay the recount. At the 1934 Republican state convention, at which candidates for most of the state-wide elective offices were to be chosen, the power of Edward N. Barnard, Wayne County Republican leader, was temporarily eclipsed and anti-Barnard candidates were nominated for the state-wide offices. Among those nominated were Harry Toy and Orville Atwood, put up for Attorney General and Secretary of State. The candidacy of Atwood must have been particularly galling to Barnard, inasmuch as his election would give him a large amount of patronage.[92] Hence, it is not altogether surprising that Barnard should be advising the Democrats on the chances of their winning a recount for the office of Secretary of State in 1934. Barnard was among those investigated by the one-man grand jury, but no criminal charges were ever produced against him.[93]

Whatever the long-run political consequences of the recount affair,[94] the short-term results of unfavorable publicity were not particularly serious for the Michigan Democrats. In the 1936 election, they won back the state Senate, kept the House, and took

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[90]"In re Investigation of Recount, Brief on Behalf of Duncan C. McCrea, Prosecuting Attorney for Wayne County," 11-12. So far as one can tell, McCrea never actually sought the investigation.

[91]*People* v. *O'Hara, Record on Appeal*, IV, 165.

[92]The 1934 factionalism within the Republican party is told by Stephen B. Sarasohn, "The Regulation of Politics and Nominations in Michigan: The Politics of Electoral Reform" (Unpublished Ph.D. dissertation, Department of Political Science, Columbia University, 1953), pp. 345-46.

[93]*Detroit News*, June 12, 1935, p. 4; Aug. 12, 1935, pp. 1-2; Aug. 15, 1935, p. 4.

[94]In 1937, the first bill to repeal the One-Man Grand Jury Law was introduced in the Michigan Legislature. (Michigan, *House Journal*, Regular Session, 1937, II, 1152.) The agitation for repeal continued and increased from that time, with the sponsorship of repeal legislation coming exclusively from Democrats. The peak of agitation in the Legislature was reached in 1949.

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over the governorship and most of the other state offices that had been lost in 1934.[95]

By most standards, the investigation conducted by Judge Cotter was a success. It got to the bottom, or at least close to the bottom, of the recount conspiracy. It resulted in a number of persons being sent to prison, among whom were included the leaders in the attempted vote-steal. It did not expose itself to strong attack, either through the courts or through the public forum. It was the most important one-man grand jury since the House of David inquiry in 1923. And, perhaps of even greater significance, the Cotter investigation paved the way for the spectacular use of the judge-jury power a few years later.

Heyday of the One-Man Grand Jury

It is impossible to say with any great accuracy how frequently the one-man grand jury was used down to the close of the 1930's. One rough estimate, made in 1944, was that about fifty inquiries a year were being conducted under the law.[96] The only other available statistics — which also constitute a considered guess — estimate that as of 1948 about 15,000 witnesses had given testimony before one-man grand juries.[97] This second statistic would place the total number of grand juries conducted down to that date at three hundred.[98] The two discrepant figures — fifty investigations a year and three hundred investigations in twenty years — may be partly reconciled by the fact that the late 1930's and early 1940's witnessed a greatly expanded use of the special inquisitorial system.

While the great bulk of investigations conducted down to 1939 were of a minor sort and attracted little public notice, their cumulative impact was undoubtedly great. Most of the investigations took place in the Detroit metropolitan area and covered a broad range of subjects, most of them dealing with public corruption, great and small. The flowering of the one-man grand jury occurred between 1939 and 1948. The system was used on an unprecedented scale, in investigations big and little and in all parts of the state, though its dominant habitat continued to be the southern half of

[95]Also, Barnard's faction was back in control of Wayne County Republicanism, Toy and Chester P. O'Hara had broken politically, Toy had been eased upstairs to the Supreme Court, and O'Hara had been defeated by McCrea for the prosecutor's office in Wayne County. (Sarasohn, p. 340).

[96]Winters, *Journal of the American Judicature Society*, XXVIII, 141. The maker of this estimate was Walter S. Foster, chairman of the Bar Association committee which initially proposed the 1917 law.

[97]"Special Committee to Study and Report upon the One-Man Grand Jury Law," *Michigan State Bar Journal*, XXVIII, 69.

[98]This is also a guess, based upon the writer's calculation that the average number of witnesses called before a one-man grand jury was fifty.

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the lower peninsula where the bulk of Michigan's population resides. Many of the inquiries carried out by judge-jurors had little impact beyond a limited locale, but there were a good number of one-man grand juries that stirred widespread interest. Among the latter, a few may be cited. In Flint and in Pontiac, in 1941, there were one-man grand juries probing into prostitution, gambling, and official corruption.[99] In 1946, there were reported to be at least nine grand juries investigating the behavior of public officials.[100] A controversial grand jury of that period was the labor rackets investigation.[101] In 1947, a Macomb County Circuit Court judge extensively investigated gambling and graft conditions in that area, and among those whom he indicted was the former mayor of Flint.[102]

However, the period 1939-48 is most noteworthy for the grand juries headed by Judge Homer Ferguson of Wayne County Circuit Court and Judge Leland Carr of Ingham County Circuit Court. These two grand juries were in existence during most of this period; they extended into multifarious areas of political activity; and they overshadowed all other inquisitions. Morever, there was considerable continuity between the two grand juries, although one dealt with Detroit and Wayne County graft and the other with the Legislature and various state agencies.

The Ferguson grand jury was the first of the two. It developed out of a suicide. On August 6, 1939, a Detroit woman took her life and that of her daughter, leaving behind letters which spoke of the gambling activities of her former lover. The letters also referred to police bribery in connection with the gambling. The acting prosecuting attorney for Wayne County immediately began to investigate the "Janet McDonald affair," but the inquiry came to an abrupt halt on order of the prosecuting attorney, who was on vacation at the time. The prosecuting attorney, Duncan C. McCrea, stated that the small size of his staff prevented an adequate investigation and that he would not be party to a "whitewash" of the police department. For the same reason, McCrea rejected a request of Mayor Richard Reading that he review the evidence in the McDonald charge and, if the facts warranted, seek a grand jury investigation.[103]

McCrea's refusal to take action simply whetted other appetites. At least three petitions were presented to the Wayne County Circuit

[99]*People ex rel Roach* v. *Carter*, 297 Mich. 477 (1941); *In re Hickerson, Record on Appeal*, In the Supreme Court of Michigan, Jan. term, 1942, Motions and Rehearings, 17-19.
[100]*Detroit News*, July 16, 1946, p. 18.
[101]*Ibid.*, Aug. 19, 1946, p. 14.
[102]*Ibid.*, May 27, 1947, p. 10.
[103]*People* v. *McCrea, Brief for the People, Plaintiff and Appellee*, In the Supreme Court of Michigan, June term, 1942, Docket No. 60, 1-7.

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Court asking for grand jury investigations. The Circuit Court, acting *en banc,* approved the petition presented by officers of the Detroit Citizens League, an urban reform group with a strong interest in civic affairs. Judge Homer Ferguson was designated to conduct the investigation, with Chester P. O'Hara appointed as special prosecutor.[104]

The Ferguson grand jury had as its stated purpose the investigation into "gambling . . . and the possible protection thereof by certain officials of Wayne County."[105] It began operations almost at once and it did not cease its labors until about the middle of 1942. Nearly two years of investigatory work produced several hundred indictments,[106] and over 150 convictions for crimes involving for the most part the receiving and paying of bribes,[107] and the elevation of Ferguson to the United States Senate and that of O'Hara, his special prosecutor, to the Wayne Circuit Court. The Ferguson inquiry also stimulated a number of lesser grand juries.

More imposing than the quantity of the Ferguson grand jury catch was its quality. The City of Detroit contributed its mayor; the mayor's private secretary (and son); the superintendent of police; the latter's deputy; members of the Common Council; and sundry police inspectors, lieutenants, sergeants, and cops on the beat. Wayne County offered up its prosecuting attorney; its sheriff; some of the chief assistants to these officials; two members of the Board of Auditors; and a bevy of smaller fry. Officials of some of the communities surrounding Detroit were also in the collection of governmental officers who had betrayed their trust. Finally, private enterprise furnished a motley crew of illicit entrepreneurs – handbook and baseball pool operators, brothel managers, and similar personalities.

The Ferguson grand jury had been established because of the the relation between gambling and official corruption, but Ferguson later embarked into two other fields of inquiry.[108] One field was the building of a city housing project, into which bribery and

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[104]*People* v. *Garska. Brief on Behalf of Defendant and Appellant, Alfred J. Garska,* In the Supreme Court of Michigan, June term, 1942, Docket No. 60, 2.
Ferguson was the presiding judge of the Wayne County Circuit Court. O'Hara had served as special prosecutor to the legislative recount grand jury; It was reported in the press that United States Attorney General Frank Murphy had rejected a request that the Detroit FBI director be "loaned" to the grand jury as special prosecutor. (*Detroit Free Press,* Aug. 21, 1939, p. 1.)

[105]*People v. Watson, Brief for Defendants and Appellants,* In the Supreme Court of Michigan, Oct. term, 1943, Docket No. 83, 1.

[106]The number varies according to the authority. "Unprecedented Success in Criminal Courts," *Journal of the American Judicature Society,* XXVI (Aug., 1942), 42, reports 500 indictments, while Winters, *ibid.,* XXVIII, 142, puts the number at 360.

[107]*Detroit Free Press,* July 29, 1942, p. 13, mentioned 156 convictions. There were additional convictions after this date.

[108]Actually, Ferguson did not restrict himself to gambling pay-offs, but went into brothel pay-offs as well.

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graft had made their way; the other was into bribery charges in connection with Wayne County purchasing and contracts.[109] Ferguson somehow managed to conduct all three investigations at the same time. In so doing, he amassed a staff which, at peak strength, amounted to about fifty employees. He maintained up to three places for handling grand jury business, and he compiled over 40,000 pages of testimony.[110]

The Ferguson grand jury was not established because of the occurrence of gambling in Wayne County, but because city and county officials were involved in this activity. Indeed, far from gambling interests having taken over local government, public officials, from the mayor down to the precinct policeman, had organized an intricate system for extorting money from illegal enterprises as a sort of tax upon their operations. This was a basic reason why, when the grand jury went into action, so many gamblers were willing to turn state's witnesses.[111]

The extortion apparently began with the county prosecutor. McCrea became prosecuting attorney on January 1, 1935. During the next couple of months, while involved with the legislative recount grand jury, McCrea laid the groundwork for a system of graft collection from handbooks, houses of prostitution, slot machine operators, and operators of policy games in Wayne County.[112]

Bribe-extortion spread to the office of the Wayne County sheriff in January, 1937, when Thomas C. Wilcox succeeded to that position. Wilcox had run for sheriff in 1934 and had been temporarily given the office in a recount held at the same time as the fraudulent legislative recount in the Secretary of State race. Wilcox worked out a plan to collect payments from the same illegal sources as McCrea.[113] The mayor's office entered the graft-taking picture in 1938. Richard Reading became mayor in January, 1938, and by autumn of that year, Reading, his son, his police superintendent, and others were taking underworld money.[114] By this time, a number of the gamblers and kindred spirits apparently were paying money to all three sources for protection.[115]

Until their largesse was summarily cut off by the intrusion of the Ferguson grand jury, the three groups of graft-takers received over $400,000 from illegal entrepreneurs for protecting them against

[109]"Unprecedented Success in Criminal Courts," *Journal of the American Judicature Society*, XXVI, 42.
[110]*Ibid.*, Winters, *Journal of the American Judicature Society*, XXVIII, 142-43.
[111]*Detroit News*, Jan. 26, 1944, pp. 1-2.
[112]*People* v. *McCrea, Brief for the People, Plaintiff and Appellee*, 12.
[113]*Ibid.*, 22-23.
[114]*People* v. *Roxborough, Record on Appeal*, In the Supreme Court of Michigan, Oct. term, 1943, Docket No. 82, IV, 2181-82.
[115]*Ibid.*, 2247.

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the law.[116] Of this amount, Prosecutor McCrea received $104,000 and his assistant, $52,000;[117] Sheriff Wilcox, who started two years after McCrea, made about $34,000 and his two assistants about $17,000 apiece;[118] and Mayor Reading, for the first eight months of 1939 alone, acquired an unearned income of $43,000, while seven others associated with him got $77,600 during the same period.[119] In addition, unknown amounts of money spread through the lower ranks of city and county government.

The gambling and vice graft phase of the Ferguson grand jury investigation was more or less completed by the end of 1940. Neither of the other two inquiries achieved the same fame. One was into charges of vote-selling by members of the Detroit Common Council. Three Council members were indicted for accepting bribes amounting to $25,000 in connection with awarding an $8,000,000 contract for construction of a public housing project.[120] Ferguson's final probe was into charges that Wayne County officials were taking bribes from businessmen in exchange for contract awards and other favors.[121] A number of public officials and private persons were convicted as a result of this inquiry, the most important of whom were two of the three members of the Wayne County Board of Auditors — the third member was removed from office by the Governor.[122] And a member of the Hamtramck City Council was indicted and convicted for accepting a bribe on a parking meter contract.[123]

The litigation in the Michigan Supreme Court relating to the Ferguson grand jury was considerable. However, most of the litigating dealt primarily with the trial proceedings, and the question of sufficiency of evidence for conviction. Only one challenge to the grand jury received support in the Michigan high court.

The one-man grand jury system achieved the peak of its fame in the Carr-Sigler investigation into corruption and bribery in the Michigan Legislature. The Ferguson investigation ran for about two years. The Carr-Sigler inquiries began in August, 1943, and ran almost three years. The Carr-Sigler grand jury, like its famous predecessor, reached its climax with the elevation of its principal

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[116] *People* v. *McCrea, Brief for the People, Plaintiff and Appellee,* xxi-xxii; *Detroit News,* Jan. 3, 1944, p. 1. The figures from these two sources add up to $390,200, but do not include money received in the last few months of 1938.

[117] *People* v. *McCrea, Brief for the People, Plaintiff and Appellee,* xxi.

[118] *Ibid.,* xxii.

[119] *Detroit News,* Jan. 3, 1944, p. 1.

[120] *Detroit News,* Mar. 30, 1941, p. 12.

[121] *People* v. *Karoll, Record on Appeal,* In the Supreme Court of Michigan, June term, 1946, Docket No. 49, 139-40.

[122] Arthur W. Bromage, "Home Rule for Wayne County," *National Municipal Review,* XXXI (July, 1942), 386.

[123] *People* v. *Kuberacki,* 310 Mich. 162 (1944).

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agents to higher public office; but Judge Carr's ascension to the Michigan Supreme Court was a greater reward than Chester P. O'Hara's ascension to a circuit court judgeship, and Kim Sigler's election to the governorship was even more spectacular than Ferguson's election to the United States Senate. Furthermore, the Ferguson investigation had Wayne County for its oyster; Carr and Sigler had, indirectly, much of the state of Michigan, though their home base was Ingham County. And the Ferguson investigation, while it was undoubtedly expensive,[124] did not approach the one-half million dollars spent by its successor.[125]

The Carr-Sigler grand jury was established about a year after the expiration of the Ferguson jury. Despite this fact, the Carr-Sigler grand jury can properly be considered the legitimate successor to the Ferguson operation. It, too, owed its origin to the Detroit Citizens League. As early as April, 1943, William P. Lovett, the League's head, was discussing the possibility of an investigation of the Legislature, and he began urging Attorney General Rushton to seek a one-man grand jury that summer, supplying him with information to support the League's allegations of corruption.[126] After some initial reluctance, the Attorney General filed his complaint, on August 23, 1943.[127]

The legislative graft grand jury was established on August 26, 1943, by order of Judge Leland W. Carr, of Ingham County Circuit Court, who appointed himself as judge-juror.[128] Apparently little progress was achieved until Attorney General Rushton withdrew from the grand jury on December 14, 1943.[129] The new prosecutor, Kim Sigler, was a private attorney with exquisite sartorial taste and a flamboyant personality. From the time Sigler was appointed, the Carr grand jury operated in high gear. Carr and Sigler, abetted by a staff of special investigators and the state police, held the publicity spotlight through much of 1944 and 1945, and into the first part of 1946, when both Carr and Sigler were succeeded by new personnel.[130]

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[124]Apparently the expenditures of the Ferguson grand jury have never been reported.

[125]The exact figure, as released by the attorney general in 1952, came to $495,189.10. (*Lansing State Journal*, Apr. 19, 1952, p. 1.)

[126]Memorandum of William P. Lovett, respecting contacts with Attorney General Herbert J. Rushton on Legislative Grand Jury (in the files of the Detroit Citizens League).

[127]*Ibid.* The complaint is printed in *People* v. *Hancock Record on Appeal*, IV, In the Supreme Court of Michigan, Apr. term, 1949, Docket Nos. 65-71, 2082-84. The reason for initiating the investigation through the attorney general was probably due to the necessity of having the state finance the inquiry.

[128]*Ibid.*, 2085-87.

[129]*Ibid.*, 2088, 2090.

[130]In 1944, a poll of Michigan newspaper editors named the Carr-Sigler grand jury the outstanding news event in the state. (Detroit Citizens League, *The Grand Jury Work of the Detroit Citizens League*, Feb. 15, 1945, p. 2.) (Pamphlet).

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The legislative graft grand jury obtained most of its important testimony from those who exchanged evidence for immunity from prosecution. Probably a dozen persons, at least, performed for the state under this arrangement, and the prosecutions resulting from the grand jury's work depended largely upon this kind of testimony. Far and away the most crucial of the state's witnesses was Charles F. Hemans, a lobbyist at Lansing for various interests during the 1930's and early 1940's and a former regent of the University of Michigan. Hemans was caught up by the grand jury in December, 1943, when grand jury investigators seized an incriminating document in a raid on his home during his absence in the Army. In exchange for immunity — and, it was later alleged, for other concessions — Hemans implicated over one hundred legislators, lobbyists, and others with having given or taken bribes in connection with bills before the Legislature.[131] He himself, Hemans said, had been bribing legislators since 1933, when he first began lobbying at Lansing, and he swore that others had been engaged in the same practice.[132]

During 1944 and 1945, a steady stream of warrants emerged from the grand jury chamber. Since Judge Carr's practice was to preside at the examinations held on the charges contained in his warrants, his warrants were nearly tantamount to indictments and they were so treated by the press. The first warrants were issued in January, 1944, about a month after Sigler took over as prosecutor. They were directed at six legislators and twenty small loan company officers accused of bribery in connection with finance legislation.[133] These initial accusations were followed by many others. They included warrants on intangibles tax legislation; on bills to regulate horse racing, naturopathy, and banking; on legislation to reduce distillery license fees; and on a measure to control dental advertising. Not all the warrants had to do with legislative corruption. Some charges dealt with police corruption and gambling, violation of liquor laws, and conspiracy to murder a grand jury witness.[134] There were yet other lines of investigation which did not produce criminal charges.

Judge Carr left the legislative graft grand jury on September 24, 1945, upon his appointment by the Governor to fill a vacancy on the Michigan Supreme Court. The grand jury at this stage was

[131] *Lansing State Journal*, Sept. 22, 1949, p. 27.

[132] Hemans' description of the situation at the state capital is given in the *Detroit News*, Mar. 5, 1944, pp. 1-2.

[133] *People* v. *Hancock, Record on Appeal*, IV, 2106.

[134] Summaries of the Carr-Sigler investigatory results are contained in the *Lansing State Journal*, Sept. 22, 1949, p. 27; *ibid.*, Jan. 1, 1950, p. 9; the *Detroit News*, Mar. 10, 1946, pp. 1, 11; and "Special Committee to Study and Report upon the One-Man Grand Jury Law," *Michigan State Bar Journal*, XXVIII, 68.

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probably at its peak of success and prestige. The only important case in which action had not been taken by the grand jury was that involving the anti-branch banking bill, and the liquor laws conspiracy was then in the process of trial. The grand jury's work had thus far resulted in about ninety indictments. Among the indicted were a former lieutenant governor and twenty-three former legislators, eleven from the Senate and twelve from House of Representatives. Twelve persons had pleaded guilty of charges made against them; forty-one other persons had been convicted of charges; and eight persons had been punished for contempt of the grand jury.[135] While a large number of appeals to the Michigan Supreme Court were then pending, it did not seem likely that that tribunal would reverse any convictions, and the Supreme Court did later uphold all convictions.[136]

This, however, was the high point of the Carr-Sigler grand jury, and the descent from the peak was not long in commencing. The first of the three major set-backs to the activities and prestige of the Carr-Sigler operation came on February 14, 1946. On that date, Circuit Judge John S. Simpson directed a jury to acquit five persons accused of having violated the state liquor laws through controlling, by threats and otherwise, the distribution and sale of liquor.[137] This had been a celebrated and politically significant case. The accused included Frank D. McKay and William H. McKeighan, former mayor of Flint, both of whom were powers within the Republican party. McKay, indeed, had been known as the Republican boss of Michigan, though his influence had been under increasing attack by new forces within the Republican party. The McKay case had been one of the three big cases before the one-man grand jury.

The second set-back suffered by the grand jury had its beginning on the same day that McKay and McKeighan were acquitted. A resolution was introduced and approved in the Michigan Senate establishing a committee to investigate the expenditures of the Carr grand jury, for which no accounting had yet been made.[138]

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[135]"Special Committee to Study and Report upon the One-Man Grand Jury Law," *Michigan State Bar Journal*, XXVIII, 68.

[136]The convictions of seventeen legislators and three finance company officers for bribery on two finance bills in the 1939 Legislature were upheld, two judges dissenting; see *People* v. *Hancock*, 326 Mich. 421 (1950). The convictions of ten persons for bribery on the naturopathy bill in the 1939 Legislature were upheld in *People* v. *DeLano*, 318 Mich. 557 (1947), and *People* v. *Green*, 323 Mich. 128 (1948). The two state senators convicted for taking bribes on the horse racing bill in 1949 lost their appeal in *People* v. *Logie and Diggs*, 321 Mich. 303 (1948); the lobbyist who did the bribing on this bill lost out in *People* v. *Fitzsimmons*, 320 Mich. 116 (1948). And the four persons convicted of conspiring to murder a state senator had their convictions sustained in *People* v. *Fleish*, 321 Mich. 443 (1948), and *People* v. *Fleisher*, 322 Mich. 474 (1948).

[137]*Lansing State Journal*, Feb. 14, 1946, pp. 1, 10.

[138]Michigan, *Senate Journal*, Extra Session, 1946, p. 76.

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The committee issued its report a few weeks later, extremely critical of the use made of legislative appropriations and particularly censorious of Sigler.[139] The report covered the period from the beginning of the grand jury in August, 1939, down to March, 1946. It charged that of $393,418 spent by the grand jury from funds appropriated by the Legislature and from State Police funds, $50,000 had been wasted and an additional $35,000 had been spent unwisely.[140] Sigler, the committee said, had been paid $71,145, exclusive of hotel, transportation, and other expenses.[141] Hemans, not counting special expenses, had received $16,000 for his services as a witness, and funds had been used for such items as liquor, theatre tickets, laundry, and newspaper mats.[142]

The Senate committee's investigation, the results of which received front page treatment in the press, split the grand jury wide open. The successor to Carr, Circuit Judge Louis E. Coash, had made the grand jury's financial records available to the committee, in violation, Sigler said, of an agreement Coash had made with him.[143] Sigler had refused to honor a subpoena to appear before the committee, saying he would testify only at a public hearing.[144] Sigler resigned from the grand jury,[145] and released an attack upon Judge Coash, charging Coash with having lost interest in the grand jury, with planning to bring it to an end, and with having cooperated with the Senate investigators, thereby exposing him, Sigler, to public attack. Sigler said he would petition the Michigan Supreme Court to assume supervision of the grand jury.[146]

Sigler also attacked the Senate committee which had attacked him. He charged that two of its three senators were trying to cover up their own political wrongdoing. This charge led to a one-man grand jury investigation in Macomb County and the indictment of Senator Ivan A. Johnston, chairman of the Senate committee, for having accepted bribes from gamblers and brothel operators while Johnston was Macomb prosecuting attorney.[147] Johnston was defeated for renomination to the state Senate while awaiting trial, and in the 1946 general election Sigler was elected governor of Michigan. However, the over-all effect of the financial revelations, but-

[139]Michigan, Legislature, Senate, "Report of the Special Committee Appointed to Investigate Ingham County Grand Jury Expenditures." (Typewritten). This report was never formally filed with the secretary of the Senate and hence was never printed in the Senate journal. It is included in the records of *People* v. *Hancock*, In the Circuit Court for Ingham County, n. d., Docket No. 7813. (Typewritten).

[140]*Ibid.*, p. 2.

[141]*Ibid.*, p. 5.

[142]*Ibid.*, pp. 9-11.

[143]*Detroit News*, Mar. 6, 1946, pp. 1-2.

[144]Michigan, Legislature, Senate, "Report of the Special Committee Appointed to Investigate Ingham County Grand Jury Expenditures," pp. 3-4.

[145]The Senate committee report said Sigler had been dismissed. (*Ibid.*, p. 1).

[146]*Detroit News*, Mar. 6, 1946, pp. 1, 19.

[147]*Ibid.*, June 13, 1946, pp. 1-2.

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tressed by further developments, was unfavorable to the Carr-Sigler grand jury. And Johnston was later acquitted of the bribery charges.[148]

One of the three major enterprises of the Carr-Sigler grand jury had been the McKay affair. This fell through when the trial court directed acquittal of McKay and his associates. A second of the three major enterprises also came to a fruitless conclusion with the collapse of the anti-branch banking bill prosecution. Although the banking bill was the case which first set the grand jury moving, warrants were not issued in the case until the middle of 1946. The warrants, when finally issued on July 20, 1946, charged twenty-eight persons with conspiracy in connection with legislation aimed at regulating branch banking.[149] Included in this group were nineteen legislators and, most prominent of all the accused, Charles E. Bohn, head of Bohn Aluminum & Brass Company. Hemans was the key witness in the prosecution's case. In fact, as Judge Chester P. O'Hara, the examining magistrate, observed: "He is the all-important cog in this case . . . Without him they [the prosecution] have no case that amounts to anything."[150] Hemans had, according to the state, advised Simon D. DenUyl, of Bohn Aluminum & Brass Company, that the only way to defeat the banking bill in the 1941 Legislature was to buy votes. Hemans allegedly listed the "price" of a number of legislators and, with DenUyl's approval, proceeded to bribe them.[151] The state claimed that over $50,000 was spent to defeat the bill.[152]

The state's case suddenly began disintegrating when, on August 28, 1946, Hemans moved from Michigan to Washington, D.C., to avoid testifying at the preliminary examination. To bring him back to Michigan, a federal indictment was obtained charging him with traveling in interstate commerce in order to avoid giving testimony.[153] Hemans used his federal prosecution, which he carried to the United States Supreme Court, as a basis for pleading self-incrimination at the state examination to questions concerning the receipt of bribery money from DenUyl.[154] The federal proceedings

[148] *Lansing State Journal*, May 9, 1947, pp. 1, 8. Sigler also figured in the trial of Johnston. The prosecuting attorney of Macomb County, evidently unwilling to handle Johnston's prosecution himself, petitioned the trial judge to appoint someone else. Sigler, now an ex-governor, was appointed, but the court order designating him was set aside by the Michigan Supreme Court, which upheld the intervention of the attorney general in the case. (*People* v. *Johnston*, 326 Mich. 213, 1949.)

[149] *People* v. *DenUyl (In re Hemans)*, *Record on Appeal*, In the Supreme Court of Michigan, Jan. term, 1947, Docket No. 86, 2-7.

[150] *People* v. *DenUyl (In re Hemans)*, *Record on Appeal*, In the Supreme Court of Michigan, Jan. term, 1948, Motions and Rehearings, II, 3.

[151] *Ibid.*, 40-49.

[152] *Lansing State Journal*, July 2, 1946, pp. 1, 13.

[153] *People* v. *DenUyl (In re Hemans)*, *Brief for Plaintiff-Appellant*, In the Supreme Court of Michigan, Jan. term, 1947, Docket No. 86, 4-5.

[154] *People* v. *DenUyl (In re Hemans)*, 318 Mich. 645 (1947).

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concluded, in October, 1947.[155] Hemans suffered punishment for contempt rather than talk.[156] Thus frustrated, the state, prodded by the Michigan Supreme Court to give the defendants a speedy trial, had no alternative but to drop its prosecutions.[157] Even Hemans went unpunished, for the Supreme Court ruled that, inasmuch as he was now unable to purge himself of contempt, the other cases having been dismissed, Hemans' conviction must be reversed.[158]

Thus did the second major enterprise of the Carr-Sigler grand jury come to nought. The McKay-McKeighan case had ended in a directed verdict of acquittal and the branch banking case had culminated in the inability of the state to go to trial. In only the finance case had the grand jury's efforts been rewarded by convictions. In that case, the accused had been convicted in 1944 and the Michigan Supreme Court had upheld in early 1950.[159] However, this prosecution, too, fell through, and again it was Hemans who was responsible. On September 25, 1950, Circuit Judge John S. Simpson granted a motion for a new trial in the case of Hancock, a finance company officer, on the basis of evidence concerning Hemans' testimony at Hancock's trial.[160] Ultimately all the convictions were reversed by Judge Simpson and the state did not undertake new prosecutions. The state's undoing was an affidavit filed by a former investigator with the Carr-Sigler grand jury.[161] The affidavit declared that Hemans had agreed to testify in the finance bribery cases "in such a way as the prosecution desired regardless of his own recollection," and that he had said several times that he had never informed the finance officials about his bribe-paying. In exchange for his testimony, according to the affidavit, Hemans was to receive certain favors from the grand jury. Judge Simpson presumably did not consider the affidavits of denial filed by Sigler and Hemans[162] of sufficient weight to offset the conclusion that the finance bribery case convictions had been obtained through "purchased testimony."[163]

Thus ended the Carr-Sigler grand jury.

Both the Ferguson and the Carr grand juries were successful in producing a large number of indictments. What distinguished the

[155] *Hemans* v. *United States*, 163 F (2d) 228 (1947); cert. denied, 332 U. S. 801 (1947).
[156] *People* v. *DenUyl*, *Record on Appeal*, II, 27-28.
[157] *People* v. *DenUyl (In re Hemans)*, 320 Mich. 477 (1948).
[158] *People* v. *DenUyl (In re Hemans)*, 323 Mich. 490 (1949).
[159] *People* v. *Hancock*, 326 Mich. 471.
[160] "*People* v. *Hancock*, Opinion of the Court," In the Circuit Court for Ingham County, Sept. 25, 1950, Docket No. 7813. (Typewritten).
[161] "*People* v. *Hancock*, Affidavit of Monroe M. Wendell," In the Circuit Court for Ingham County, n. d., Docket No. 7813. (Typewritten).
[162] "*People* v. *Hancock*, Affidavit of Kim Sigler, Answer to Motion for Leave to File Motion for New Trial," In the Circuit Court for Ingham County, n. d., Docket No. 7813. (Typewritten.); "People v. Hancock, Affidavit of Charles F. Hemans," In the Circuit Court for Ingham County, n. d., Docket No. 7813. (Typewritten).
[163] "*People* v. *Hancock*, Opinion of the Court."

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two operations was the much greater success of the Ferguson cases beyond the grand jury stage. However, the two grand juries were equally well supported by the Michigan Supreme Court. In only one minor instance was a claim against grand jury action honored by the Court.[164] The judicial set-backs suffered by the Carr operation, it will be recalled, were not due to adverse decisions of the Supreme Court.

Supreme Court backstopping was particularly important to the success of the Ferguson grand jury, since it instigated almost all of the legal issues. About twenty cases decided by the Court involved challenges to Judge Ferguson's behavior; Judge Carr stimulated only three Supreme Court decisions.[165] Even a few crucial reversals of grand jury action by the Court could have seriously impaired the effectiveness of Ferguson's investigation.

The Supreme Court upheld the power of Ferguson, a Wayne Circuit judge, to investigate matters within the City of Detroit and to issue warrants returnable to Detroit Recorder's Court.[166] The Court also upheld Ferguson's extension of the scope of his inquiry to include prostitution and other illicit activities in addition to gambling, when these other activities were shown to involve the same public officials.[167] Likewise, the Supreme Court had little difficulty in holding that Ferguson could hold examination on the indictments issued by him. Besides finding that there had been no show of actual prejudice on Ferguson's part, the Court said that since a preliminary examination was not required by due process anyway, Ferguson's examining his own charges could not be objected to on the ground that this violated due process of law.[168]

The most troubled part of the Ferguson and Carr grand jury investigations concerned the use of contempt and immunity powers. These powers were extensively employed and often they were used in support of each other as a means of wringing out testimony. The Michigan Supreme Court assisted in making the use of these powers as effective as possible. If a witness testified before the grand jury without formally receiving immunity, he could later be prosecuted, for he did not gain immunity automatically through his testimony.[169] If he testified in a manner which the judge considered evasive, he

[164] *People* v. *Karoll*, 315 Mich. 423 (1946).

[165] It is not known how many appeals from grand jury action were turned down by the Michigan Supreme Court.

[166] *People* v. *Wilcox*, 303 Mich. 287; *People* v. *Malone*, 303 Mich. 297; *People* v. *Staebler*, 303 Mich. 298 (1942); *People* v. *Stambaugh*, 303 Mich. 300 (1942).

[167] *People* v. *Ewald*, 302 Mich. 31 (1942); *People* v. *Robinson*, 306 Mich. 167; *People* v. *Watson*, 307 Mich. 596 (1943).

[168] *People* v. *McCrea*, 303 Mich. 213 (1942); *People* v. *Roxborough*, 307 Mich. 576 (1943). *People* v. *Hancock*, 326 Mich. 471, raised the same issue with respect to the Carr investigation.

[169] *People* v. *Robinson*, 306 Mich. 167.

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could be summarily punished for contempt.[170] If his grand jury testimony conflicted with testimony given at the examination or trial, he was liable to be prosecuted for perjury.[171] If the witness claimed self-incrimination, then he could be given immunity and compelled to testify. If the witness was already under indictment for the crime concerning which immunity was granted, he could not refuse to accept immunity on the ground this would lose him his right to defend himself against public accusation.[172] And, while the Court did not require a witness to testify where this would expose him to federal prosecution, it did look very closely at the danger of such prosecution and the witnesses who refused to testify on that ground all went to jail.[173] And the Court ruled that a person who was improperly granted immunity by the grand jury would have to object to the illegal action at the time it occurred (at which time he was before the judge-jury without counsel); otherwise, he was out of luck.[174] Persons prosecuted as a result of the one-man grand jury were also under a judicially imposed handicap. While the state was permitted to use any portions of the grand jury record in order to refresh the memory of its witnesses or to impeach the witnesses for the defense, the same right was denied the defense.[175]

Unsuccessful supplicants in the Michigan courts could, of course, attempt to gain redress of grievances in the federal courts, and a number of such attempts were made. All but one of the efforts were directed to getting the United States Supreme Court to grant certiorari; one person attempted to challenge his contempt conviction through a habeas corpus petition to the federal district court. None of the attempts was successful.[176]

Up to this time — 1947 — the Michigan Legislature had not been drawn into the controversy involving the one-man grand jury to any serious degree. The last statement of legislative policy had occurred in 1921; since then, grand jury policy had been made in the administration of the grand jury law and in judicial decisions. The wind-up of the Carr-Coash-Sigler grand jury in 1946 marked the point of re-entry for the Legislature.

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[170] *In re Slattery*, 310 Mich. 458 (1945).

[171] *People* v. *Woodson*, 309 Mich. 391 (1944); *People* v. *Kert*, 304 Mich. 148 (1943).

[172] *In re Watson*, 293 Mich. 263 (1940).

[173] *Ibid.*; *In re Schnitzer*, 295 Mich. 736 (1940); *In re Cohen*, 295 Mich. 748 (1940); *In re Ward*, 295 Mich. 742 (1940).

[174] *People* v. *Woodson*, 309 Mich. 391.

[175] *People* v. *McCrea*, 303 Mich. 213; *People* v. *Roxborough*, 307 Mich. 576; *People* v. *Stambaugh*, 303 Mich. 300.

[176] *Ewald* v. *Michigan*, 317 U. S. 688 (1942); *McCrea et al* v. *Michigan*, 318 U. S. 783 (1943); *Robinson* v. *Michigan*, 320 U. S. 799 (1943); *Roxborough et al* v. *Michigan*, 323 Mich., 749 (1944); *Woodson* v. *Michigan*, 324 U. S. 853 (1945); *In re Slattery*, 325 U. S. 876 (1945); *Slattery* v. *McDonald*, 151 F (2d) 326 (1946).

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Chapter 3 | *Revision*

The Law Among the Lawyers

IT WAS only appropriate that the one-man grand jury issue should revert to the State Bar, inasmuch as the law had its origin in that group. The Bar made a particularly good battleground because of the gateway it provided to action in the Legislature. On matters relating to the courts and judicial administration, the State Bar enjoys a respectful audience with the Legislature, the judiciary committees of which are composed nearly exclusively of attorneys. Since 1936, Michigan has had an integrated Bar; in order to practice his profession, a lawyer must be a member of the State Bar of Michigan.

The attack within the Bar upon the one-man grand jury was launched at the 1945 annual meeting, in the form of two resolutions. The first resolution, adopted unanimously, put the Bar in favor of legislation to disqualify judge-jurors from presiding at either the preliminary examination or the trial of persons arrested under warrants issued by them.[1] The resolution seemingly was directed at the activities of Judges Ferguson and Carr, both of whom regularly presided at the examination of their own charges.[2] Appropriate legislation was drawn up and approved by the Legislature in 1947, the first amendment to the One-Man Grand Jury Law in over twenty-five years.[3]

The second resolution did not find such easy success. It was introduced, as was the first resolution, by Walter M. Nelson, the attorney who had been punished for contempt in the House of David investigation of 1923. Nelson presented to the Bar meeting, "with especially personal pleasure," a resolution placing the State Bar on

[1]State Bar of Michigan, *Proceedings, Tenth Annual Meeting*, pp. 56-58.
[2]*Detroit News*, Aug. 29, 1946, p. 19.
[3]*Michigan Public Acts* (1947), Public Act No. 33.

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record in favor of the abolition of the one-man grand jury.[4] After considerable debate, the resolution was tabled, by a vote of 62 to 52.[5]

In 1946, the debate continued. At the Bar meeting that year, a fifteen-man Special Study Committee was created to study the law.[6] The importance of the issue is suggested by the composition of the committee which the president of the State Bar subsequently appointed. Its chairman was an ex-governor (and later Secretary of the Army in the Eisenhower Cabinet), Wilber M. Brucker; and among the other fourteen members were five former presidents of the Bar and a former Michigan Supreme Court justice.

The Detroit chapter of the National Lawyers Guild evidently had much to do with getting the movement against the one-man grand jury underway. A Guild officer offered the repeal resolution in 1945; the president of the Guild was responsible for the motion which established the study committee in 1946; and it was another Guild member who proposed the amendment that directed the president of the Bar to make the study committee representative. However, the movement against the one-man grand jury certainly had a much broader base than the Lawyers Guild could provide, and it is probable that as the attack mounted, and as the influence of the Guild within and without the legal profession dwindled in the late 1940's, control of the anti-one-man grand jury forces shifted to other hands.

The Special Committee held three all-day meetings during 1947. It solicited and obtained the views of almost everyone who had served as a one-man grand juror or prosecutor, as well as the views of many of the attorneys who defended persons accused by the one-man jury.[7] An attempt was made to get the entire committee behind a single report, but the cleavages within the group resulted in three recommended policies being presented to the 1947 meeting of the Bar. The majority report, supported by twelve members, advocated retention of the special grand jury with appropriate amendments.[8] Two members recommended revision of the system through transfer of the grand juror's powers to a member of the bar.[9] One member, Walter M. Nelson, came out for straight repeal.[10]

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[4]State Bar of Michigan, *Proceedings, Tenth Annual Meeting*, p. 60.

[5]*Ibid.*, pp. 69-70.

[6]State Bar of Michigan, *Proceedings, Eleventh Annual Meeting* (Lansing, Mich., Sept. 13, 1946), p. 36.

[7]State Bar of Michigan, *Proceedings, Twelfth Annual Meeting* (Grand Rapids, Mich., Sept. 17, 18, and 19, 1947), pp. 56-57.

[8]The majority report is contained in "Special Committee to Study and Report upon the One-Man Grand Jury Law," *Michigan State Bar Journal*, XXVI, 55-62.

[9]The first minority report is located *ibid.*, 62-67. This report actually urged that the system be "abolished" and not "revised," but the language was changed by one of the report's authors at the 1947 meeting. (State Bar of Michigan, *Proceedings, Twelfth Annual Meeting*, p. 16).

[10]*Ibid.*, 67.

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The majority on the Special Committee, while it defended the special grand jury, did support changes in the law that could only imply recognition of abuses in the law's operation. The changes recommended by the majority related to four aspects of the grand jury's activity. The first aspect concerned initiation of investigations, and here the majority recommended that inquiries be instituted only upon approval of a panel of at least three judges of a court of record; this panel was to specify the scope of inquiry and designate the judge-juror.[11] The second aspect of grand jury activity concerned the subpoena power. To eliminate use of the "forthwith" subpoena as an arrest warrant, the majority proposed that a grand juror be required to take the testimony of a witness responding to such a subpoena, "without unreasonable delay." The third aspect concerned the immunity power. It was recommended that only judges of courts of record be authorized to grant immunity; that immunity should not extend beyond the scope of the inquiry nor beyond the questions asked but, once given, should continue until the witness is told immunity no longer protects his testimony; it was also recommended that a copy of the immunity order be furnished the witness. The fourth aspect of grand jury activity considered by the Committee related to the problem of public disclosure of grand jury transactions by persons connected with inquiries. Here, however, the Special Committee majority restricted itself to condemning the violation of grand jury secrecy.

The first minority report accepted the legislative changes proposed by the majority and added to them. It believed that immunity orders either should be placed on record or should be delivered to a witness before testimony could be required, and the two-man minority would have limited the contempt power — something not considered at all by the majority — to cases where a witness refused to appear or to answer questions. The most drastic proposal of the first minority would have had the grand juror chosen from the Attorney General's staff, from the staff of the county prosecuting attorney, or from the Bar at large. It was this recommendation which brought out the underlying conflict between majority and minority: the majority believed that any abuses in the system could be corrected by specific and limited amendments; both minorities shared the view that the judge-jury system was fatally defective because it combined executive and judicial powers in one individual. The two-man minority felt that the system could be corrected by shifting the inquisitorial function to non-judicial personnel,

[11]Under the existing law, *any* magistrate could institute an inquiry with himself as grand juror and with the thinnest restraint upon the scope of inquiry.

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thereby permitting witnesses to appeal actions to a court of record instead of to the judge-juror. The one-man minority believed that abolition was the only way to solve the problem.

At the 1947 convention of the State Bar, only the majority and the first minority reports were put to a vote. The latter was defeated by a vote of 66 to 102, and the majority report was adopted by voice vote.[12] The Special Study Committee was continued into 1948 in order to study the one-man grand jury further and to draw up amendments for submission to the 1949 session of the Legislature.[13] The Committee members divided in exactly the same way in 1948 as they had a year earlier.[14] The Committee majority presented amendments to the law designed to carry out the recommendations of the previous year and it offered, in addition, a few new items of legislation.

Although sentiment within the Special Committee towards the one-man grand jury had not changed, sentiment within the State Bar had. The vote on the question of outright repeal of the one-man grand jury statute – the Nelson position – was fifty-two in favor, seventy-six opposed.[15] The vote on the first minority report, on transferring the grand juror's functions to a non-judicial person, came even closer to success; it lost by a vote of fifty-eight to sixty-seven.[16] Besides showing an increase in strength for the two Committee minority positions, the voting demonstrated that the basic issue within the attorneys' organization was whether to keep or abolish the grand jury. All but six of those voting for non-judicial investiture of grand jury powers would have abolished the system completely. Furthermore, although the two minority reports were rejected, neither was the majority report adopted. A motion intended to shelve the issue by continuing the One-Man Grand Jury Law and the Special Committee study for another year carried by voice vote.[17]

What accounted for the change in legal sentiment toward the judge-jury system between September, 1947, and September, 1948? It was probably due partly to the spreading reaction to the large-scale investigations of the preceding eight years and particularly to the Carr-Sigler grand jury. Another factor might have contributed

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[12]State Bar of Michigan, *Proceedings, Twelfth Annual Meeting*, pp. 116-17.

[13]The Bar meeting took place in September, 1947. Since the next biennial session of the Legislature would not begin until January, 1949, no time was lost by extending the study of the grand jury issue another year.

[14]"Special Committee to Study and Report upon the One-Man Grand Jury Law," *Michigan State Bar Journal*, XXVII (Sept., 1948), 60-68.

[15]State Bar of Michigan, *Proceedings, Thirteenth Annual Meeting*, p. 128. The place of the meeting, appropriately enough, was the chamber of the Michigan House of Representatives.

[16]*Ibid.*, p. 143.

[17]*Ibid.*, p. 151. This vote, a substitute to the motion to adopt the majority report, occurred after motions to reconsider the Nelson report, to send the majority report back to committee, and to adjourn had all failed on voice votes. (*Ibid.*, pp. 144-45).

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to increased opposition to the special judge-jury. Down to 1948, the "respectable elements" were on the side of the One-Man Grand Jury Law, including leading members of the Bar generally. Moreover, the Michigan Supreme Court had consistently upheld the law against charges of unconstitutionality, and the United States Supreme Court had refused to take any of the appeals carried to it. The majority report of the Special Committee of the Bar emphasized both of these facts in its defense of the one-man grand jury.[18]

Opposition to the one-man grand jury became legally respectable of a sudden in March, 1948, with the United States Supreme Court's decision in the *Oliver* case.[19] The case emerged from a contempt commitment of sixty days made by a one-man grand juror conducting a broad-gauge investigation of gambling and bribery in Oakland County. William Oliver was asked certain questions respecting "bonds" which he had purchased a couple of years previously for pin-ball machines owned by him. The judge-juror, with the concurrence of two other judges sitting with him in advisory capacity, found that Oliver had given false and evasive answers to questions concerning his reason for buying the so-called bonds (which were supposed to provide for reimbursement of the county for any expense entailed by illegal use of the machines) and the manner in which he disposed of them after they expired. The Michigan Supreme Court divided evenly, thereby upholding the contempt punishment,[20] and appeal was carried on certiorari to the United States Court.

While the federal Supreme Court did not rule on the constitutionality of the law, it nonetheless gave strong heart to those in opposition to the one-man grand jury. The specific holding of the Court was that conviction of a person for contempt of court without a reasonable opportunity to defend himself against the charges, and conviction within the secrecy of the judicial chamber, constituted a denial of due process of law. Speaking for the Court, Justice Black castigated the Michigan proceedings in the strongest terms, reaching back to the English Star Chamber, the Spanish Inquisition, and the French *lettre de cachet* for his analogies.[21] The *Oliver* decision, coming from the highest source of judicial authority, was effective ammunition for the legitimacy-starved critics of the one-man grand jury. Black's language was not only pungent, but quotable as well, and it was put to use.[22]

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[18] "Special Committee to Study and Report upon the One-Man Grand Jury Law," *Michigan State Bar Journal*, XXVI, 58.

[19] *In re Oliver*, 333 U. S. 257.

[20] *In re Oliver*, 318 Mich. 7 (1947).

[21] *In re Oliver*, 333 U. S. 257, 268-70, 272-73.

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The anti-one-man grand jury forces had scored two victories in the campaign waged within the Michigan State Bar. First, they had obtained a forum for airing their views before the public and an arena in which to win adherents to their cause. Second, they had neutralized the Bar as a significant force in the next stage of the battle, to be fought within the chambers of the Michigan Legislature. The law's protagonists might, and did, urge their views before the legislative session of 1949, but they were unable to speak with the undivided voice of the State Bar.

The Law and the Lawmakers: Round One

The three-way division within the State Bar over the one-man grand jury found its approximate counterpart within the 1949 state Legislature. Among the legislators there were some who wanted to amend the statute but keep its basic features, including that of the single judge-juror, intact; there were others who wanted to make a major revision of the system; and a third group wanted to abolish it. The legislative division on the grand jury differed in two respects from that which existed within the Bar. First, those advocating major revision within the Legislature did not espouse the plan of the Bar's first minority report, which provided for transfer of the juror's powers to a non-judicial officer, but supported instead the creation of a three-judge system, heavily weighted with procedural safeguards. And, second, in interesting contrast to the temper of the lawyers' group, by far the smallest and least significant group within the Legislature was that which sought to amend-but-keep the one-man grand jury. The real contest lay between the forces of repeal and the forces of revision. Indeed, as the law finally emerged from the legislative labyrinth, there seemed to be little difference between the latter two positions.

The three legislative stances were expressed in five bills.[23] The only measure to which a Democrat's name was attached was the one to abolish the one-man grand jury. Three bills were of the amend-but-keep variety and one advocated revision. The House of Representatives was the battleground on the issue. The fact that the earliest of the amendatory measures was introduced over a month

[23]During debate on the State Bar Committee's reports of 1948, for example, defenders of the grand jury were pointedly reminded that "the minority have some pretty respectable company adopting their views." (State Bar of Michigan, *Proceedings, Thirteenth Annual Meeting*, pp. 134-35). See also "Special Committee to Study and Report upon the One-Man Grand Jury," *Michigan State Bar Journal*, XXVIII, 77; *ibid.*, 76-77; *ibid.*, XXVII, 66-67; State Bar of Michigan, *Proceedings, Thirteenth Annual Meeting*, pp. 127ff; State Bar of Michigan, *Proceedings, Fourteenth Annual Meeting* (Detroit, Mich., Sept. 29, 1949), pp. 117-18, 128.

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after the repeal bill suggests that the other four bills were designed to head off the threat of repeal. None of the three amend-but-keep bills was reported from committee. The repeal bill was reported to the House floor without recommendation on April 7, following a lengthy hearing.[24] The House Judiciary Committee appears to have agreed that the differing bills would be reported out one at a time, without recommendation, until the House accepted one of them.[25] The committee chairman, Howard R. Carroll (Republican, Macomb County), a leader in the repeal movement, expressed confidence that the repeal bill would be enacted, despite indications that the Senate might not be willing to move so far as repeal.[26] The lack of committee recommendation meant that the repeal measure, introduced by Representative John Ptaskiewicz of Detroit, automatically was laid on the table. The absolute majority required for taking a bill from the table was obtained, and the measure was placed on general orders for consideration in Committee of the Whole on April 13.[27] The Committee of the Whole recommended passage without amendment, and the repealer was advanced to third reading.[28]

The repeal bill came up for third reading and final passage on April 14. At this point, the anti-repeal forces, who had not raised a word of objection against the bill in Committee of the Whole, began to play their strategy.[29] First, third reading of the bill was postponed until April 21.[30] Then, on April 20, the revision bill, providing for a three-judge grand jury, was reported from the Judiciary Committee with recommendation. What apparently happened was that supporters of the one-man grand jury had shifted to the three-man jury

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[23]*Amend-but-keep*
H. 283. Introduced by Representative Louis C. Cramton (Republican, Lapeer County), March 9.
H. 466. Introduced by Representative Cramton, April 8.
S. 313. Introduced by Senators Bruce F. Clothier (Republican, Lapeer County) and Bion L. Bates (Republican, Clinton County), April 14.
Major revision
H. 287. Introduced by Representatives John W. Bannasch (Republican, Jackson County) and Homer L. Bauer (Republican, Eaton County), March 9.
Repeal
H. 102. Introduced by Representative John S. Ptaskiewicz (Democrat, Detroit), January 27.
There was a sixth bill (Senate Bill No. 192), but this is not included inasmuch as it dealt with a specific and minor aspect of the One-Man Grand Jury Law and was not intended to compete with the others.
Copies of all these measures are in Michigan, Legislative Service Bureau, "1949 Unofficial Amended House Bills"; and *ibid.*, "1949 Unofficial Amended Senate Bills."

[24]Michigan, *House Journal*, Regular Session, 1949, I, 707.
[25]*Detroit News*, Apr. 7, 1949, p. 1; Apr. 8, 1949, p. 5.
[26]*Detroit Free Press*, Apr. 13, 1949, p. 1.
[27]Michigan, *House Journal*, 1949, I, 707. No special agency, such as a rules committee, controls consideration of bills reported from committee in the Michigan Legislature. Every bill gets its chance before the house, either by coming up in its regular turn on general orders or by being made a special order for a certain day. Committee of the Whole is used for all legislation.
[28]*Ibid.*, 788.
[29]*Detroit Free Press*, Apr. 14, 1949, p. 11.
[30]Michigan, *House Journal*, 1949, I, 818.

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as the preferable of the two practicable alternatives.[31] Representative Cramton, the sponsor of two of the weaker amending measures, announced that "the two factions opposed to all-out repeal" had united behind the revision bill.[32]

Thus united, the anti-repeal forces were ready for a showdown. The revision bill was considered in Committee of the Whole on April 20, and the Committee recommended passage with the immunity provision of the law eliminated. The amendments were adopted and the bill was put on the order of third reading for that same day, through suspension of the rules.[33] The repeal bill was then taken up on third reading and it was defeated, forty to fifty-two.[34] The revision bill was immediately thereafter voted upon and it was passed by the overwhelming vote of eighty-five to seven.[35]

The floor fight in the Senate centered on the question of immunity, and this power was restored to the bill on third reading.[36] The bill, carrying other amendments added by the Senate was then approved, twenty senators voting yea, ten voting nay.[37]

The House of Representatives rejected the Senate amendments to its bill, and the measure went to Conference Committee.[38] The Committee consisted of six legislators; three were from each house, two Republicans, and one Democrat. The Conference Committee's report was made on May 20, the last and busiest day of the session.[39] One member of the Committee, a Republican senator, refused to sign the report, because of the elimination by the Conference Committee of the immunity provision.[40] This action of the Conference Committee evoked the greatest objection to the report in the two houses. Except for immunity, the House conferees largely accepted the Senate version of the revision bill.[41] The Conference report was adopted by both houses, final action being completed at 3:00 a.m., May 21.[42] The Senate vote was twenty to ten, the House vote fifty-seven to thirty.[43]

The grand jury revision bill now went to the Governor, with all the pressures which had accompanied it through the Legislature.

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[31] *Detroit News*, Apr. 20, 1949, p. 25.
[32] *Ibid.*
[33] *House Journal*, 1949, I, 930. Record votes on bills are not taken in Committee of the Whole; nor at any other time except at third reading, unless one-fifth of the members so demand.
[34] *Ibid.*, 931.
[35] *Ibid.*, 931-32.
[36] Michigan, *Senate Journal*, Regular Session, 1949, II, 1220-21.
[37] *Ibid.*, 1220-23.
[38] Michigan, *House Journal*, 1949, II, 1621-23.
[39] The Senate journal for that day ran to 107 pages of small print and the House journal ran to 127 pages. Although the Legislature by the official clock adjourned at 11:59 p.m., the session actually ran well into the next morning. (*The Civic Searchlight*, Apr., 1951, p. 4.)
[40] *Detroit News*, May 21, 1949, pp. 1-2.
[41] Michigan, *Senate Journal*, 1949, II, 1326-28.
[42] *Detroit News*, May 21, 1949, pp. 1-2.
[43] Michigan, *Senate Journal*, 1949, II, 1328; Michigan, *House Journal*, 1949, II, 1710-11.

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The incumbent in the executive office was G. Mennen Williams, who had defeated Kim Sigler, of Carr grand jury fame, in the 1948 election and who was serving the first year of his first term in office. The resistance to revising the One-Man Grand Jury Law had been steadily mounting as the revision bill progressed through the Legislature. This increase in opposition was reflected in the smaller majorities by which the Conference Committee report had been accepted by the two houses, as compared with the votes on passage. From the time that the first grand jury measure had been reported by the House Judiciary Committee, on April 7, to the final passage of the revision bill on May 20, the *Detroit News* alone published ten major editorials in support of the one-man grand jury, not to mention constant news stories.[44] And, upon passage of the legislation by the House and Senate, the chief executive was editorially advised: "Honest Citizens, Gov. Williams, Want Crooks to Go to Jail."[45]

Faced with what was considered by many to be the hottest issue of the 1949 session, Governor Williams was hesitant in making his move. He had taken no position on the issue while it was being considered by the Legislature, although the Attorney General, also a Democrat, was a known critic of the one-man system. Williams' first announcement after passage was that he wanted to study the measure in its final form before deciding upon signing it.[46] Ten days later, on June 1, still publicly undecided, Williams asked leading protagonists and antagonists of the act to submit briefs expressing their positions and he invited comments from the general public as well.[47] On June 2, he announced that he would hold a public hearing on the matter.[48]

Almost all of those who appeared before Governor Williams were members of the State Bar. There were the representatives of the majority and two minority views within the special Bar committee, the spokesmen for the amend-but-keep and revision forces in the House of Representatives, the chairman of the Bar Association committee which first recommended the law in 1917, the president of the State Bar, the secretary-treasurer of the Michigan

[44] *Detroit News*, Apr. 8, 1949, p. 30; Apr. 15, p. 26; Apr. 16, p. 4; Apr. 19, p. 22; Apr. 20, p. 28; Apr. 23, p. 4; Apr. 26, p. 22; May 9, p. 18; May 10, p. 22; May 13, p. 32. Cf. also the *Free Press* page-one story of April 22, 1949, which began: "The House voted to amend the One-Man Grand Jury Law in a way that would nullify effectiveness of the Law. . . . Here are the members who voted to wipe out grand juries with teeth in their activities." (*Detroit Free Press*, Apr. 22, 1949, p. 1).

[45] *Detroit News*, May 24, 1949, p. 22.

[46] *Ibid.*, May 21, 1949, p. 1.

[47] *Detroit News*, June 1, 1949, p. 1. Williams had not yet received an official copy of the act, and thus time had not begun to run on it. Since the Michigan Legislature briefly reconvenes about a month after it completes its regular business, the chief executive is unable to administer a pocket veto to a bill.

[48] *Ibid.*, June 2, 1949, p. 14.

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Federation of Labor, the executive director of the Detroit Citizens League, the representative of the state prosecutors' association, and a number of individual members of the Bar.[49] The hearing took place on June 15. The Governor also received a delegation of Democratic legislators, asking him to sign the act, and a group from the "Thumb" area of the state, asking the same thing.[50]

In addition to the oral arguments, letters and briefs were submitted to Williams from many parts of the state, about one-half in favor and one-half opposed to the revision measure. Those supporting the change generally cited broad or specific – sometimes personal – objections to the manner in which judge-jurors had functioned in the past. Those opposing the change almost invariably conceded defects in the system, but urged a gubernatorial veto because the legislation enacted would in effect repeal the judge-jury system. All told, the governor probably received about seventy-five letters on House Bill No. 287.[51]

Thus supplied with argument, Governor Williams on June 17 gave his signature to House Bill No. 287. In his statement to the press, the governor expressed his position as follows:

> I am convinced the one-man grand jury has inherent defects which militate against justice.
>
> Chief among these is the concentration of executive and judicial power in the hands of one individual, who both directs the investigation and issues the indictments. No man can be a good judge and at the same time be a good prosecutor. As a judge he should be impartial, objective and disinterested. As a prosecutor he should be aggressive and zealous in ferreting out evidence against the accused and in seeking indictments. These functions are in conflict when combined in the same officer.[52]

Thus, the law enacted in 1917 and, up to 1949, only twice amended and then in relatively minor ways, was completely revised – so much so that opponents of the new act claimed the law had in effect been repealed.

The new grand jury law, Public Act No. 311 of 1949, provided as follows:

1. Instituting an inquiry. As under the old law, any person could file a complaint, requesting an investigation of an alleged

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[49] *Ibid.*

[50] *Detroit News*, June 8, 1949, p. 39.

[51] This figure is based on examination of the executive office files. There may be some additional correspondence not contained in the files furnished the writer, but the testimony before a state Senate committee a year later by Wilber M. Brucker that "hundreds of letters were sent to Governor Williams" is certainly an exaggeration. Likewise erroneous is the impression that was given that those doing the writing favored vetoing the legislation. (Michigan, Senate Interim Committee, "Hearings," [Detroit, Mich., Aug. 21, 1950], pp. 11-12).

[52] "Governor Williams' Statement on the Grand Jury Bill" (in the files of the Executive Office of the Governor). (Typewritten).

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offense. However, the new law eliminated peace and police justices from any role in the proceedings beyond referring complaints filed with them to judges of a court of record if they found probable cause to suspect that a crime had been committed. As under the old law, a judge of a court of record had to find probable cause to suspect that a crime had been committed, but, if he so found, he was required under Public Act No. 311 to have two other judges of a court of record sit with him to consider the complaint.

The three judges sitting *en banc* also had to make a determination of probable cause of crime (this could be the third such determination on a complaint), and they also had to determine that evidence about the crime could be given. Upon these determinations, they could themselves institute an inquiry into the matters relating to the complaint, but their order had to be specific as to the scope of the investigation. (The superseded law involved only one judge, no mention was made concerning the specificity of the order, and the judge *had* to institute an inquiry if probable cause was found and if the application for inquiry had come from a prosecuting attorney.)

2. Conducting the inquiry. The same general powers given to the judge-juror under the old statute were given to the judge-jurors under the new one, except that they could not grant immunity to witnesses pleading possible incrimination. Furthermore, the grand jurors were hemmed in by a large number of procedural restraints.[53]

What forces within the Legislature were responsible for Public

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[53]The judges had to attest that reasonable ground existed for believing that a witness to be summoned had knowledge of matters pertinent to the inquiry.

When a witness appeared in response to a "forthwith" subpoena, it was made the duty of the judges to appear and take testimony without unreasonable delay.

Testimony of witnesses had to be taken in the presence of all three judges.

Testimony had to be taken either in a courthouse or other suitable public building where secrecy could be maintained.

Orders returning indictments were to be concurred in by all three judges, and all other orders, decisions, and findings by two judges.

The main participants in an inquiry lasting beyond thirty days were disqualified from holding other public office for a period of two years from the date the inquiry ended. This restriction extended to the judge, prosecuting attorney, special prosecuting attorney, and attorney general (if, of course, he had been a participant).

A person was made ineligible for reappointment as special prosecutor to a grand jury for three years, and his fees were limited to $5,000 for any six months' period and a total fee of $10,000.

An inquiry could not extend beyond six months without a specific order of the judges for each six months' extension.

Disclosure of grand jury transactions by judges, prosecutors, and others connected with an inquiry was made a misdemeanor punishable by imprisonment up to one year and/or a fine of $100 to $500. When committed by a public official, the offense was to constitute malfeasance in office.

The judges could not issue presentments charging crime or wrongdoing as to persons against whom no legal action had been taken. They could, however, file with the county clerk reports of no finding of guilt in the cases of persons whose involvement in an inquiry, as witnesses or otherwise, had become public knowledge.

Contempts could be punished only after a hearing in open court.

Communications between an informant and a reporter, between a client and an attorney, between a parishioner and his clergyman, and between a patient and his physician were made privileged.

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Act No. 311? The legislators who were opposed both to revision and to repeal were nearly all Republicans, and they evidently did not amount numerically to very much. The pro-repeal group was predominantly Democratic, though it did have a small Republican wing. The vote on abolishing the one-man grand jury, which lost forty to fifty-two, had all but one Democrat voting yea, and six of the 57 Republicans voting on the question joined the Democratic repealists.[54] Upon defeat of the repeal move, most of the Democrats found the revision bill, with immunity removed from it, sufficiently compatible with their views to merit their support.[55] Of the Democrats who had voted to repeal the one-man grand jury, only three refused to accept revision and the lone Democrat who had opposed repeal slipped into abstention.

If the House Democrats were willing to make a rightward accommodation, the House Republicans seemed equally willing to make a leftward one, and only four Republican votes were cast against the revision bill, the over-all majority in favor being eighty-five to seven.[56] As a result probably of a combination of factors — amendments by the Senate, second thoughts, and intense pressure from the outside — a fairly large group of House revisionists changed their minds by the time the compromise was presented to them by the Conference Committee. At this stage, the seven votes previously in opposition rose to thirty, all but one vote cast by Republicans. However, thirty-three Democratic votes supported by twenty-four Republican votes were enough to put the measure across.[57]

The question of repeal was not put to a vote in the Senate. If it had been, Senate opposition undoubtedly would have been greater than that in the House, because, if for no other reason, the ratio of Republicans to Democrats was greater in the second chamber. No Senate Democrat was anti-revisionist; eight supported passage of Public Act No. 311 and all nine voted to adopt the conference report.[58] As in the House, the Republicans were divided over

[54]Michigan, *House Journal,* 1949, I, 931. Three Democrats and one Republican abstained from voting.

[55]In fact, two weeks before the issue was brought to a vote in the House of Representatives, pro-repealists were planning to get behind the revision bill should their own project be defeated. (*Detroit News,* Apr. 8, 1949, p. 5).

[56]*Ibid.,* 931. The Democrats had indicated their willingness to swing over shortly before the vote on the repeal bill was taken, on a motion to suspend the rules in order to consider the revision bill that same day. The journal entry does not reveal the size of the majority that agreed to the motion, but the fact that two-thirds of the members voting were required to adopt it shows that at least some Democrats were ready to go along with revision even before the vote on repeal was taken.

[57]*Ibid.,* II, 1710-11.

[58]Michigan, *Senate Journal,* 1949, II, 1223, 1328. The measure passed by a vote of eighteen to twelve. The Democrat who did not vote on passage was Senator Anthony J. Wilkowski. Since Wilkowski had been in attendance at the start of the day's session, his abstention might have been due to a reluctance to vote because of his own personal experience with the one-man grand jury in the 1930's. If this was the reason, then the prospect of having the conference report defeated in the Senate was enough to overcome any such disinclination. As it turned out, the report was adopted with a single vote to spare.

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whether to change the system to any important extent. They split twelve to ten on passage and nine to twelve on adopting the conference report.[59]

Thus, the enactment of the revision bill was due to the near-unanimous support of the Democratic party, which supported revision because repeal could not be gotten, and due to the support of almost all the Republicans when the issue was that of revision or repeal, and to a smaller but still considerable number of Republicans when the issue became that of revision or no change.

An interesting facet of Republican support for the repeal and revision bills, excepting the House vote on passage of the revision measure, was that it came mostly from urbanized districts. In the Senate this pattern was clear on all of the four roll-call votes; in the House it was most clear on the vote to accept the Conference Committee's recommendations. The Democratic party in the Legislature itself is an urban party. Thus, to a considerable extent the conflict over the one-man grand jury reflects a rural-urban division. One might suggest that the rural legislators tended to weigh more heavily the claims of security, while the urban legislators placed more emphasis upon the claims of individual rights. Since most of the one-man grand jury work had been carried on in the urban areas, this represented another instance of the non-urban areas of the state seeking to impose their notions of proper public policy upon the more libertarian cities.

In addition to the Democratic-Republican and urban-non urban cleavages, there was another division within the Legislature on the one-man grand jury question. Those legislators who had been in the Legislature during the Carr-Sigler and related investigations tended to support revision while the freshmen legislators tended to oppose it.[60] While these legislators also tended to come from the more urbanized districts, it is possible that they were reacting against one-man grand jury incursions into the legislative realm as well.[61] The division between the new and old Republicans was particularly noticeable in the Senate.[62]

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[59]*Ibid.*

[60]In the House of Representatives, only eight first- and second-term Republicans supported the conference report, while fifteen opposed it. However, of those serving their fourth term or more, twelve supported and only seven opposed the report. (Michigan, *House Journal*, 1949, II, 1710-11; data on previous legislative experience were obtained from Michigan, *Legislative Handbook*, 1949-1950, pp. 120-24.

In the Senate, three Republicans with no or one previous term of legislative service supported the conference report and seven opposed it; and four senators with three or more previous terms supported and four opposed. (Michigan, *Senate Journal*, 1949, II, 1328; data on previous legislative service obtained from Michigan, *Legislative Handbook*, 1949-1950, pp. 87-92.

[61]The press was not remiss in pointing out that the two Republicans who led the fight against the One-Man Grand Jury Law in the House of Representatives were both close friends of a former legislator who had been tried (and acquitted) on charges of bribery as a result of a judge-jury investigation.

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The one-man grand jury issue was by no means settled by the Michigan Legislature in 1949. It had simply gone through its first round. The start of the next round was not long in coming.

The Law and the Lawmakers: Round Two

The three-judge grand jury law took effect on September 23, 1949, automatically terminating all investigations under the old statute.[63] Since the Legislature would not meet in regular session again until 1951, a year and a half had to intervene before any "second round." Opponents of the new legislation had other arenas in which to carry on the struggle, however. There was some thought given to seeking a referendum on the law, but nothing came of it.[64] The pro-one-man grand jury forces aimed their sights at preparing the ground for the 1951 session of the Legislature.

The first shots in the restoration campaign were fired by the press. The *News* and *Free Press* fought vigorously against the new law, and only the *Detroit Times,* of the big-city press, had anything good to say about it. The press campaign did not end until victory was won. The Michigan State Bar was another energetic proponent of restoration. The 1949 convention of the Bar took place only a few days after the three-man jury law became operative. As in previous years, competing reports were presented to the membership.[65] By the close vote of 167 to 153, the Bar went on record in opposition to the new three-judge grand jury law and in support of the one-man system with corrective amendments.[66]

Joining the campaign of the press and the Bar in 1950 was the Republican group in the Michigan Senate which had opposed revising the grand jury law. Its vehicle was an interim study committee.[67] Two Republicans were appointed to the study committee – both known supporters of the one-man grand jury, and one Democrat was appointed – a known supporter of the three-man grand jury. The committee conducted public hearings, most, if not all,

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[62]The *Detroit News*, May 21, 1949, pp. 1-2, refers to the attempt of "freshmen" Republicans to prevent adoption of the conference report.

[63]The inquiries affected by the new law are described in the *Detroit News*, July 3, 1949, p. 3, and Sept. 22, 1949, p. 22.

[64]*Detroit Free Press*, May 22, 1949, p. 2; *Detroit News*, June 18, 1949, p. 1.

[65]"Special Committee to Study and Report upon the One-Man [sic] Grand Jury Law," *Michigan State Bar Journal*, XXVIII, 63-74.

[66]Michigan State Bar, *Proceedings, Fourteenth Annual Meeting* (Detroit, Mich., Sept. 29, 1949), p. 133.

[67]Senate Resolution No. 20, Michigan, *Senate Journal*, Extra Session, 1950, 298. Since this was a special session of the Legislature, the session was restricted to consideration of legislative recommendations presented to it by the governor; consequently, the grand jury issue could not rise as a legislative issue. But the Legislature, or either house, was free to establish such committees as it wished.

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of which were held in Detroit, during the summer, fall, and winter of 1950. A number of Michigan judges worked with the press-Bar-legislative coalition, and they expressed their unequivocal hostility to the three-judge system.[68]

The theme of the restoration campaign was simple and persuasive. The three-judge grand jury system, it was argued, was unworkable, and this left the people of Michigan without any adequate defense against organized crime. While objections were made to the entire law, the features singled out for strongest criticism were the lack of immunity and the three-judge set-up.[69] The Senate committee was much more successful in adducing evidence that the new system was inoperable than in proving a rise in the crime rate. Yet there seems to be little doubt that it successfully aroused public sentiment on both issues.[70]

The year-and-a-half campaign against the three-judge grand jury was directed to a single end: restoring the one-judge system. The visit of the Kefauver Crime Investigating Committee to Michigan helped this objective along, highlighting as it did the issue of crime and official corruption.[71] When the Legislature convened in early January, 1951, the pro-one-man grand jury forces were primed for action.

There were in the 1951 Legislature sixty-six Republicans and thirty-four Democrats in the House of Representatives and twenty-four Republicans and five Democrats in the Senate.[72] This marked a moderate increase in Republican strength. Five bills relating to the one-man grand jury had been introduced in the 1949 Legislature; only a single measure was sponsored in 1951. This bill, House

[68]Circuit Judge Chester P. O'Hara, the one-man grand jury special prosecutor of previous days, told the Senate committee: "You are not going to get cooperation out of the average judge and, frankly, I would not serve on [a grand jury] under the present law. If I am ever requested to, I will decline with thanks. I don't desire to have any part of your present system." (Michigan, Senate Interim Study Committee, "Hearings, Investigation of the Present Status of the Grand Jury System, in Michigan," Extra Session, 1950, [Detroit, Mich., July 18, 1950], p. 17.) (Typewritten). And Judge Joseph A. Gillis, of Detroit Recorder's Court, remarked of the investigation he was conducting when the old law expired that "continuance of this inquiry with three judges sitting, stripped of power to control witnesses through grants of immunity would be ridiculous." (*Detroit News*, July 3, 1949, p. 3).

[69]Persons with grand jury experience seemed to find the immunity deletion more grievous than the three-judge provision. See the comments of Kim Sigler, Michigan, Senate Interim Committee, "Hearings," (Detroit, Mich., Dec. 18, 1950), pp. 41-42; Circuit Judge Chester P. O'Hara, *ibid.*, (July 18, 1950), p. 17; and Attorney General Frank A. Millard, *Detroit News*, Mar. 25, 1951, p. 17.

[70]The Senate committee made use of the fact that the 1949 law had not once been invoked. It would be necessary to know, however, the number of investigations which were requested but refused under the new law and the extent to which the law's disuse was due to a boycott by law enforcement officials and others because of opposition to it. Cf. the accusation of Walter M. Nelson, *Lansing State Journal*, May 10, 1951, p. 17.

The committee appeared unsuccessful in establishing a correlation between the revision of the judge-jury system and any increase in crime. Cf. Michigan, Senate Interim Committee, "Hearings," (Detroit, Mich., July 18, 1950), p. 4; (Aug. 21, 1950), p. 5; (Dec. 18, 1950), p. 18.

[71]The Kefauver Committee, incidentally, obtained part of its information about Michigan conditions from one-man grand jury records, made available to it by a Wayne County Circuit Judge.

[72]Michigan, *Legislative Handbook*, 1951-1952, pp. 20, 86.

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Bill No. 3, was introduced on the second day of the session by Representative Louis C. Cramton (Republican, Lapeer County) and Representative Howard R. Estes (Republican, Oakland County).[73] According to Cramton's subsequent account, the bill was drafted by him in consultation with representatives of the State Bar and judges of grand jury experience.[74] As introduced, it would have reestablished the pre-1949 grand jury arrangement with minor changes.

By the time House Bill No. 3 completed its journey through the Legislature, it had become heavily loaded with restrictive amendments. Many of these amendments were transplanted from the 1949 law, and a number of them had even escaped the ingenuity of those who essayed to limit grand jury powers in 1949.

Governor Williams reacted in exactly the same manner with the restoration act as he had with the three-judge act. Once again, he asked leading supporters and opponents within the State Bar to submit briefs to him; he invited communications from the public at large; and he announced a public hearing at which oral arguments could be made. The hearing took place in a well-filled House chamber. It consumed about two hours of gubernatorial time, most of which was used in listening to declamations against restoration of the one-man grand jury.[75] Williams then kept the enrolled bill the maximum number of days before it would automatically become law, and then signed it.[76]

The governor's reasons for approving the new grand jury law were three: first, he said, a substantially effective effort had been made to correct deficiencies in the system; second, the public desired to give the new legislation a trial; and, third, public opinion would enforce the limitations imposed by the Legislature.[77] Despite his approving the act, Williams obviously was not enthusiastic about it,[78] and he expressed his conviction that the twenty-three man grand jury was a more effective instrument for handling crime.[79]

The groups supporting the governor were generally opposed to the 1951 act of the Legislature. Democratic legislators, Democratic organization people, the labor unions, and many liberals would have preferred a veto. On the other hand, Governor Williams was considerably concerned over the pressure exerted through the press,

[73]Michigan, *House Journal*, Regular Session 1951, I, 40. A copy of the bill is in Michigan, Legislative Service Bureau, "1951 House Unofficial Amended Bills."
[74]*Ibid.*, Regular Session, 1955, II, 1536. The introduced bill was basically the same one which Cramton had sponsored in 1949.
[75]*Detroit Free Press*, June 22, 1951, p. 2.
[76]Michigan, *Public Acts* (1951), Public Act No. 276.
[77]*Detroit News*, June 27, 1951, pp. 1, 4.
[78]The *Detroit News*, June 28, 1951, p. 34, reported Williams as having been "reluctant" to sign the measure.
[79]*Ibid.*, June 27, 1951, p. 4.

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in particular. Also, his personal mail ran almost overwhelmingly in favor of approval.[80] His election margin in 1950 had been less than 1200 votes, and the Republicans nationwide were having a field day with the charge that the Truman Administration was soft on crime and corruption.

What kind of a law did the Legislature produce in 1951?[81] When one considers the intensity and fervor of the restoration campaign, it is surprising that no more was extracted from the legislative mill by the pro-one-man grand jury forces. It is true that the single-judge feature and compulsory immunity were restored to the basic law, but little else was achieved. Most of the restrictions of the 1949 law remained, and some new ones were added. The balance of power might have swung away from the anti-one-man grand jury group and towards the pro-jury group between 1949 and 1951; however, it had not swung very far.

The new law permitted any judge of a court of record – the 1949 exclusion of inferior magistrates was kept – to conduct a judicial investigation upon proper application. The application might come from any person and the judge was required initially to determine that probable cause existed to believe a crime had been committed and that evidence about it could be obtained. The inquiring magistrate was empowered to summon witnesses, compel their testimony, grant immunity in exchange for incriminating evidence, and punish certain contemptuous actions. But these activities were surrounded with a number of legislative restraints and caveats. These ran as follows:

1. The order instituting an inquiry had to be specific as to the scope of the investigation, and the grand juror had to attest that questions for which answers were demanded fell reasonably within the scope of the order.

2. No inquiry could extend beyond a year's duration. A judge-juror succeeding to an already established investigation came under this limitation.

3. All testimony had to be taken in the presence of the grand juror. When a witness appeared to testify in response to a "forthwith" subpoena, the judge-juror was required to take his testimony "forthwith."

4. The judge-juror and others serving with the grand jury were made liable to one year's imprisonment and/or a fine of $100 to $1,000 for disclosing grand jury information; for public officials, this offense constituted malfeasance in office. In addition, it was

[80]In the files of the Executive Office of the Governor—"Grand Jury, 1951."
[81]Consult Appendix B for the provisions of the 1951 law.

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made a felony to disclose grand jury proceedings held prior to the 1951 law.

5. The judge-juror was disqualified: from hearing motions to dismiss or quash complaints or indictments; from hearing contempt charges instituted by him (unless the contempt involved refusal to appear in response to a subpoena); and from acting as examining magistrate or trial judge in his own cases.

6. The punishment for contempt was increased from $100 and/or 60 days in jail to $1,000 and/or 90 days in jail.

7. The judge-juror and others attached to the grand jury were disqualified from holding any political office other than that currently held for one year from the termination of the inquiry.

8. Grand jury witnesses were to receive only the regular witness fees paid in other criminal proceedings. No person connected with an inquiry was permitted to employ a witness in any capacity.

9. The judge-juror, before he filed a report of no guilt concerning a person's involvement in a one-man grand jury investigation, had to obtain that person's consent.

10. A witness granted immunity was to receive a copy of the immunity motion and order before having to testify, and he was to receive a copy of the portion of the transcript containing testimony given under the immunity grant.

11. Communications concerning news reporters and their informants were made privileged. Communications were made privileged which involved attorneys and clients, physicians and patients, and clergymen and church members when such communications were necessary to enable practitioners of these professions to serve in their professional capacities.

12. A public accounting of all grand jury expenses was required within ninety days of the conclusion of an inquiry.

13. Grand jury records were to be filed with the Supreme Court clerk, with relevant portions made available to witnesses involved in contempt proceedings. These records could be destroyed after six years, upon approval of the Supreme Court.

It is clear from the above enumeration that the victory won by the pro-one-man grand jury forces was gained at heavy cost. The Cramton bill was straddled by amendments in both the House and Senate. Indeed, the opposition came within an ace of producing a law as weak as the 1949 statute which the Legislature was laboring to change. In the House, voluntary immunity was substituted for compulsory immunity – a witness could opt whether to accept. Compulsory immunity was restored to the legislation only after

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two conferences, on the last regular day of the session, with the vote actually being concluded at 5:50 a.m. the next day.[82]

Not all the amendments to the Cramton bill came from unfriendly sources. A group of them originated with the Detroit Bar Association. The Bar Association's amendments were accepted "practically verbatim" by the House Judiciary Committee.[83] These amendments, however, did not include the most stringent additions to the law. It is interesting that all successful amendments to House Bill No. 3, friendly and hostile alike, were added to the measure in either House or Senate committee, with but one exception,[84] thereby adding force to the adage that committees are the workshops — and powerhouses — of legislative bodies.

Approximately the same interests were represented before the Legislature in 1951 as in 1949. There were attorneys of the different factions within the State Bar; there were law enforcement officers and judges; there was the head of the Detroit Citizens League and representatives from organized labor. All these, and others, spoke their pieces at a two-and-a-half hour meeting of the House Judiciary Committee, held before a full-capacity audience in the House chamber;[85] and they afterwards repeated their parts on the Senate side.[86]

The new One-Man Grand Jury Law was certainly much weaker than one had been prepared to expect on the basis of the campaign waged for restoration. But as Representative Cramton, the measure's sponsor, has said, it was about the best that could be put through the Legislature.[87] Sentiment against the one-man grand jury still remained very strong. At least the system was back in business, battered though it was, and it was ready to be used again.

Since Restoration

The one-man grand jury was restored in September, 1951, after a two-year experiment with a three-judge grand jury system which never was used. Since restoration, no determined legislative effort has been made to repeal or drastically to amend the law. Nor has the one-man grand jury attracted the attention or engaged in the adventures of times gone by. It seems that, exhausted by several

[82] *Lansing State Journal*, May 26, 1951, pp. 1-2. It appears that a strong card played by the pro-restoration forces was the threat of a popularly initiated measure should the Legislature fail to include compulsory immunity in the new law. (*Ibid.*, May 18, 1951, p. 7).
[83] *Civic Searchlight* (Detroit Citizens League), April, 1951, p. 4.
[84] The exception was No. 11 of the above-enumerated changes.
[85] *Detroit News*, Apr. 5, 1951, pp. 1-2.
[86] *Detroit Free Press*, May 10, 1951, p. 29.
[87] Personal interview, May 23, 1955.

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years of hectic struggle, the contending forces have accepted the status quo in the legislative realm.

This is not to imply that the legislative arena has been dormant, but that the major struggle has shifted from legislative to judicial chambers. The struggle in the Legislature and in the courts has centered on two features of the law, and these features have provided the link between the legislative and judicial phases of the struggle. These features are the right-to-counsel provision in the law and the provision disqualifying judge-jurors from hearing their own contempts.

The 1951 legislation states that:

> Any person called before the grand jury shall at all times be entitled to legal counsel not involving delay and he may discuss fully with his counsel all matters relative to his part in the inquiry without being subject to the requirements of secrecy. . . .[88]

Did the Legislature intend that a witness should have the right to counsel in the grand jury room? or did it intend that a person could consult with counsel before and after he had been before the grand jury and, perhaps, during special recesses? The question was raised in the first investigation under the new law. Circuit Judge Chester P. O'Hara, in his probe of the management of the State Fair, refused to permit a witness's attorney to be present during testimony, ruling that if the Legislature had intended attorneys to be present "it would have said so."[89] When the Legislature met in early 1952, an amendment to the One-Man Grand Jury Law was introduced, designed to undo Judge O'Hara's ruling by specifying that "all times" included time spent in the grand jury room.[90] The bill was approved by the House with little discussion and no dissent, on January 25.[91]

The House action was greeted with sharp opposition. Judges, leaders of the State Bar, Senator Homer Ferguson, and the press joined in a chorus of attack.[92] The political heat was turned on the Senate. The Senate Judiciary Committee did not bother to schedule a hearing on the House bill, but let it be known that there was no chance of the bill reaching the floor.[93] Towards the latter part of March, it was unobtrusively reported that the House measure had been killed by unanimous vote of the Senate Judiciary Committee.[94]

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[88]Michigan, *Public Acts* (1951), Public Act No. 276, sec. 3.
[89]*Detroit Times*, Oct. 24, 1951, p. 1.
[90]Michigan, Legislative Service Bureau, "1952 Unofficial Amended House Bills," House Bill No. 95.
[91]Michigan, *House Journal*, Regular Session, 1952, I, 185-86. The vote was 65 to 0.
[92]*Detroit Free Press*, Jan. 28, 1952, p. 6; *Detroit News*, Jan. 29, 1952, p. 18.
[93]*Detroit Free Press*, Jan. 30, 1952, p. 2; Feb. 6, 1952, p. 17.
[94]*Detroit News*, Mar. 26, 1952, p. 31.

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The attack on the right-to-counsel amendment was predicated on the assumption that the amendment's sponsors wished to change the judge-jury statute, and in a way that would be novel and destructive. However, House members appear to have viewed their action simply as clarifying the intent of the 1951 law. One representative even questioned the need for the amendment since he thought the 1951 law covered the point sufficiently clearly. It was explained to this member that "almost everybody else" had thought the same until Judge Chester O'Hara's ruling in the State Fair investigation.[95] The bill's sponsor, in answer to press criticisms of his bill, said on the House floor:

> There is no question in my mind that we intended to allow attorneys in the grand jury room [when we] originally passed the bill; in fact, I can recall last year when the question arose in committee. We considered the problem of having attorneys present in the grand jury room. Last year on the floor of the House, Judge Cramton said that I had something to do with the amendment that permitted attorneys into the grand jury room. I knew what it meant. I think every member of the House knew what it meant and now the papers are attempting to distort it.[96]

Representative Louis Cramton, the sponsor of the restorative bill in 1951 and a member of the House Judiciary Committee, supported this explanation. The only purpose of the 1952 amendment, he said, was to make the law "so plain that even a Wayne judge would be inclined to follow it."[97] No member took exception to either statement. It would appear that there was room for some honest difference of opinion concerning the meaning of the controversial amendment to the restoration law.

With the right-to-counsel amendment thus blocked in the Senate, the One-Man Grand Jury Law went unchanged in 1951, and it has continued untouched by the Legislature since that time.

Since 1951, the focus of attention on the one-man grand jury has been on the administration of the statute and its adjudication in the courts. One important investigation was that conducted in spring, 1954, into charges of police graft in connection with gambling operations within Detroit. The court cases which developed from the investigation brought up for judicial determina-

[95] *Detroit News*, Jan. 26, 1952, p. 3.
[96] Michigan, *House Journal*, 1952, I, 260.
[97] *Ibid.*, 198. Cramton went on to say: "Now what did we mean when we said [a witness] might have that counsel with him at all times? Did we mean he could have the counsel with him in his office or on the street but then when he went in the jury room he would be denied the benefit of counsel? Of course not. We meant that he would have the benefit of counsel when he needed counsel." (*Ibid.*)
Unfortunately, newspaper discussion of the right-to-counsel provision during the 1951 enactment of the grand jury law almost invariably paraphrased or simply stated the wording of the provision, thus, adding little to the intention of the Legislature.

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tion the meaning of the right-to-counsel provision and, also, the provision disqualifying grand jurors from punishing their own contempts.

In mid-March, 1954, the Recorder's Court of Detroit granted a petition by the prosecuting attorney of Wayne County, asking for a police graft grand jury, and Judge John P. O'Hara was assigned to conduct the inquiry.[98] The petition stemmed from police observations, culminating in a raid, on the residence of one "Indian Steve" Stephen, a numbers racket operator. The attention of the law had been directed to the place by complaints from the gambler's neighbors that numerous policemen were seen visiting it.[99] The raid had set the stage for the investigation. Among the witnesses summoned before the grand jury were Lee Roy Murchison, a policeman, and John White, a hotel operator. The two were to be linked in the proceedings that went to the United States Supreme Court, but there was no evident connection between the men in the one-man grand jury proceedings. The questioning of neither man progressed very far. In the case of Murchison, it halted upon the denial by the witness that he had ever visited the home and headquarters of Indian Steve. In the case of White, it reached no further than an admission by the witness of his name.

Testimony had been given before the grand jury that Murchison had entered upon the premises of the gambler on March 9, 1954, and pictures taken of him at Stephen's house by two police officers, who also testified that they knew him well, were presented in evidence.[100] Murchison denied to Judge O'Hara that he had ever been to Stephen's place and he said he did not know exactly where the street in question was. When he was shown photographs of himself at the location, he denied that they were of him.[101] Upon persisting in his ignorance of the whereabouts of the gambling residence, Murchison was ordered to show cause why he should not be punished for contempt for false testimony.

Judge O'Hara was exceedingly careful to ensure that the United States Supreme Court's ruling in the *Oliver* case, as he understood it, was complied with. Murchison was given time to obtain counsel and prepare his defense; the contempt hearing was conducted in open court; and defense counsel was accorded opportunity to cross-examine witnesses and present witnesses and arguments for Murchison. However, O'Hara's procedure openly violated Michigan law,

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[98] "In re Murchison, Concise Statement of Facts and Proceedings," In the Supreme Court of Michigan, June term, 1954, Calendar No. 46,218, 1. (Photostat).
[99] *In re Murchison and White, Transcript of Record,* In the Supreme Court of the United States, Oct. term, 1954, Docket No. 405, 9.
[100] "In re Murchison and White, People's Brief," 3-4.
[101] *Ibid.*, 2-3.

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since he insisted upon presiding at his own contempt hearing.[102] O'Hara declared this restriction to be an unconstitutional attempt by the Legislature to impair the "inherent" right of a judge of a court of record to punish for contempt. Accordingly, on May 14, he adjudged Murchison guilty of contempt and sentenced him to 60 days in the county jail.[103]

White was summoned before the one-man inquiry because it was believed that he might have information regarding police corruption. If so, the information was never elicited.[104] White declined to answer any questions without his counsel being present. This resulted in issuance of a show-cause order against him, and he was convicted of contempt on May 28 and sentenced to ninety days in jail and fined $250.[105] White, like Murchison, challenged the authority of Judge O'Hara to preside at a contempt proceeding that he had initiated, and his challenge also was denied. But White had an additional argument: that he was entitled under the law to have counsel with him in the grand jury room. This contention likewise was repelled, O'Hara stating that the Legislature could not have intended to permit counsel to be privy to all that transpired inside the grand jury chamber.[106]

Both men appealed their convictions to the Michigan Supreme Court. That body, on July 6, 1954, upheld Judge O'Hara in both instances.[107] The Court used two legal premises in attacking the contempt question. The first one was the doctrine enunciated in *Mundy* v. *McDonald*[108] that a judge acting as a one-man grand jury was acting in a judicial capacity.[109] The second premise was that judges of courts of record had "inherent" judicial power to punish for contempts committed in their presence. The conclusion which flowed from these premises was that the Legislature was powerless to disqualify a judge acting as grand jury from hearing a contempt charge arising from an investigation conducted by him.[110]

The Court brought similar logic to bear on the right-to-counsel

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[102]Michigan, Public Acts (1951), Public Act No. 276, sec. 4, provides that "the judge conducting the inquiry . . . shall be disqualified . . . from hearing any charge of contempt . . . except alleged contempt for neglect or refusal to appear in response to a summons or subpoena."

[103]"In re Murchison Proceedings and Testimony," May 14, 1954, 126, 129.

[104]"In re Murchison and White, People's Brief," 6.

[105]*Ibid.*, 7.

[106]"To me it seems that if the Legislature intended that a lawyer was to sit in the court room, it could have said so very easily. It didn't say so, and because it didn't say so . . . I am convinced that all the Legislature intended to do was to allow a witness to consult with a lawyer and get legal advice as to what he should do." (*In re Murchison and White, Transcript of Record,* 165).

[107]*In re White,* 340 Mich. 140 (1954); *In re Murchison,* 340 Mich. 151.

[108]216 Mich. 444.

[109]The Court, however, cited *In re Slattery,* 310 Mich. 458, not *Mundy,* for the source of the doctrine—possibly because in *Mundy* the doctrine had been stated without argument and without proof.

[110]*In re White,* 340 Mich. 140, 146-149.

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question. It drew upon an 1890 Michigan decision dealing with the right of a witness to counsel before a common-law type grand jury in order to understand what the Legislature intended in 1951 with respect to the one-man grand jury.[111] Upon this authority, the Court concluded that the 1951 act did not intend that a person should have counsel with him when he testified before a judge-juror.[112]

The favorable rulings of the Michigan Supreme Court seemingly cleared the way for Judge O'Hara to pursue his investigation of police graft. O'Hara thought so, for he announced his intention of calling back about seventy witnesses who had refused to cooperate with him.[113] The issue, however, turned out to be not quite settled. Murchison and White carried their appeals to the United States Supreme Court, and that body granted certiorari on December 6, 1954.[114] Oral argument was held in late April, 1955, and on May 16 of that year, just within a year from the date when the legal actions commenced in Detroit Recorder's Court, the U. S. Supreme Court handed down its decision governing the two cases.

The Supreme Court's decision in the cases of Murchison and White[115] came seven years after it decided *In re Oliver*.[116] As in the *Oliver* case, Justice Black wrote the opinion of the Court. As in the *Oliver* case, the Supreme Court did not rule on the constitutionality of the one-man grand jury.[117] The Supreme Court in its *Oliver* decision had said that due process required that a person charged with contempt by a one-man grand jury must be given a public hearing with adequate notice and the right to counsel and to examine witnesses. These conditions had been met in the Murchison and White contempt punishments. The issue now before the Court was whether a judge-juror could preside at his own contempt hearing. On this question, the Court divided six to three. The majority stated, through Black, that the due process requirement of an impartial tribunal demanded that the proceedings be tried by some other judge. "It is difficult if not impossible," said the Court, "for a judge to free himself from the influence of what took place in his 'grand-jury' secret session."[118]

Justice Reed, speaking for the dissenters, felt that the majority had not based its decision on any actual irregularity in the contempt

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[111]The earlier case relied upon was *People* v. *Lauder*, 82 Mich. 109.
[112]*In re White*, 340 Mich. 140, 150.
[113]*Detroit News*, July 6, 1954, p. 1.
[114]*In re Murchison and White*, 348 U. S. 894 (1954). Judge O'Hara apparently was taken by surprise by the court's action. (*Detroit News*, Dec. 7, 1954, p. 19).
[115]*In re Murchison*, 349 U. S. 133 (1955).
[116]333 U. S. 257.
[117]The Court was not asked to decide the constitutional question in *Oliver*, though Justice Rutledge would have anyway. (*Ibid.*, 278-83).
[118]*Ibid.*, 138.

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proceedings; that, in addition, the interest of a judge in such a proceeding was no different from that of a judge in other contempt actions; and that, in fact, the Court was imposing a severer standard upon state judges in contempt proceedings than it enjoined upon federal judges, the latter being able to punish summarily for contempts committed within their presence.[119]

The reaction in Michigan to the United States Court's decision was about what one would expect. The *Detroit Times* was the only important newspaper which applauded the reversal of the Michigan Supreme Court. "Once again," it announced, "the U. S. Supreme Court has condemned the star-chamber practices of Michigan's judges under the One-Man Grand Jury Law."[120] Members of the Legislature likewise applauded the action of the high court.[121] The Legislature, like the minority within the Michigan State Bar, discovered that the United States Supreme Court made a most potent ally.

What is surprising about the displeased reactions to the federal Supreme Court's decision is their great pessimism. In this respect, they were very similar to the reactions to the *Oliver* decision. The *Detroit Free Press*, state judges, and the law enforcement officers joined in mournful burial of the one-man grand jury system. The judge-jury had been delivered a "death blow";[122] it could no longer hope to be successful;[123] the decision marked "the end of the one-man grand jury in Michigan";[124] and so on.

Despite the obituaries, the one-man grand jury has not died but, on the contrary, has entered a new phase of activity. In recent months there have been four judge-jury investigations important enough to catch the newspaper eye. The most important of these has been in operation nearly a year, having as its object some of the suburbs around Detroit, in which charges of official corruption have been circulating. Thus far, this one-man grand jury has produced criminal charges against twenty-eight persons, most of them officials of two Wayne County townships.[125] The one-man grand

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[119]*Ibid.*, 139-42.

[120]*Detroit Times*, May 18, 1955, p. 18.

[121]As Representative Cramton, the author of the 1951 law, put the matter: "In our 1951 act this house sought to hold . . . grand jury procedure [with respect to punishing for contempt] within due process of law. The Michigan Supreme Court held we exceeded our constitutional powers. We are now sustained by the highest judicial tribunal, the U. S. Supreme Court." Michigan, *House Journal*, Regular Session, 1955, II, 1536.

[122]The Detroit assistant prosecuting attorney, *Detroit News*, May 16, 1955, p. 1.

[123]Circuit Judge Chester P. O'Hara, *ibid.*, May 17, 1955, p. 23.

[124]Recorder's Court Judge John P. O'Hara, *Detroit Free Press*, May 17, 1955, p. 23.

[125]*Grand Rapids Herald*, Jan. 20, 1957. Attempts to expand the grand jury's activities have met with the refusal of the Wayne County Circuit Court. The Court's latest refusal, its fourth, was to a joint request by the Michigan Attorney General and Wayne County prosecutor, reached in what was reported to be a "stormy" meeting of the judges. (*Detroit Free Press*, Jan. 30, 1957).

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jury launched a few months ago in Flint to probe the relationship between police officers and gamblers gives indications of being a large-scale operation.[126]

Legal challenges to the One-Man Grand Jury Law have emanated from the most recent flurry of investigations, and it is not improbable that at least one case will reach the United States Supreme Court in the near future. That Court twice has ruled against the one-man grand jury and, in the *Murchison* case, Justice Black deliberately put aside the question of the one-man grand jury's constitutionality.[127] Black is a known and forceful subscriber to the theory that the Fourteenth Amendment makes the first eight amendments to the Bill of Rights fully applicable to the states.[128] Since his theory seemingly would make the one-man grand jury repugnant to the conventional grand jury requirement of the Fifth Amendment, Black's avoidance of the constitutional question in the *Murchison* and *Oliver*[129] cases seems strange. One might speculate that Black has been biding his time.

At any rate, the United States Supreme Court, having twice intervened in a state controversy about the proper policy to follow in criminal investigation and accusation, will find withdrawal from the scene difficult. Up to now the Court's involvement has been selective and limited; one can only expect that attempts will be made to obtain a major decision from the federal justices.

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[126]*Lansing State Journal*, Apr. 11, 1957, p. 47. The judge-juror had to this date indicted twenty-five persons on gambling charges.

[127]*In re Murchison*, 349 U. S. 133, 136n.

[128]The most detailed exposition of Black's stand is in his dissent in *Adamson* v. *California*, 332 U. S. 46, 68-92 (1947).

[129]*In re Oliver*, 333 U. S. 257.

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Chapter 4 | *Conclusion*

THE ONE-MAN grand jury has been part of Michigan's system of criminal jurisprudence since 1917. During its history, it has been used in investigations of widespread political importance and, in fact, its special value appears to be in situations involving political corruption and conspiracy. In this period, the judge-jury system has been the subject of legislation a number of times. Practically all legislative efforts at change have been directed to restraining or abolishing the system. Legislative amendment has succeeded on only four occasions: in 1921, in 1947, in 1949, and in 1951. The first two changes were relatively minor. The former authorized grand jurors to institute removal proceedings against public officials and the latter enjoined grand jurors from examining or trying their own cases. The one-man grand jury was drastically overhauled in 1949, most notably in those revisions which established a three-judge procedure and which took from the jurors the power to grant immunity. The judge-jury system was remodeled once more in 1951. This last change re-established the single-judge and compulsory immunity features of the system, but left many of the other restricting amendments of the 1949 law.

It is not known how many times the one-man grand jury has been challenged in lower Michigan courts nor how many appeals have been carried to the Michigan Supreme Court. However, the law has been involved in about seventy-five cases accepted and decided by the Michigan high court. Thus, that tribunal has had the question of upholding, modifying, or invalidating the special grand jury, in whole or in part, before it more often than has the Michigan Legislature. The Court, moreover, has adopted a more favorable attitude towards the law and those charged with its administration. In only five cases have individual claims against

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the one-man grand jury been sustained, and all of them dealt with relatively minor aspects of the system.[1]

At the height of its fame and power, the Michigan one-man grand jury was indeed a formidable institution. The grand juror combined in himself judicial functions and functions analogous to those of the common-law grand jury. Acting in his judicial capacity, the grand juror could not be sued for issuing an improper report reflecting on the integrity of a governmental officer.[2] He could hire at public expense a staff of special prosecutors, investigators, accountants, and others.[3] He was not directly controlled by any court other than his own, which meant that he considered in the first instance appeals against his actions as juror. He could punish, summarily and in secret, testimony which he considered false or evasive.[4] And he was authorized by law to preside at the examination and trial of cases he investigated.[5] Like the twenty-three man grand jury, the one-man grand jury could institute an inquiry without finding probable cause and, once begun, an investigation could be directed into broad paths.[6]

At the time Public Act No. 196 became law, in 1917, Michigan lacked an agency for exercising inquisitorial powers in the course of criminal investigation and accusation. The common-law grand jury had largely slipped into disuse and its replacement, the prosecutor-information system, lacked the grand jury's power to subpoena, to compel testimony, and to grant immunity. Moreover, because of his position in local government, the prosecuting attorney could not always be expected to act in a decisive manner.[7] Thus, the one-man grand jury filled a void in Michigan's criminal system.

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[1]In *Oakman* v. *Recorder of Detroit*, 207 Mich. 15, the Court declared that an inquiring magistrate could not issue a presentment containing charges of wrongdoing against a person not accused of any crime. *In re Wyrick*, 301 Mich. 273 (1942) and *In re Hickerson*, 301 Mich. 278 (1942) reversed contempt convictions where the immunity motion was made by the *amicus curiae*, instead of by the prosecuting attorney as required by law. In a fourth reversal, *People* v. *Karoll*, 315 Mich. 423, the Supreme Court said that a defendant in a trial could not without good reason be denied access to his grand jury testimony where the testimony had been extensively used by the prosecution in cross-examining him. And, finally, the grand jury came out second best in a case where the petitioner had been punished for contempt for failing to appear in response to a forthwith subpoena in which no mention had been made of the grand jury location (in a Western Union office) and where the party had sought to locate the inquiry before it concluded (forty-five minutes after he received the subpoena). (*In re Moore*, 325 Mich. 429 [1949]).

[2]*Mundy* v. *McDonald*, 216 Mich. 444.

[3]*In re Investigation of Recount*, 270 Mich. 328.

[4]*People* v. *Doe (In re Nelson)*, 226 Mich. 5; *In re Oliver*, 318 Mich. 7.

[5]*People* v. *O'Hara*, 303 Mich. 213. The writer knows of no instance where a judge-juror presided at the trial of his own accusations.

[6]*People* v. *St. John*, 284 Mich. 24 (1938); *People* v. *Wilcox*, 303 Mich. 287. The most serious challenge to the broad inquisitorial power exercised by judge-jurors occurred in the *St. John* case. The court split four-to-four in its decision, thereby upholding the judgment below. The judges who would have reversed declared as follows: "The [1917] statute provides for a special investigation under a complaint of the commission of an alleged crime; it does not authorize a grand inquest, with power of roving inquiry and presentment of offenders generally. When the statutory authority is properly invoked it operates as an aid toward bringing criminal offenders to trial." (33-34).

[7]See the testimony of Wilber M. Brucker directly to this point, in Michigan Senate Interim Committee, "Hearings," (Detroit, Mich., Aug. 21, 1950), p. 13.

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Its operations have drawn upon the one-man grand jury two general criticisms. One is that the system has combined executive and judicial functions in violation of the principle of separation of powers and consequently in derogation of individual liberty. The other criticism is that the system has placed too much power, with too much temptation for abuse, in a single governmental official, also to the detriment of individual liberty. It is interesting to observe that recent actions by the Michigan Legislature and United States Supreme Court have gone a considerable way to satisfy both of these criticisms. In wielding his powers, the judge-juror is surrounded by a host of procedural props, which limit his discretion in many ways. The separation of powers issue has largely been met through an internal separation of functions, which prevents the grand juror from trying his own contempts, considering appeals taken from his actions, or being connected with a proceeding beyond the indictment stage. However, the system's critics have not been entirely satisfied. Investigatory functions still are vested in the judicial branch and, to those who put their trust in numbers, grand jury functions would appear to be more safely entrusted to twenty-three persons than to one man.

The one-man grand jury has been an experiment in criminal procedure by a state operating in the laboratory of the federal system, free from the conventional grand jury requirement of the Fifth Amendment to the United States Constitution. Proponents of the Michigan procedure have, on the basis of its local use, recommended its imitation by other states.[8] Thus far, no other state has followed this advice, though a few states have been doing some experimenting of their own along somewhat similar lines. In its two decisions affecting the Michigan law,[9] the United States Supreme Court has narrowed to an extent the area of state tinkering with judicial inquiries and has rendered the one-man grand jury a less prestigious institution. The importance of the Supreme Court's role in shaping state policy in this field demonstrates that not all centralizing in our political system is achieved through the activities of Congress and the Executive, and that the future of the Michigan one-man grand jury may depend, not upon the Michigan Legislature and courts, but upon the attitude of the nine justices of the federal supreme bench.

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[8]See, for example, "The Grand Jury, A Venerable Nuisance," *Journal of the American Judicature Society*, VIII (Dec., 1924), 99-100.

[9]*In re Oliver*, 333 U. S. 257; *In re Murchison*, 349 U. S. 133.

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Appendix A

Public Act No. 196 of 1917 and Amendments

Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give any material evidence respecting such offense, such justice or judge in his discretion may, and upon the application of the prosecuting attorney, or city attorney in the case of suspected violation of ordinances, shall require such person to attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings.

If upon such inquiry the justice or judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the justice or judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint: [Provided, That the justice or judge conducting the inquiry under Section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment.][1] [And if upon such inquiry the justice or judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance of office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said justice or judge shall make a written finding setting forth the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges.][2] And in respect of communicating or divulging any statement made by such witnesses during the course of such inquiry, the justice, judge, prosecuting attorney and other person or persons who may, at the discretion of such justice, be admitted to such inquiry, shall be governed by the provisions of law relative to grand jurors.

Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such justice or judge may require material

[1]Public Act No. 33 of 1947.
[2]Public Act No. 395 of 1921.

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to such inquiry, shall be deemed guilty of a contempt and shall be punished by a fine not exceeding 100 dollars or imprisonment in the county jail not exceeding sixty days or both at the discretion of the court: Provided, That if such witness after being so sentenced shall appear and answer such question, the justice or judge may in his discretion commute or suspend the further execution of such sentence.

No person shall upon such inquiry be required to answer any questions the answers of which might tend to incriminate him except upon motion in writing by the prosecuting attorney which shall be granted by such justice or judge, and any such questions and answers shall be reduced to writing and entered upon the docket or journal of such justice or judge, and no person required to answer such questions upon such motion shall thereafter be prosecuted for any offense concerning which such answers may have tended to incriminate him.

Approved May 10, 1917.

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Appendix B

Public Act No. 276 of 1951

Whenever by reason of the filing of any complaint, which may be upon information and belief, or upon the application of the prosecuting attorney or attorney general any judge of a court of law and of record shall have probable cause to suspect that any crime, offense or misdemeanor shall have been committed within his jurisdiction, and that any persons may be able to give any material evidence respecting such suspected crime, offense or misdemeanor, such judge in his discretion may make an order directing that an inquiry be made into the matters relating to such complaint, which order, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted, and thereupon conduct such inquiry: Provided, That in any court having more than one judge such order and the designation of the judge to conduct the inquiry shall be made in accordance with the rules of such court. Thereupon such judge shall require such persons to attend before him as witnesses and answer such questions as such judge may require concerning any violation of law about which they may be questioned within the scope of the order; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall not receive any compensation or remuneration other than witness fees as paid witnesses in other criminal proceedings, and said witness shall not be employed in any capacity by the judge or by any person connected with such inquiry, within the scope of the said inquiry being conducted. Whenever a subpoena shall be issued by the judge conducting such inquiry, commanding the appearance of a witness before such judge forthwith upon the service of such subpoena, and, following the service thereof, such witness arrives at the time and place stated in such subpoena, the judge so issuing the same shall be forthwith notified of such appearance by the officer serving the subpoena, and it shall thereupon be the duty of such judge forthwith to appear and take the testimony of such witness. Any person called before the grand jury shall at all times be entitled to legal counsel not involving delay and he may discuss fully with his counsel all matters relative to his part in the inquiry without being subject to a citation for contempt. All matters so revealed to the attorney shall be subject to the requirements of secrecy in Section 4, and any revelation thereof by the attorney shall make him subject to punishment as provided in said section. No testimony shall be taken or given by any witness except in the presence of the judge.

Any judge, prosecuting attorney or special prosecuting attorney, or the attorney general participating in any inquiry under this section which continues more than thirty calendar days shall thereafter be disqualified from appointment or election to any office other than one held at the time of such inquiry: Provided, That such disqualification shall not extend more than one year from date of termination of such inquiry, as determined by final order of said judge entered prior to such date.

If upon such inquiry the judge shall be satisfied that any offense has been

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committed and that there is probable cause to suspect any person or persons to be guilty thereof he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint: Provided, That the judge conducting the inquiry under Section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment, or from hearing any charge of contempt under Section 5 hereof, except alleged contempt for neglect or refusal to appear in response to a summons or subpoena. And if upon such inquiry the judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance in office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges. Except in cases of prosecutions for contempt or perjury against witnesses who may have been summoned before the judge conducting such inquiry, or for the purpose of determining whether the testimony of a witness examined before such judge is consistent with or different from the testimony given by such witness before a court in any subsequent proceeding, or in cases of disciplinary action against attorneys and counselors in this state, any judge conducting such inquiry, any prosecuting attorney and other persons who may at the discretion of such judge be admitted to such injuiry, who shall while conducting such inquiry or while in the services of such judge or after his services with such judge shall have been discontinued, utter or publish any statement pertaining to any information or evidence involved in any such inquiry, or who shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, or who shall disclose that any person has been questioned or summoned in connection with any such inquiry, or who shall disclose or publish or cause to be published any of the proceedings of such inquiry otherwise than by issuing or executing processes prior to such indictment, or shall disclose, publish or cause to be published any comment, opinion or conclusions related thereto, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not more than one year or by a fine of not less than $100 nor more than $1,000, or both such fine and imprisonment in the discretion of the court, and such offense when committed by a public official shall also constitute malfeasance in office. Upon the termination of such inquiry if the judge shall make no presentment of crime or wrongdoing as to any person or persons whose apprehension or removal from office he has not so caused, he may, in his discretion, with the consent of the person who may be named, file with the clerk of the county in which such inquiry has been conducted, a report of no finding of criminal guilt as to any person or

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persons involved in such inquiry, either as witness or otherwise, whose involvement in such inquiry has become public.

No inquiry or proceeding hereunder shall continue longer than six months unless extended by specific order of the said judge or his successor for an additional period not to exceed six months.

In the event any judge conducting such inquiry shall be unable to continue therein because of physical disability, disqualification, termination of office or death, the presiding circuit judge of Michigan shall appoint a successor.

It shall be unlawful for any person, firm or corporation to possess, use, publish, or make known to any other person any testimony, exhibits or secret proceedings obtained or used in connection with any grand jury inquiry conducted prior to the effective date of this act, except in the manner specifically provided herein, and also excepting any information heretofore disclosed before any investigating committee of the Congress of the United States or any agency of the federal government. Any person violating the provisions of this section shall be guilty of a felony.

Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such judge may require as material to such inquiry, shall be deemed guilty of a contempt and after a public hearing in open court and conviction of such contempt, shall be punished by a fine not exceeding $1,000 or imprisonment in the county jail not exceeding one year or both at the discretion of the court: Provided, That if such witness after being so sentenced shall offer to appear before such judge to purge himself of such contempt, the judge shall cause such witness to be brought before him and, after examination of such witness, the judge may in his discretion commute or suspend the further execution of such sentence.

In any inquiry authorized by this act, communications between reporters of newspapers or other publications and their informants are hereby declared to be privileged and confidential. Any communications between attorneys and their clients, between clergymen and the members of their respective churches, and between physicians and their patients are hereby declared to be privileged and confidential when such communications were necessary to enable such attorneys, clergymen, or physicians to serve as such attorney, clergyman, or physician.

No witness shall upon such inquiry be required to answer any questions, or shall be convicted for contempt upon refusal to do so, when the answers might tend to incriminate him. A written order granting to such witness immunity from such incrimination may be entered by said judge pursuant to a written motion by the prosecuting attorney or other duly authorized representative of the state in such proceeding, which order shall set forth verbatim the questions which such witness refused to answer. A true copy of such motion and order shall be delivered to such witness before he shall answer such questions. The order granting immunity so made shall thereafter extend to all related questions which may thereafter be put to such witness until such judge advises the witness that said immunity no longer applies. All such questions and the answers thereto shall be reduced to writing under the direction of such judge and a true copy of such transcript, duly certified by such judge, shall be delivered to such witness as soon as practicable thereafter. The provisions for secrecy provided for in Section 3 hereof shall apply to all copies

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of such motion, order and transcript so delivered to such witness except that the witness may be privileged to disclose the same to his attorney if such witness should thereafter be prosecuted for any offense directly or indirectly growing out of any testimony given by him in such inquiry. No person required to answer such questions shall thereafter be prosecuted for any offense concerning which such answers may have tended to incriminate him. No such order granting immunity shall extend beyond the scope of such inquiry, nor shall it extend beyond the particular questions set forth in any such motion, order or transcript.

On termination of any such inquiry lasting not more than 30 calendar days the docket, journal, reporters' notes, transcript and other record of such judge in such inquiry shall be sealed and filed with the clerk of the court having jurisdiction; and if lasting more than 30 calendar days shall be sealed and filed with the clerk of the supreme court of the state of Michigan, where it shall be held secretly in a separate container securely locked. Any person who shall violate the secrecy herein ordered as to such docket, journal, transcript and record shall be punished as provided in Section 4 hereof. And the entire transcript and record as to any witness, and so far as material, including any grant of immunity, shall be available to such witness in connection with any appeal or other judicial proceeding where it may be revelant upon such witness filing a petition with the circuit court of the county in which he resides, setting forth the proceeding for which such documents are sought and describing the portions of such transcript and record as to such witness only, which such witness requested for such appeal or proceeding; the judge of such circuit court shall issue an order upon the filing of such petition directed to the clerk of the supreme court of the state of Michigan or the clerk of the court, as the case may be, ordering such clerk to make available to such witness all such portions of the transcript and record as shall pertain to such witness and as set forth in the petition. The clerk shall immediately reseal the remaining transcript and records after compliance with such order. The petitioner shall execute to the clerk of the supreme court a receipt for such documents and such documents shall be returned to the clerk immediately upon the termination of such appeal or proceeding for which the same shall have been obtained: Provided, however, upon the petition of the prosecuting attorney of the county in which such inquiry was conducted, or any other interested person, any circuit judge, acting as such in said county, upon determining that there is no further need for preserving and retaining the same, shall enter an order providing for the referring to the supreme court, for the entry of such order or orders as a majority of the court may at any time determine, for the destruction of said transcripts, notes and records, or any part thereof: Provided further, That no such order shall be entered by such circuit judge until at least six years after the termination of such inquiry.

Within ninety days after the termination of such inquiry, such judge shall file with the clerk of the court having jurisdiction a public accounting of all monies disbursed by him or disbursed at his direction.

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Appendix J





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dred fifty of Howell's Annotated Statutes, be and the same is hereby amended so as to read as follows:

(1350) SEC. 12. All road work hereafter done upon roads that have been opened and worked for ten years or more, except such as may be required for necessary repairs, shall have in view the permanent improvement of such roads by graveling and turnpiking. Elevations upon the line of such roads shall be cut down and the depressions raised in order to form a grade as level as the nature of the ground will permit. Any surplus earth or gravel taken from one portion of the road may, with the consent of the highway commissioner, be used to fill such depressions in any other road in the same district: *Provided*, That no earth shall be dug, plowed, or scraped nearer than within eight feet of the margin of the highway without the consent of the owner of the premises adjacent thereto. Such roads shall be worked so as to form a turnpike sufficiently crowning to turn the water, with gutters adequate for drainage, and the width of the turnpike shall be not less than ten feet on each side of the center line of the road, terminating in the center of the gutter. Any person may under the direction of the overseer of highways, be allowed to remove snow from the traveled highway, to haul gravel or other material for the repair of roads at any time during the year, and a receipt for the work so done shall apply on his next assessment of highway labor.

Work upon roads to have in view, etc.

Proviso.

How to be worked.

When snow may be removed for purpose of working road.

Receipt for, etc.

Ordered to take immediate effect.

Approved June 9, 1885.

[No. 161.]

AN ACT to establish the police court of the city of Detroit.

SECTION 1. *The People of the State of Michigan enact*, That on and after the fourth day of July, in the year of our Lord eighteen hundred eighty-six, there shall be in the city of Detroit a court which shall consist of two police justices and which shall be known and designated as "The Police Court of the City of Detroit."

When court established to consist of; known as.

SEC. 2. The first election for said police justices shall be held on the Tuesday next succeeding the first Monday in November, in the year eighteen hundred eighty-five, when there shall be elected by the qualified electors of the city of Detroit, two police justices, whose terms of office shall commence on the fourth day of July, in the year eighteen hundred eighty-six, and shall continue as follows, namely: One term for a period of two years, one term for a period of four years. At this election the electors shall with the names of the persons for whom they intend to vote for police justice, designate upon their ballots the terms of office they intend such persons to hold substantially in manner following, namely:

First election of police justices.

Term.

Ballots.

For Police Justice—Term of two years, ... (Name of candidate.)
For Police Justice—Term of four years, ... (Name of candidate.)

The person for whom the greatest number of legal votes shall be cast for police justice for any one of said terms shall be deemed and

declared elected police justice for such term. On the Tuesday after the first Monday in November, in the year eighteen hundred eighty-seven, and on the same day in every second year thereafter, there shall be elected in the city of Detroit a police justice who shall hold office for a term of four years, commencing on the fourth day of July, of the year next succeeding. In case of a vacancy in the office of police justice, the common council of the city of Detroit shall, as soon as practicable, order a special election to fill such vacancy, in like manner as at the time is provided by law in case of a vacancy in the office of mayor of said city; but no such special election for police justice shall be held within the three months next preceding the time herein appointed for the regular election of a police justice, unless there be more than one vacancy, in which case the common council may in its discretion order such special election to be held within the said three months. The provisions of law relative to holding elections for city officers in said city, canvassing the votes and making returns thereof, and the disposition of and action upon such returns shall, so far as applicable, regulate and apply to all elections for said police justices. Whenever an election held under the provisions of this act shall, from any cause, occur on the same day with an election held under the charter of the city of Detroit for mayor, city clerk, city attorney, treasurer, and councilmen, or for any one or more of said city officers, the names of the persons voted for for police justice shall be placed on the same ticket or ballot with the names of those voted for for the city officers aforesaid.

Subsequent elections for police justice.

Term of.

Vacancy, how filled.

Laws governing elections for police justice.

Name on same ticket with city officers.

SEC. 3. There shall be a clerk of said police court, and also such assistant clerks as the common council of said city may at any time after the passage of this act by ordinance prescribe, but no amendment or repeal of such ordinance shall have the effect to remove any assistant clerk from office during the term for which he is appointed. The clerk and assistant clerks of the police court shall be appointed by the police justice whose term of office shall first expire, as soon as practicable after the fourth day of July, in the year of our Lord eighteen hundred eighty-six, and after the fourth day of July in every second year thereafter, and they shall hold office for a term of two years, commencing on the first day of August, in the year in which they are appointed, and until their successors are appointed and qualified: *Provided, however*, That the persons appointed clerk and assistant clerks in the year eighteen hundred eighty-six, shall hold such offices and shall execute the powers and perform the duties thereof during so much of the month of July of said year as may remain unexpired at the time of their appointment and qualification. In case of vacancy in the office of clerk or assistant clerk of the police court, the same shall be filled by appointment in like manner as above provided, and the person appointed to fill such vacancy shall hold office for the remainder of the unexpired term, and until his successor is appointed and qualified. Memoranda of such appointments shall be entered in the journal of the proceedings of the police court, and shall be signed by the police justice making such appointment, and certificates of such

Clerk and assistant clerks of police court.

Appointment of.

Term of.

Proviso.

Vacancy.

Entry of appointments in journal.

appointments signed in like manner, shall be by him transmitted to the city clerk of said city who shall file and preserve the same in his office, and notify the common council of said city of such appointments. Certificate to city clerk. Notice to council

SEC. 4. No person shall be eligible to the office of police justice or to the office of clerk or assistant clerk of said police court unless at the time of his election or appointment he shall be a citizen of the United States and of the State of Michigan, and a resident elector of the city of Detroit. Said police justices shall be attorneys at law authorized to practice in the supreme court of this State. The police justices, the clerk and assistant clerks of the police court shall, before entering upon the duties of their respective offices take and subscribe the oath of office prescribed by the constitution of this State before some officer authorized by law to administer oaths, and shall deposit the same with the city clerk who shall file and preserve the same in his office. The said clerk and assistant clerks, before entering upon the duties of their respective offices, shall each give his bond to the people of the State of Michigan in the penal sum of two thousand dollars, with two sufficient sureties, to be approved by the controller of said city, conditioned for the honest and faithful discharge of the duties of his office. Such bond shall be deposited with the controller, who shall file and preserve the same in his office, and inform the common council and the board of education of the city of Detroit of the filing of said bond, and of the names and residences of the sureties thereon. The common council, whenever they shall deem such bond, or any of the sureties thereon insufficient, may, by resolution, order and require, within a reasonable time, to be fixed by such resolution, new or additional security, to be given in manner and form as near as may be, as is above provided in case of the original security to be filed by said clerks. Who eligible as justice, clerk and assistant clerks. Oath. Clerk and assistant clerk's bond.

SEC. 5. The police justices may be removed from office in like manner and for like cause as is provided by law for the removal of justices of the peace. The clerk, and assistant clerks may be removed from office by the police justices upon proof of incompetence, gross neglect of duty, or willful misconduct in office. Resignation of office by any police justice shall be made to the mayor of the city of Detroit, who shall immediately inform the common council of said city thereof. Resignation of office by any clerk, or assistant clerk, shall be made to the police justices who shall cause to be made an appropriate record of the same. Vacancy in office of police justice, clerk, and assistant clerk shall be deemed to exist when the incumbent shall have died, resigned, been removed from office, ceased to be a resident of the city of Detroit, or wholly failed, for any cause other than sickness for a continuous period of six months to perform the duties of his office. Vacancy in the office of clerk, and assistant clerk, shall also be deemed to exist if such clerk, or assistant clerk, shall not within the time fixed by the common council file new or additional security when required as provided in section four of this act. Any person holding office Removal from office. Resignation of justice, clerk, and assistant clerk. When vacancy deemed to exist.

Not eligible, during term, to any other office.

under this act shall not during the term for which he is elected or appointed, be eligible to any other office whatever.

Salary of justices, clerk, and assistant clerks.

SEC. 6. Each of the police justices shall receive an annual salary of three thonsand dollars; the clerk shall receive an annual salary of eighteen hundred dollars; and the assistant clerks shall each receive such annual salary not exceeding that of the clerk, as the common council may by ordinance prescribe; but the salary of an assistant clerk shall not be increased or diminished during the term for which he shall be appointed. The salaries provided by this section shall be paid in monthly installments. The police justices, the clerk, and assistant clerks shall receive no other or further compensation for any services rendered, acts done or duties performed under this act than the salaries provided by this section.

Other compensation forbidden.

Duty of metropolitan police to serve process, etc.

SEC. 7. The members of the Metropolitan police force of the city of Detroit shall have the power and it shall be their duty to serve all process issued and to execute all orders lawfully made by the police court or any of the police justices; and they shall perform all of the duties of conveying prisoners from any jail, or other place of detention or imprisonment to the police court or to any of the police justices, for complaint, arraignment, examination, trial, sentence or other proceeding, and from the police court or the police justices to any jail, house of correction, reform school, prison, reformatory or any other place of detention, reformation, correction, punishment or imprisonment under the direction, order, process, judgment or sentence of the police court or any of the police justices, and they shall be the ministerial officers of the police court and of said police justices. It shall the duty of the Board of Metropolitan Police of the city of Detroit, upon the written request of the police justices, to detail a roundsman and two patrolmen of the Metropolitan police force of said city to attend the police court; but said board may in its discretion detail a sergeant in place of such roundsman and may detail such additional patrolmen to attend the police court as shall from time to time be deemed necessary and proper.

To be the ministerial officers of police court, etc.

Detail of roundsmen and patrolmen to attend the court, etc.

Common council to provide, etc., offices, rooms, etc., for court and its officers.

SEC. 8. The common council of the city of Detroit shall have power and it shall be their duty to provide, maintain and suitably furnish a place for the transaction of the police court, and of the police justices, and of said clerks, which place shall have such offices, rooms, and apartments as may be deemed appropriate. The common council shall have power to provide such places by rental, or by purchase, or in any other manner not inconsistent with the provisions of the charter of the city of Detroit or with the laws relating to the powers of said city, but such place or any part thereof shall not be within or a part of any building or other structure used in whole or in part as a police station. The place so provided by the common council shall be known and designated as "The Police Court Building," and all of the business of the police court, of the police justices, and of the clerk, and assistant clerks shall be transacted therein except as shall be otherwise provided by this act. In case of the destruction of such building or other necessity, the common council may provide a temporary place elsewhere for the transaction of such business.

Limitation as to location of.

Designated as.

Temporary place for.

SEC. 9. The payment of the salaries provided by section six of this act, and the cost and expenses of providing, maintaining, and furnishing a place for the police court and of securing any site therefor as authorized by section eight of this act shall be borne by the city of Detroit, and shall be provided for by the common council of said city in its discretion as a part of the general fund as established by the charter of the city of Detroit, and shall be paid from such fund in like manner as near as may be as annual city expenses are provided and paid. All other cost and expense necessary and proper to the due maintenance and operation of the police court and to the orderly and efficient transaction of the business thereof, and of the police justices, and of said clerks, and to the due and complete operation of the provisions of this act, including the service of all writs and process (excepting, however, the salaries of the sergeant, roundsmen and patrolmen mentioned in section seven of this act), shall be borne by the county of Wayne and shall be provided for and paid in like manner as near as may be as other county expenses are provided for and paid.

Salaries and other expenses provided for and paid by city of Detroit.

Other expenses to be borne by Wayne county.

SEC. 10. The police court shall have original and exclusive jurisdiction to hear, try and determine all criminal cases wherein the crime, misdemeanor or offense charged shall have been committed within the corporate limits of the city of Detroit or upon any lands, tenements or hereditaments owned or occupied by, or under the authority of the city of Detroit, within the county of Wayne, and which crime, misdemeanor or offense would be, now or hereafter, cognizable by a justice of the peace if the same had been committed in any other part of this State; to entertain, conduct and dispose of all preliminary examinations into crimes, misdemeanors and offenses which shall have been committed within the corporate limits of the city of Detroit, and which may, now or hereafter, be cognizable by the recorder's court of said city; to hear, try and determine or otherwise lawfully entertain, conduct and dispose of all cases and proceedings arising within the corporate limits of the city of Detroit under the laws of this State relative to disorderly persons, illegitimate children, fugitives from justice from other States and foreign countries, the preservation of the public peace and the prevention of crime: *Provided, however*, That this act shall not be in any wise construed to interfere with or affect any of the powers of or the authority conferred by law upon the grand jury of the county of Wayne. The police court shall have concurrent jurisdiction with the recorder's court of the city of Detroit to hear, try and determine cases arising under the ordinances of the common council relative to common prostitutes, vagrants, mendicants, street beggars, drunken persons, disorderly persons, disturbances and breaches of the peace, indecent exposure of the person, indecent conduct, indecent exhibitions, and other disorderly conduct, and any person arrested for a breach of any of the ordinances aforesaid, shall be discharged from custody upon entering into a recognizance in a sum not exceeding the penalty provided for the violation of the same, and with sureties satisfactory to the officer taking said recognizance, conditioned for the appearance of such person

Jurisdiction.

Proviso.

Concurrent jurisdiction with recorder's court in certain cases.

Persons arrested for violation of above ordinances to be discharged from arrest upon giving recognizance, etc.

to answer to any complaint that may be preferred against him or her. Either of said police justices, the clerk of the police court and the clerk of the recorder's court of the city of Detroit shall have power to take said recognizances, and it shall be the duty of the officer having such person in custody to produce him before any of said officers for the purpose of giving such bail when required so to do. All recognizances taken as hereby provided shall be filed as soon as practicable in the office of the clerk of the court before whom such person is brought for trial and said courts shall have full jurisdiction and authority to control and enforce the same.

Who may take recognizances.

Duty of officer having person in custody to produce for purpose of giving recognizance.

Recognizances to be filed.

Jurisdiction of court to control and enforce same.

Power to issue writs, process, etc.

SEC. 11. The police court shall have power to issue all lawful writs and process, and to do all lawful acts which may be necessary and proper to execute and carry into complete effect the powers and jurisdiction given by this act, and especially to issue all writs and process, and to do all acts which justices of the peace, within their respective jurisdictions, may issue and do by the laws of this State, and shall, as far as applicable, be governed by the provisions of law regulating criminal cases and proceedings before justices of the peace. Any one of the police justices may open the police court, and hold, continue, and adjourn a session thereof, and shall constitute a quorum for the transaction of any business of which the police court may lawfully take cognizance, and said police justices may severally hold, continue, and adjourn sessions of the police court, simultaneously, for the transaction of any such business; but a continuance or adjournment by one police justice shall not of itself affect any session held by or business pending before any other police justice. The police justices shall severally have power and authority to act in any case, matter, or proceeding pending in said court as circumstances and justice may require, or as may be necessary or proper, subject to the limitations of this act; but no police justice shall review or revise any order, judgment, sentence, or act of any other police justice involving the personal discretion, judgment, or opinion of such other police justice. The police justices may assign or apportion the business of the police court among themselves, for the convenient, orderly, and prompt transaction thereof. The police justice whose term shall soonest expire, and who shall not have been elected to fill a vacancy, shall be known and designated as the senior police justice. He shall sign the daily journal of the proceedings of the police court. In case of the absence or inability to act of the senior police justice, the other justice present shall act as senior police justice. Except as provided by this act, the senior police justice shall possess no greater or other power or authority than any other police justice. The practice in the police court shall, subject to the provisions of this act, conform, in general, to the practice in similar proceedings in courts of record; but neither the police court nor any police justice shall have any power or authority to grant new trials, or to vacate or arrest any judgment, or to stay any proceedings thereon. No person shall be allowed to appear or practice in the police court as an attorney and counsellor unless he shall be authorized to appear

One justice a quorum.

Simultaneous sessions.

Continuance, adjournments, etc.

One justice shall not review, etc., acts, etc., of other.

Apportionment of business.

Senior police justice.

Signing journal.

Practice in police court.

Who may appear as attorney.

and practice in that capacity in the circuit court for the county of Wayne. Trials and examinations in the police court shall be public, but whenever it shall appear that, upon the trial of any cause or upon examination, evidence of licentious, lascivious, degrading, or peculiarly immoral acts or conduct will probably be given, the police justice presiding at such trial or examination may, in his discretion, require and cause every person, except those necessarily in attendance thereon, to retire and absent himself or herself from the court room during such trial or examination, or any portion thereof; and no person under the age of sixteen years shall be permitted at any time to remain during the trial of any cause, or during any examination in the police court, or during any portion thereof, in the court room in which such trial or examination is pending, unless such person is accompanied by one of its parents or guardian, or is required by law or the process of the court to be present or in attendance thereon. The police court and clerk's office shall be open daily (except Sundays and holidays), at reasonable hours, for the transaction of the general business thereof, but said court shall be deemed in law always open for the purpose of taking complaints, issuing warrants, and admitting prisoners to bail, in cases, matters, or proceedings arising under the laws of the State of which the police court may take cognizance; and in such cases, matters, and proceedings, either police justice may take complaints and issue warrants thereon, at all hours, and upon all days, anywhere within the corporate limits of the city of Detroit. It shall be the duty of the several police justices to attend and open the police court, and hold sessions thereof, at such times as the common council of the city of Detroit shall by ordinance prescribe, and then and there examine into and determine all cases arising under any of the ordinances of said common council which shall be brought before the police court, and of which such court shall, by the terms of this act, have jurisdiction. And it shall be the duty of all officers having in custody or confinement any person charged with violating any of the ordinances of the common council mentioned in section ten of this act, to promptly bring such prisoner before the police court for trial or other lawful action, unless such prisoner shall be held under or by virtue of the warrant, capias, or other process of another court, magistrate, or officer.

Trials and examinations.

When all except those connected with, to be excluded.

Persons under 16 years prohibited being present at any trial, except.

When court and clerk's office to be open.

Court to be deemed always open.

May issue warrants, etc., anywhere in city limits.

Duty of justices to attend and open court, etc., at such times, etc.

Duty of officers having in custody persons, etc., to bring promptly before court, unless.

SEC. 12. The police court shall have power to punish as for a criminal contempt any person who shall be guilty of any act, conduct, or behavior for which such person would be punishable as for a criminal attempt [contempt] in any court of record if such act had been committed within its jurisdiction, and the procedure in the police court in cases of contempt shall be substantially the same as in courts of record, and like punishment may be inflicted therein, except that no fine shall exceed one hundred dollars.

Power to punish for contempt.

Procedure in case of.

Punishment; fine limited.

SEC. 13. The police court shall have authority in all cases, in its discretion, either before or after the issuing of process, to require of the complainant security for costs to the satisfaction of the police justice ordering the same, or in his absence to the satisfaction of any other police justice, and the person becoming such security

Security for costs.

shall sigh a memorandum in writing to that effect which shall be filed with the clerk and shall be kept as a part of the proceedings in the case. If the defendant or prisoner shall be discharged upon examination or acquitted upon trial, or, if the complainant, being a material witness, can not be found, and the case shall for that reason be dismissed, judgment for costs shall be entered immediately against the complainant or against the complainant and his surety when security for costs shall have been given; and such judgment shall have like force and effect, and execution for the collection thereof may issue as in case of any judgment rendered by a justice of the peace: *Provided,* That the police justice rendering such judgment shall find and cause to be entered in the record of the case that he found that payment of such costs by the complainant was just and equitable. In determining the amount of such costs the court shall be governed by the provisions of law relative to fees, costs, and expenses in similar proceedings before justices of the peace, but in no case shall such judgment for costs, when rendered, be less than for three dollars. If execution shall have been issued upon such judgment for costs and shall have been returned unsatisfied, proceedings as for contempt may be had against the complainant or his surety or both, as in case of criminal contempt committed out of the presence of the court.

When judgment for costs to be entered against complainant, etc.

Force and effect of.

Proviso.

Determination of amount of costs.

Not to be less than three dollars.

When execution returned unsatisfied.

Limitation as to who may accept bail for crime, etc., over which police court has jurisdiction.

SEC. 14. The police court, or either police justice thereof, the recorder's court of the city of Detroit, the circuit court for the county of Wayne, and the supreme court of this State and the justices thereof, and no other court, magistrate, or officer whatever, except as provided in section ten, shall have power to let to bail any prisoner or person in custody charged with a bailable crime, misdemeanor, or offense of which the police court shall for any purpose have jurisdiction.

When person may be attached as witness, etc.

Detention of.

Bail of.

SEC. 15. If it shall appear to the police court, or to either police justice, by affidavit or other appropriate evidence upon oath, or by the testimony of any witness or witnesses given in the course of any trial or examination in the police court, that any person is a material witness in any case, matter, or proceeding pending in said court, and will probably be a necessary witness therein, either before the police court or any other court, and that there is reason to believe that such person will not appear and testify in such case, matter, or proceeding, unless security be given by such person to so appear and testify, the police court or police justice may by appropriate process attach such person, and commit him or her to the custody of the superintendent of the Metropolitan police force of the city of Detroit, to be by said superintendent held and detained according to law as a witness in such case, matter, or proceeding, until the further order of the police court, but not longer than thirty days from the date of the warrant of commitment, unless such person shall give bail in such sum and with such surety or sureties as shall be approved by either police justice of said court, conditioned at the option of the party giving the same, either to remain openly for the thirty days next succeeding the date of the warrant of commitment, within the corporate limits of the city of Detroit, or to appear and

testify from time to time in such case, matter, or proceeding therein without further notice.

Persons punishable by imprisonment in county jail to be sent to Detroit House of Correction, etc.

SEC. 16. When any person shall be convicted in the police court of any crime, misdemeanor, or offense which may, by the terms of any law or statute prescribing the punishment therefor, be punished by imprisonment in the county jail, either as an absolute or alternative penalty, the judgment or sentence of the police court shall in such case, if punishment by imprisonment is imposed thereby, provide that such convicted person shall be imprisoned in the Detroit House of Correction instead, anything in said law and statute to the contrary notwithstanding. And persons so sentenced to the Detroit House of Correction, shall be received and kept by the superintendent thereof in like manner as other prisoners lawfully committed thereto.

Superintendent of to receive and keep.

Fines, default in payment, term in Detroit House of Correction.

SEC. 17. When by any statute of this State a forfeiture is provided as a penalty for the violation thereof, and such violation is an offense falling within the jurisdiction of the police court to hear, try, and determine, the offender shall, upon conviction in that court, be sentenced to pay a fine not exceeding the amount of such forfeiture, and in default of the payment of such fine, to be imprisoned in the Detroit House of Correction for a definite period not exceeding ninety days, unless such fine be sooner paid.

Warrants, writs, etc., to whom addressed, etc.

SEC. 18. Any warrant, writ, or other process of the police court, whether issued by said court or a police justice, shall be in the name of the people of the State of Michigan, shall be addressed to the superintendent or any captain, sergeant, roundsman, detective, or patrolman of the Metropolitan police force of the city of Detroit, shall be tested by the senior police justice, shall be returnable before the police court at the police court building, shall be signed by the police justice issuing the same or authorizing the issuing thereof, and may, without backing or endorsement by any other court, magistrate, or officer, be served or executed anywhere in the State of Michigan.

Adjournment, continuation, etc., of cases—exceptions.

SEC. 19. Any case, matter, or proceeding pending in the police court may be adjourned, postponed, or continued from time to time as in the discretion of the court shall seem proper, except such as may be heard, tried, and determined in the police court, which shall, if the accused is in custody for want of bail, be heard, tried, and determined, within ten days after the return of the warrant, unless it shall be made to appear by affidavit or other sufficient showing that justice requires an adjournment, postponement, or continuance of such case, matter, or proceeding beyond said ten days, in which event it may be adjourned, postponed, or continued beyond said ten days, but not more than thirty days in all from the date of the return of the warrant, and which shall, if the accused is not in custody for want of bail, be heard, tried, and determined within thirty days from the date of the return of the warrant. But if any of the periods of time herein limited shall expire during the trial of such case, matter, or proceeding, it shall nevertheless proceed to final determination, in the manner and with like effect, as though the period limited as aforesaid had not expired.

Certain crimes suspected, justice may require person to appear and testify, etc.

SEC. 20. If either police justice shall have probable cause to suspect that an indictable crime, misdemeanor, or offense has been committed within the corporate limits of the city of Detroit, and that any person within the lawful jurisdiction of the process of the police court may be able to give any material evidence respecting such crime, misdemeanor, or offense, he shall have power and authority in his discretion to require such person to appear before him as a witness and answer upon oath such questions as shall be put to him or her touching such crime, misdemeanor, or offense, or his or her knowledge or information of the same, or of any material fact involved therein; and the proceedings to summon said witness and to compel him or her to testify shall, as far as practicable, be the same as proceedings to summon witnesses and compel their attendance and testimony in ordinary cases, matters, and proceedings in the police court, and if upon such inquiry the police justice shall be satisfied that such crime, misdemeanor, or offense has been committed, and that there is probable cause to suspect any particular person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process, and upon the return of such process served or executed, the police justice shall proceed with the case, matter, or proceeding in like manner as upon formal complaint by the injured party or other person. And in respect to communicating or divulging any statements made by such witness during the course of such examination the police justice shall be governed by the provisions of law relative to grand jurors.

Summons of.

Apprehension of person suspected.

Trial of case.

Law as to grand jurors to govern as to divulging statements of such witness.

Duty of clerk.

SEC. 21. The clerk of the police court shall keep a true record of the proceedings of said court and of the business of his office in journals, calendars, or other proper books, to be provided for such purpose, which books shall be of such forms as shall be approved by the senior police justice. He shall file and safely keep all books, bonds, recognizances, and papers belonging to the police court or to his office. He shall receive all fines and costs imposed by said court, and shall, within forty-eight hours after the receipt thereof, pay the same to the county treasurer of the county of Wayne and take receipt therefor, except such fines and costs as shall be imposed and received in cases arising under the city ordinances above mentioned, which shall be paid in like manner and within the same period to the city treasurer of the city of Detroit, and by him credited to the police court fund. He shall have power and authority generally to administer oaths and take affidavits. He shall write depositions and perform such other clerical work as shall be required from time to time by the police court. The assistant clerks shall have the same powers and may perform the same duties as the clerk, but shall be under his direction and may be assigned by him to exercise such powers and perform such duties before or with either of said police justices. In the absence of the clerk the senior police justice may direct an assistant clerk to act as clerk for the time being. The books, records, files, and papers of the police court and of the clerk's office shall be deemed public, and subject to reasonable rules and regulations to be fixed by the police justices shall be, at reasonable times, open to public inspection.

Record.

File, etc., bonds, etc.

As to fines and costs.

As to oaths and affidavits.

Deposition, etc.

Assistant clerk.

Books, records, etc., of the court to be public.

Juries, judges of the law.

SEC. 22. Juries in the police court shall be judges of the law and the facts. They shall be composed of six persons, who shall severally possess the lawful qualifications of jurors in the recorder's court of the city of Detroit, and any challenge which would be valid and sufficient if made in the recorder's court shall be valid and sufficient if made in the police court: *Provided, however,* That but two peremptory challenges shall be allowed to the people and a like number to the accused in all trials in the police court. The "board of jury commissioners," as created by act number one hundred and sixty of the session laws of eighteen hundred eighty-one, shall annually or whenever required by the senior police justice in accordance with the method provided by that act, select persons to serve as jurors for the trial of cases, matters and proceedings in the police court, and shall file a list of the persons so selected with the clerk of the police court. The number to be selected on the third Monday in May of each year, as provided by said act, shall be three hundred. After the filing of such list the proceedings for selecting, summoning, and compelling the attendance of jurors and talesmen shall be, as far as practicable, the same as is provided by law for like purposes in the recorder's court. Jurors shall be drawn and summoned for a term of one month, which shall be the calendar month next succeeding such drawing. Not less than eighteen nor more than thirty-six jurors shall be drawn and summoned for a term, unless for a special reason the senior police justice shall in writing direct that a greater number be drawn and summoned. No juror shall be excused from attendance for the term except by the concurrence of the two police justices. Whenever by law the recorder, or judge of the recorder's court is required or directed to be present at or participate in any part of the proceedings to select jurors for that court, the senior police justice, or acting senior police justice, shall perform like duty in like proceedings to select jurors for the police court.

Composition, qualifications. Challenge.

Proviso.

Selection of.

To file with.

Appeals allowed to recorder's court, how and when.

SEC. 23. In all cases determined in the police court, an appeal may be taken to the recorder's court of the city of Detroit in the same time and manner and with the same effect as prescribed by the general laws of the State for appeals from justices of the peace to the circuit court in criminal cases.

Designation of justice of the peace as assistant police justice.

SEC. 24. The common council of the city of Detroit shall have power, at any time after the passage of this act and subject to the limitations thereof, by resolution to designate a justice of the peace of said city to act as assistant police justice, and in case of death, resignation, absence, or inability of the present police justice the person so designated shall have and exercise all the powers and functions of the present police justice and shall perform all the duties of such office and in case of death, resignation, absence, or inability of both of the police justices provided for by this act, simultaneously, the justice of the peace, so designated as assistant police justice shall have and exercise all the powers and functions of a police justice (including those of the senior police justice) and shall perform all the duties of such office until a police justice is elected and qualified, or resumes the performance of the duties of his office.

Powers, etc., of.

Acts repealed.

SEC. 25. The act of the Legislature of the State of Michigan

entitled "An act to establish a police court in the city of Detroit," approved April two, eighteen hundred fifty, and all amendments thereof and all other acts and parts of acts of said Legislature relative to the police court of the city of Detroit, except so far as the same shall be preserved or continued in force by this act, shall,

Existence of present court to terminate.

on and after the fourth day of July, in the year of our Lord eighteen hundred eighty-six, stand repealed, and the present police court of the city of Detroit shall on the fourth day of July, in the year of our Lord eighteen hundred eighty-six, wholly cease to exist and shall then and thereafter exercise no power, authority, or jurisdiction whatever; and all cases, matters, and proceedings pending and undetermined before the said police court or police justice, shall, on said day, by virtue of this act simply, be and shall stand transferred to the police court established by this act, and shall therein be heard, tried, and determined, or otherwise lawfully disposed of as though originally commenced in the latter police court, and as near as may be, according to the law and practice thereof; and all records, books, files, bonds, recognizances, and other papers belonging or appertaining to the present police court, or to the office of the clerk thereof, shall be by such clerk promptly delivered to the clerk of the police court established by this act, and shall be by the latter clerk kept and filed in his office where they shall have the same force and effect and be used for the same purpose as though originally filed in said office;

Cases, etc., to stand transferred, etc.

Construing of this act as regards.

but this act shall not be construed to affect any cause, matter, or proceeding heard, tried, and determined, or otherwise lawfully disposed of in the present police court at any time prior to said fourth day of July, in the year of our Lord eighteen hundred eighty-six, except for the taking of a lawful appeal therein which may be taken under the provisions of this act only.

Approved June 9, 1885.

[No. 162.]

AN ACT to amend section four thousand three hundred and four of the compiled laws of eighteen hundred and seventy-one, being section five thousand seven hundred and seventy-four of Howell's Annotated Statutes, relative to determination of all estates at will or by sufferance.

Section amended.

SECTION 1. *The People of the State of Michigan enact*, That section four thousand three hundred and four of the compiled laws of eighteen hundred and seventy-one, being section five thousand seven hundred and seventy-four of Howell's Annotated Statutes, be and the same is hereby amended so as to read as follows:

Determination of estates at will or by sufferance.

SEC. 4304. All estates at will or by sufferance may be determined by either party by three months' notice given to the other party; and when the rent reserved in a lease is payable at periods of less than three months, the time of such notice shall be sufficient if it be equal to the interval between the times of payment, and such notice shall not be held void by reason of its mentioning a day for

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Appendix K

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Appendix A

Public Act No. 196 of 1917 and Amendments

Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give any material evidence respecting such offense, such justice or judge in his discretion may, and upon the application of the prosecuting attorney, or city attorney in the case of suspected violation of ordinances, shall require such person to attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings.

If upon such inquiry the justice or judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the justice or judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint: [Provided, That the justice or judge conducting the inquiry under Section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment.][1] [And if upon such inquiry the justice or judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance of office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said justice or judge shall make a written finding setting forth the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges.][2] And in respect of communicating or divulging any statement made by such witnesses during the course of such inquiry, the justice, judge, prosecuting attorney and other person or persons who may, at the discretion of such justice, be admitted to such inquiry, shall be governed by the provisions of law relative to grand jurors.

Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such justice or judge may require material

[1]Public Act No. 33 of 1947.
[2]Public Act No. 395 of 1921.

to such inquiry, shall be deemed guilty of a contempt and shall be punished by a fine not exceeding 100 dollars or imprisonment in the county jail not exceeding sixty days or both at the discretion of the court: Provided, That if such witness after being so sentenced shall appear and answer such question, the justice or judge may in his discretion commute or suspend the further execution of such sentence.

No person shall upon such inquiry be required to answer any questions the answers of which might tend to incriminate him except upon motion in writing by the prosecuting attorney which shall be granted by such justice or judge, and any such questions and answers shall be reduced to writing and entered upon the docket or journal of such justice or judge, and no person required to answer such questions upon such motion shall thereafter be prosecuted for any offense concerning which such answers may have tended to incriminate him.

Approved May 10, 1917.

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Appendix L

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[No. 395.]

AN ACT to amend section two of act number one hundred ninety-six of the Public Acts of nineteen hundred seventeen, entitled "An act to authorize proceedings for the discovery of crime, and to provide penalties for a violation of such procedure."

The People of the State of Michigan enact:

Section amended.

SECTION 1. Section two of act number one hundred ninety-six of the Public Acts of nineteen hundred seventeen, entitled "An act to authorize proceedings for the discovery of crime, and to provide penalties for a violation of such procedure," is hereby amended to read as follows:

Apprehension of persons suspected.

SEC. 2. If upon such inquiry the justice or judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process, and, upon the return of such process served or executed, the justice or judge shall proceed with the case, matter or proceeding in like manner as upon formal complaint. And if upon such inquiry the justice or judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance of office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said justice or judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body, having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges. And in respect of communicating or divulging any statement made by such witnesses during the course of such inquiry, the justice, judge, prosecuting attorney and other person or persons who may, at the discretion of such justice, be admitted to such inquiry, shall be governed by the provisions of law relative to grand jurors.

Removal of public officer.

Finding, basis for removal.

Approved May 18, 1921.





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CHAPTER I.

[27.3178(52)] Costs, awarding of, in contested cases by probate and circuit courts; issuance of execution or garnishment process for collection.

Sec. 52. When costs are awarded to 1 party to be paid by the other, the said courts, respectively, may issue execution therefor, or garnishment process for the collection thereof, in like manner as is practiced in the circuit courts in other cases.

Approved April 4, 1947.

[No. 33.]

AN ACT to amend section 4 of chapter 7 of Act No. 175 of the Public Acts of 1927, entitled "An act to revise, consolidate and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts and of the judges and other officers thereof under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses; to provide for the arrest of persons charged with or suspected of criminal offenses; to provide for bail of persons arrested for or accused of criminal offenses; to provide for the examination of such persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and to provide for the procedure therein; to provide for judgments and sentences of persons convicted of criminal offenses; to provide for procedure relating to new trials, appeals, writs of error and bills of exception in criminal causes; to provide a uniform system of probation throughout the state of Michigan, the appointment of probation officers and to prescribe the powers, duties and compensation of such officers and to provide penalties for the violation of the duties of such officers; to provide for procedure governing proceedings to prevent crime; proceedings for the discovery of crime; to provide for the jurisdiction, powers, duties, and procedure of justices of the peace in criminal cases; to provide for fees of officers, witnesses and others in criminal cases; miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," being section 17218 of the Compiled Laws of 1929.

The People of the State of Michigan enact:

Section amended.

Section 1. Section 4 of chapter 7 of Act No. 175 of the Public Acts of 1927, being section 17218 of the Compiled Laws of 1929, is hereby amended to read as follows:

CHAPTER VII.

17218 [28.944] Jurisdiction of courts of record over prosecutions upon information; apprehension of suspected person; grand juries, judge conducting, disqualified from acting as examining magistrate on complaint or indictment.

Sec. 4. If upon such inquiry the justice or judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, a justice or judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint: *Provided,* That the justice or judge conducting the inquiry under section 3 c.

this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment. And if upon such inquiry the justice or judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance of office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said justice or judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges. And in respect of communicating or divulging any statement made by such witnesses during the course of such inquiry, the justice, judge, prosecuting attorney and other person or persons who may, at the discretion of such justice, be admitted to such inquiry, shall be governed by the provisions of law relative to grand jurors.

This act is ordered to take immediate effect.

Approved April 8, 1947.

[No. 34.]

AN ACT to amend section 2 of Act No. 58 of the Public Acts of 1935, entitled "An act to create the state bar of Michigan; and to authorize the supreme court to provide for the organization, regulation and rules of government thereof."

The People of the State of Michigan enact:

Section amended.

Section 1. Section 2 of Act No. 58 of the Public Acts of 1935 is hereby amended to read as follows:

[27.102] State bar of Michigan, powers of supreme court as to; membership dues; discipline; publishing of rules.

Sec. 2. The supreme court is hereby authorized to provide for the organization and regulation of the state bar of Michigan; to provide rules and regulations concerning the conduct and activities of the association and its members; the schedule of membership dues therein, non-payment of which shall be ground for suspension, the ethical standards to be observed in the practice of law, and the discipline, suspension or disbarment of association members. Under such regulations and restrictions as the supreme court may prescribe, the power of subpoena may be conferred upon the association or its officers and committees for the purpose of aiding in the cases of discipline, suspension or disbarment; the rules promulgated by the supreme court to be published in the Michigan reports and advance sheets thereof.

This act is ordered to take immediate effect.

Approved April 11, 1947.

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Appendix N





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[No. 311.]

AN ACT to amend sections 3, 4, 5 and 6 of chapter 7 of Act No. 175 of the Public Acts of 1927, entitled "An act to revise, consolidate and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts and of the judges and other officers thereof under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses; to provide for the arrest of persons charged with or suspected of criminal offenses; to provide for bail of persons arrested for or accused of criminal offenses; to provide for the examination of such persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and to provide for the procedure therein; to provide for judgments and sentences of persons convicted of criminal offenses; to provide for procedure relating to new trials, appeals, writs of error and bills of exception in criminal causes; to provide a uniform system of probation throughout the state of Michigan, the appointment of probation officers and to prescribe the powers, duties and compensation of such officers and to provide penalties for the violation of the duties of such officers; to provide for procedure governing proceedings to prevent crime; proceedings for the discovery of crime; to provide for the jurisdiction, powers, duties, and procedure of justices of the peace in criminal cases; to provide for fees of officers, witnesses and others in criminal cases; miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," section 4 as amended by Act No. 33 of the Public Acts of 1947, being sections 767.3, 767.4, 767.5 and 767.6, respectively, of the Compiled Laws of 1948; and to add to said chapter a new section to stand as section 5a thereof.

The People of the State of Michigan enact:

Sections amended and added.

Section 1. Sections 3, 4, 5 and 6 of chapter 7 of Act No. 175 of the Public Acts of 1927, section 4 as amended by Act No. 33 of the Public Acts of 1947, being sections 767.3, 767.4, 767.5 and 767.6, respectively, of the Compiled Laws of 1948, are hereby amended, and a new section is hereby added to said chapter to stand as section 5a thereof, said amended and added sections to read as follows:

CHAPTER 7.

767.3 Grand jury; proceedings before trial; number of judges, selection, action en banc upon complaint; order directing inquiry; summoning, etc., witnesses, procedure; subpoena, service; take testimony; concurrence by judges in orders, etc.; indictments, signatures; grand jury prosecutors, disqualification; inquiry, time limitation. [M.S.A. 28.943]

Sec. 3. Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace or police judge shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, he shall refer such complaint together with his recommendations thereon to a circuit judge or judge of a court of record having jurisdiction in criminal causes in any county of this state.

Whenever a complaint shall be filed with any circuit judge or judge of a court of record having jurisdiction in criminal causes in any county of this state, which complaint may be upon information and belief, or whenever any complaint has been referred to such judge by any justice of the peace or police judge, and such judge shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, such circuit judge or judge of a court of record shall forthwith call 2 other judges of such court in said county to consider and act en banc with him upon such complaint: Provided, That if there are not 3 circuit judges or judges of a court of record having jurisdiction in criminal causes in such county, then the presiding circuit judge of Michigan shall upon notification thereof by such judge, forthwith designate 1 or

more circuit judges as shall be necessary to serve for such purpose. Whenever, by reason of the filing of such complaint, which may be upon information and belief, such 3 judges sitting en banc shall determine that there is probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within such county, and that any person may be able to give any material evidence respecting such offense, such 3 judges in their discretion may make an order directing that an inquiry be made into the matters relating to such complaint, which order, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted, and thereupon conduct such inquiry, and shall require such persons as they may deem necessary to attend as witnesses and answer such questions as said judges may require concerning any violation of law about which they may be questioned; and the proceedings to summon such witnesses and to compel them to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings: Provided, That before issuance of any summons there shall be an attestation by the judges that there is reasonable ground to believe that the witness to be summoned has knowledge of matters pertinent to the inquiry. Whenever a subpoena shall be issued by the judges conducting such inquiry commanding the appearance of a witness before such judges, forthwith upon the service of such subpoena, and, following the service thereof, such witness arrives at the time and place stated in such subpoena, the judges so issuing the same shall be notified of such fact forthwith by the officer who served the subpoena, and it shall thereupon be the duty of the judges to appear and take the testimony of such witness without unreasonable delay. The testimony of all witnesses shall be taken, in the presence of all 3 judges, either in the court room or other suitable public building wherein the secrecy of the proceedings may be maintained.

No order, decision or finding by said judges shall be valid unless concurred in by 2 of them: Provided, That orders returning indictments shall be signed by 3 judges.

Any judges, prosecuting attorneys or special prosecuting attorneys, or the attorney general participating in any inquiry under this section which continues more than 30 calendar days shall thereafter be disqualified from appointment or election to any office other than one held at the time of such inquiry: Provided, That such disqualification shall not extend more than 2 years from date of termination of such inquiry, as determined by final order of said judges entered prior to such date. No special grand jury prosecutor shall be eligible for reappointment as a special grand jury prosecutor within a period of 3 years and the fees paid for said services shall not exceed $5,000.00 in any 6 months period: Provided, That the total amount paid to any grand jury prosecutor shall not exceed $10,000.00.

No inquiry hereunder shall continue longer than 6 months unless extended by specific order of the said judges: Provided, That such extension shall terminate within 6 months, unless extended by specific order for like periods.

767.4 Same; apprehension of suspect; disqualification as examining magistrate, finding as to misconduct in office; confidential information; penalty for disclosing information or evidence involving inquiry; report filed with clerk of county; appointment of successor judge. [M.S.A. 28.944]

Sec. 4. If upon such inquiry the judges shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, they may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the judges having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint: Provided, That the judges conducting the inquiry under section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment, or from hearing upon any charge of contempt under section 5 hereof. And if upon such inquiry the judges shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance of office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said judges

shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges. And in respect of communicating or divulging any statement made by such witnesses during the course of such inquiry, the justice, judges, prosecuting attorney and other person or persons who may, at the discretion of such judges, be admitted to such inquiry, shall be governed by the provisions of law relative to grand jurors. Any judges conducting such inquiry, any prosecuting attorney and other persons who may at the discretion of such judges be admitted to such inquiry, who shall while in the services of said grand jury or after his services with the grand jury shall have been discontinued, utter or publish any statement pertaining to any information or evidence involved in any such inquiry, or who shall disclose the fact that any indictment for a felony has been found against any person not in custody or other recognizance, or who shall disclose that any person has been questioned or subpoenaed in connection with any such inquiry, or who shall disclose or publish or cause to be published any of the proceedings of such inquiry otherwise than by issuing or executing processes prior to such indictment, or shall disclose, publish or cause to be published any comment, opinion or conclusions related thereto, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not more than 1 year or by a fine of not less than $100.00 nor more than $500.00, or both such fine and imprisonment in the discretion of the court, and such offense when committed by a public official shall also constitute malfeasance in office. Upon the termination of such inquiry the judge shall make no presentment of crime or wrongdoing as to any person or persons whose apprehension or removal from office he has not so caused, but may, in his discretion, file with the clerk of the county in which such inquiry has been conducted, a report of no finding of criminal guilt as to any person or persons involved in such inquiry, either as witness or otherwise, whose involvement in such inquiry has become public.

In the event any of the judges conducting such inquiry shall be unable to continue therein because of physical disability, disqualification, termination of office or death, the presiding circuit judge of Michigan shall appoint a successor.

767.5 Same; failure of witness to appear or answer question; hearing in open court; penalty. [M.S.A. 28.945]

Sec. 5. Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such judges may require material to such inquiry, shall be deemed guilty of a contempt and after a public hearing in open court and conviction of such contempt, shall be punished by a fine not exceeding $100.00 or imprisonment in the county jail not exceeding 60 days or both at the discretion of the court: Provided, That if such witness after being so sentenced shall appear and answer such question, the judges may in their discretion commute or suspend the further execution of such sentence.

767.5a Communications confidential and privileged. [M.S.A. 28.945(1)]

Sec. 5a. In any inquiry authorized by this act no communication between reporters for newspapers or other publications and their informants, between attorneys and their clients, between clergymen and members of their respective churches, and between physicians and their patients shall be inquired into or be divulged by any witness. All such communications are hereby declared to be confidential and privileged.

767.6 Incriminating answers of witness. [M.S.A. 28.946]

Sec. 6. No person shall upon such inquiry be required to answer any questions, nor shall be convicted for contempt upon refusal to do so, when the answers might tend to incriminate him.

Approved June 17, 1949.

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Appendix O

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ALWD 7th ed.
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Chicago 17th ed.
"," Michigan - Public & Local Acts, Regular Session; 1st and 2nd Extra Sessions : 581-585

AGLC 4th ed.
" Michigan - Public & Local Acts, Regular Session; 1st and 2nd Extra Sessions 581

OSCOLA 4th ed.
" 1951 581

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[No. 275.]

AN ACT to amend section 1 of Act No. 3 of the Public Acts of 1939, entitled "An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to create a public service commission and to prescribe and define the powers and duties thereof; to abolish the Michigan public utilities commission, and to confer the powers and duties now vested by law therein, on the public service commission hereby created; to provide for the continuance, transfer and completion of matters and proceedings now pending; to provide for appeals; to provide appropriations therefor; to declare the effect of this act and prescribe penalties for the violations of the provisions thereof; and to repeal all acts contrary to the provisions of this act," as amended, being section 460.1 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section amended.

Section 1. Section 1 of Act No. 3 of the Public Acts of 1939, as amended, being section 460.1 of the Compiled Laws of 1948, is hereby amended to read as follows:

460.1 Public service commission, creation; members, appointment, qualifications, terms, vacancies. [M.S.A. 22.13(1)]

Sec. 1. A commission to be known and designated as the "Michigan public service commission" is hereby created, which shall consist of 3 members, not more than 2 of whom shall be members of the same political party, appointed by the governor with the advice and consent of the senate. Each member shall be a citizen of the United States, and of the state of Michigan, and no member of said commission shall be pecuniarily interested in any public utility or public service subject to the jurisdiction and control of the commission. During his term no member shall serve as an officer or committee member of any political party organization or hold any office or be employed by any other commission, board, department or institution in this state. No commission member shall be retained or employed by any public utility or public service subject to the jurisdiction and control of the commission during the time he is acting as such commissioner, and for 6 months thereafter, and no member of the commission, who is a member of the bar of the state of Michigan, shall practice his profession or act as counselor or attorney in any court of this state during the time he is a member of said commission: Provided, however, This shall not require any commissioner to retire from, or dissolve any partnership, of which he is a member, but said partnership, while he is a member of the commission, shall not engage in public utility practice. Immediately upon the taking effect of this act, the offices of the present members of the Michigan public service commission are hereby abolished, and the members of the Michigan public service commission as herein created shall be appointed by the governor with the advice and consent of the senate, for terms of 6 years each: Provided, That of the members first appointed, 1 shall be appointed for a term of 2 years, 1 for a term of 4 years, and 1 for a term of 6 years. Upon the expiration of said terms successors shall be appointed with like qualifications and in like manner for terms of 6 years each, and until their successors are appointed and qualified. Vacancies shall be filled in the same manner as is provided for appointment in the first instance.

Approved June 21, 1951.

[No. 276.]

AN ACT to amend sections 3, 4, 5, 5a and 6 of chapter 7 of Act No. 175 of the Public Acts of 1927, entitled "An act to revise, consolidate and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts and of the judges and other officers thereof under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses; to provide for the arrest of persons charged with or suspected of criminal offenses; to provide for bail of persons arrested for or accused

of criminal offenses; to provide for the examination of such persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and to provide for the procedure therein; to provide for judgments and sentences of persons convicted of criminal offenses; to provide for procedure relating to new trials, appeals, writs of error and bills of exception in criminal causes; to provide a uniform system of probation throughout the state of Michigan, the appointment of probation officers and to prescribe the powers, duties and compensation of such officers and to provide penalties for the violation of the duties of such officers; to provide for procedure governing proceedings to prevent crime; proceedings for the discovery of crime; to provide for the jurisdiction, powers, duties, and procedure of justices of the peace in criminal cases; to provide for fees of officers, witnesses and others in criminal cases; miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," as amended by Act No. 311 of the Public Acts of 1949, being sections 767.3, 767.4, 767.5, 767.5a and 767.6, respectively, of the Compiled Laws of 1948; and to add to said chapter 3 new sections to stand as sections 4a, 6a and 6b thereof.

The People of the State of Michigan enact:

Sections amended and added.

Section 1. Sections 3, 4, 5, 5a and 6 of chapter 7 of Act No. 175 of the Public Acts of 1927, as amended by Act No. 311 of the Public Acts of 1949, being sections 767.3, 767.4, 767.5, 767.5a and 767.6, respectively, of the Compiled Laws of 1948, are hereby amended and 3 new sections are hereby added to said chapter to stand as sections 4a, 6a and 6b thereof, said amended and added sections to read as follows:

CHAPTER 7.

767.3 Grand juries; proceedings before trial; inquiry, order, conducting; summoning witnesses, proceedings, fees, subpoena, appearance; notification to judge; taking testimony; legal counsel; revelation by attorney, penalty; testimony in presence of judge; disqualification of judge, etc. [M.S.A. 28.943]

Sec. 3. Whenever by reason of the filing of any complaint, which may be upon information and belief, or upon the application of the prosecuting attorney or attorney general, any judge of a court of law and of record shall have probable cause to suspect that any crime, offense or misdemeanor shall have been committed within his jurisdiction, and that any persons may be able to give any material evidence respecting such suspected crime, offense or misdemeanor, such judge in his discretion may make an order directing that an inquiry be made into the matters relating to such complaint, which order, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted, and thereupon conduct such inquiry: Provided, That in any court having more than 1 judge such order and the designation of the judge to conduct the inquiry shall be made in accordance with the rules of such court. Thereupon such judge shall require such persons to attend before him as witnesses and answer such questions as such judge may require concerning any violation of law about which they may be questioned within the scope of the order; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall not receive any compensation or remuneration other than witness fees as paid witnesses in other criminal proceedings, and said witness shall not be employed in any capacity by the judge or by any person connected with such inquiry, within the scope of the said inquiry being conducted. Whenever a subpoena shall be issued by the judge conducting such inquiry, commanding the appearance of a witness before such judge forthwith upon the service of such subpoena, and, following the service thereof, such witness arrives at the time and place stated in such subpoena, the judge so issuing the same shall be forthwith notified of such appearance by the officer serving

the subpoena, and it shall thereupon be the duty of such judge forthwith to appear and take the testimony of such witness. Any person called before the grand jury shall at all times be entitled to legal counsel not involving delay and he may discuss fully with his counsel all matters relative to his part in the inquiry without being subject to a citation for contempt. All matters so revealed to the attorney shall be subject to the requirements of secrecy in section 4, and any revelation thereof by the attorney shall make him subject to punishment as provided in said section. No testimony shall be taken or given by any witness except in the presence of the judge.

Any judge, prosecuting attorney or special prosecuting attorney, or the attorney general participating in any inquiry under this section which continues more than 30 calendar days shall thereafter be disqualified from appointment or election to any office other than one held at the time of such inquiry: Provided, That such disqualification shall not extend more than 1 year from date of termination of such inquiry, as determined by final order of said judge entered prior to such date.

767.4 Same; apprehension of suspect; disqualification as examining magistrate; finding as to misconduct in office; disclosures of proceedings, etc., penalty; report of no finding of criminal guilt; period of inquiry; successor judge, appointment. [M.S.A. 28.944]

Sec. 4. If upon such inquiry the judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint: Provided, That the judge conducting the inquiry under section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment, or from hearing any charge of contempt under section 5 hereof, except alleged contempt for neglect or refusal to appear in response to a summons or subpoena. And if upon such inquiry the judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance in office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges. Except in cases of prosecutions for contempt or perjury against witnesses who may have been summoned before the judge conducting such inquiry, or for the purpose of determining whether the testimony of a witness examined before such judge is consistent with or different from the testimony given by such witness before a court in any subsequent proceeding, or in cases of disciplinary action against attorneys and counselors in this state, any judge conducting such inquiry, any prosecuting attorney and other persons who may at the discretion of such judge be admitted to such inquiry, who shall while conducting such inquiry or while in the services of such judge or after his services with such judge shall have been discontinued, utter or publish any statement pertaining to any information or evidence involved in any such inquiry, or who shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, or who shall disclose that any person has been questioned or summoned in connection with any such inquiry, or who shall disclose or publish or cause to be published any of the proceedings of such inquiry otherwise than by issuing or executing processes prior to such indictment, or shall disclose, publish or cause to be published any comment, opinion or conclusions related thereto, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not more than 1 year or by a fine of not less than $100.00 nor more than $1,000.00, or both such fine and imprisonment in the discretion of

the court, and such offense when committed by a public official shall also constitute malfeasance in office. Upon the termination of such inquiry if the judge shall make no presentment of crime or wrongdoing as to any person or persons whose apprehension or removal from office he has not so caused, he may, in his discretion, with the consent of the person who may be named, file with the clerk of the county in which such inquiry has been conducted, a report of no finding of criminal guilt as to any person or persons involved in such inquiry, either as witness or otherwise, whose involvement in such inquiry has become public.

No inquiry or proceeding hereunder shall continue longer than 6 months unless extended by specific order of the said judge or his successor for an additional period not to exceed 6 months.

In the event any judge conducting such inquiry shall be unable to continue therein because of physical disability, disqualification, termination of office or death, the presiding circuit judge of Michigan shall appoint a successor.

767.4a Testimony, exhibits, etc., unlawful possession, use, etc., of; exceptions, penalty. [M.S.A. 28.944(1)]

Sec. 4a. It shall be unlawful for any person, firm or corporation to possess, use, publish, or make known to any other person any testimony, exhibits or secret proceedings obtained or used in connection with any grand jury inquiry conducted prior to the effective date of this act, except in the manner specifically provided herein, and also excepting any information heretofore disclosed before any investigating committee of the Congress of the United States or any agency of the federal government. Any person violating the provisions of this section shall be guilty of a felony.

767.5 Failure of witness to appear or answer questions, hearing, penalty; commutation or suspension of sentence. [M.S.A. 28.945]

Sec. 5. Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such judge may require as material to such inquiry, shall be deemed guilty of a contempt and after a public hearing in open court and conviction of such contempt, shall be punished by a fine not exceeding $1,000.00 or imprisonment in the county jail not exceeding 1 year or both at the discretion of the court: Provided, That if such witness after being so sentenced shall offer to appear before such judge to purge himself of such contempt, the judge shall cause such witness to be brought before him and, after examination of such witness, the judge may in his discretion commute or suspend the further execution of such sentence.

767.5a Certain communications declared privileged and confidential. [M.S.A. 28.945(1)]

Sec. 5a. In any inquiry authorized by this act communications between reporters of newspapers or other publications and their informants are hereby declared to be privileged and confidential. Any communications between attorneys and their clients, between clergymen and the members of their respective churches, and between physicians and their patients are hereby declared to be privileged and confidential when such communications were necessary to enable such attorneys, clergymen, or physicians to serve as such attorney, clergyman, or physician.

767.6 Incriminating answers of witnesses, immunity order, delivery to witness; transcript; secrecy. [M.S.A. 28.946]

Sec. 6. No witness shall upon such inquiry be required to answer any questions, or shall be convicted for contempt upon refusal to do so, when the answers might tend to incriminate him. A written order granting to such witness immunity from such incrimination may be entered by said judge pursuant to a written motion by the prosecuting attorney or other duly authorized representative of the state in such proceeding, which order shall set forth verbatim the questions which such witness refused to answer. A true copy of such motion and order shall be delivered to such witness before he shall answer such questions. The order granting immunity so made shall thereafter extend to all related questions which may thereafter be put to such witness until such judge advises the witness that said immunity

no longer applies. All such questions and the answers thereto shall be reduced to writing under the direction of such judge and a true copy of such transcript, duly certified by such judge, shall be delivered to such witness as soon as practicable thereafter. The provisions for secrecy provided for in section 3 hereof shall apply to all copies of such motion, order and transcript so delivered to such witness except that the witness may be privileged to disclose the same to his attorney if such witness should thereafter be prosecuted for any offense directly or indirectly growing out of any testimony given by him in such inquiry. No person required to answer such questions shall thereafter be prosecuted for any offense concerning which such answers may have tended to incriminate him. No such order granting immunity shall extend beyond the scope of such inquiry, nor shall it extend beyond the particular questions set forth in any such motion, order or transcript.

767.6a Docket, journal, etc., sealing and filing; available in connection with appeal, order, receipt; destruction of transcripts, notes and records. [M.S.A. 28.946(1)]

Sec. 6a. On termination of any such inquiry lasting not more than 30 calendar days the docket, journal, reporters' notes, transcript and other record of such judge in such inquiry shall be sealed and filed with the clerk of the court having jurisdiction; and if lasting more than 30 calendar days shall be sealed and filed with the clerk of the supreme court of the state of Michigan, where it shall be held secretly in a separate container securely locked. Any person who shall violate the secrecy herein ordered as to such docket, journal, transcript and record shall be punished as provided in section 4 hereof. And the entire transcript and record as to any witness, and so far as material, including any grant of immunity, shall be available to such witness in connection with any appeal or other judicial proceeding where it may be relevant upon such witness filing a petition with the circuit court of the county in which he resides setting forth the proceeding for which such documents are sought and describing the portions of such transcript and record as to such witness only, which such witness requested for such appeal or proceeding; the judge of such circuit court shall issue an order upon the filing of such petition directed to the clerk of the supreme court of the state of Michigan or the clerk of the court, as the case may be, ordering such clerk to make available to such witness all such portions of the transcript and record as shall pertain to such witness and as set forth in the petition. The clerk shall immediately reseal the remaining transcript and records after compliance with such order. The petitioner shall execute to the clerk of the supreme court a receipt for such documents and such documents shall be returned to the clerk immediately upon the termination of such appeal or proceeding for which the same shall have been obtained: Provided, however, upon the petition of the prosecuting attorney of the county in which such inquiry was conducted, or any other interested person, any circuit judge, acting as such in said county, upon determining that there is no further need for preserving and retaining the same, shall enter an order providing for the referring to the supreme court, for the entry of such order or orders as a majority of the court may at any time determine, for the destruction of said transcripts, notes and records, or any part thereof: Provided further, That no such order shall be entered by such circuit judge until at least 6 years after the termination of such inquiry.

767.6b Public accounting by judge, filing. [M.S.A. 28.946(2)]

Sec. 6b. Within 90 days after the termination of such inquiry, such judge shall file with the clerk of the court having jurisdiction a public accounting of all monies disbursed by him or disbursed at his direction.

Approved June 27, 1951.

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Appendix P

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Citations:

Bluebook 21st ed.
John Barker Waite, Michigan's One-Man Grand Jury before the Supreme Court, 31 J. AM. JUD. Soc. 184 (1948).

ALWD 6th ed.
Waite, J. ., Michigan's one-man grand jury before the supreme court, 31(6) J. Am. Jud. Soc. 184 (1948).

APA 7th ed.
Waite, J. (1948). Michigan's one-man grand jury before the supreme court. Journal of the American Judicature Society, 31(6), 184-186.

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John Barker Waite, "Michigan's One-Man Grand Jury before the Supreme Court," Journal of the American Judicature Society 31, no. 6 (April 1948): 184-186

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AGLC 4th ed.
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MLA 8th ed.
Waite, John Barker. "Michigan's One-Man Grand Jury before the Supreme Court." Journal of the American Judicature Society, vol. 31, no. 6, April 1948, p. 184-186. HeinOnline.

OSCOLA 4th ed.
John Barker Waite, 'Michigan's One-Man Grand Jury before the Supreme Court' (1948) 31 J Am Jud Soc 184

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"The people prefer to participate in the selection of their local judges, and are apprehensive that if they entirely delegate the power of selection to others they may obtain judges who might be strangers to their county background and who also might be arbitrary, undemocratic and lacking in the human touch."

"Primarily because the newspapers wish to control so far as they can the selection of judges." (Note that this argument was used on the other side in Missouri.)

"I am opposed to the plan being extended to superior court judges because in my opinion it would preclude almost every lawyer who is not fortunate enough to know a governor well enough to receive a judicial appointment from ever being a judge." (Three others made the same point, in spite of the remark above that even under the elective system nobody ever gets on the bench initially except by interim appointment.)

"In most counties there are probably one or more judges who are not qualified to hold judicial offices, and I believe that the members of the bar are hopeful that through the election process they might replace them with better men. Whether this can be accomplished is another question, but at least the possibility remains and affords hope."

"I think it is because we are creatures of habit and there has not been sufficient agitation on the part of any person or group to have the system apply to the superior courts or municipal courts."

Michigan's "One-Man Grand Jury" Before the Supreme Court

JOHN BARKER WAITE

Michigan's magisterial investigatory system has been so commonly mischaracterized as a "one-man grand jury" as to obscure its true nature. A "grand jury" was, and is generally, a body of from twelve to twenty-four persons' whose essential function is that of weighing the sufficiency of evidence against a suspect in order to determine the justification of putting him to the onus of trial. If it finds the evidence sufficient it originates or approves a formal written accusation upon which the suspect can be brought to trial. As an incident of determining the sufficiency of evidence it can interrogate putative informants under oath. Only in that latter, limited, respect does the Michigan investigating magistrate have the slightest resemblance to a grand jury.

Someone, of course, must ask questions concerning crimes and criminals before prosecution can get under way. Under the Michigan constitution, as under the federal Constitution, no one, neither grand jurors nor magistrate, nor prosecuting attorney, nor the police, can legitimately compel anyone to give evidence against himself. But no such protection covers persons asked to reveal what they know concerning the criminality of others. A grand jury can ask them for information under oath, and, through the courts, can compel them to answer.

At common law there resided in no one, other than the body of grand jurors, a legalized power to compel answers to interrogation. The police might question anyone thought to have information, as might also the prosecuting attorney, but they could neither legitimately administer an oath to the person questioned, nor prosecute him for perjury for consciously untrue answers, nor procure his punishment for refusal to answer at all. These powers resided in the grand jury alone.

To avoid the delays and the general cumbersomeness of grand jury procedure, the Michigan legislature in 1917 invested certain magistrates within limited powers in this respect. The statute[2] provides that,

"Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give

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1. In Michigan "not less than 16"; Mich. Stats. Ann. 28.951; Comp. L. 1929, sec. 17225.

2. Stats. Ann. 28.943; Comp. L. 1929, sec. 17217.

any material evidence respecting such offense, such justice or judge in his discretion may, and upon the application of the prosecuting attorney, or city attorney in the case of suspected violation of city ordinances, shall require such person to attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and witnesses shall be entitled to the same compensation, as in other criminal proceedings."[3]

2. Stats. Ann. 28.943; Comp. L. 1929, sec. 17217.

Another section of the statute provides that a witness shall not be required to answer self-incriminatory questions, unless, upon written motion by the prosecuting attorney he shall have been made exempt from prosecution "for any offense concerning which such answers may have tended to incriminate him."

Under the Michigan system of prosecution by "information" without necessity for grand jury action, suspected persons are protected from spurious or unwarrantable prosecution by a "filtration process" quite as effective as when a grand jury weighs the sufficiency of the evidence. No information can be filed by a prosecuting attorney until the state's evidence has been evaluated by a magistrate at a "preliminary examination" and has been found sufficient to justify accusation and trial.[4]

In this connection, however, the statute which permits investigation of criminality by the magistrate, as it was originally drafted, contained a highly unsatisfactory provision. It authorized the investigating magistrate to sit in judgment, as examining magistrate, upon the sufficiency for further proceedings of the evidence which he himself had brought to light. This error was corrected in 1947 by an amendment which provides that "The justice or judge conducting the inquiry under section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or grant any complaint or indictment."[5]

The statute authorizing investigation by the magistrate provides that:

"Any witness neglecting or refusing to appear in response to summons, or to answer any questions which such justice or judge may require material to such inquiry, shall be deemed guilty of a contempt and shall be punished by a fine not exceeding one hundred (100) dollars or imprisonment in the county jail not exceeding sixty (60) days, or both in the discretion of the court: *Provided,* that if such witness after being so sentenced shall appear and answer such question, the justice or judge may in his discretion commute or suspend the further execution of such sentence."[6]

Under this provision it has been a common practice for investigating magistrates to sentence witnesses to jail for the full 60-day period, not only for refusal to answer, but often because the witness answered evasively, or professed ignorance.

It was this section and this practice which came before the United States Supreme Court in re William Oliver, decided March 8, 1948. County court judge Hartrick, conducting an investigation, had sentenced Oliver because, as the Court's opinion puts it, "neither he nor his advisers believed (Oliver's) story—that it did not 'jell'." Of the way in which the sentence was imposed the Court says, "Under these circumstances of haste and secrecy, petitioner, of course, had no chance to enjoy the benefit of counsel, no chance to prepare his defense, and no opportunity either to cross examine the other grand jury witness (because of whose testimony Oliver's statements had been assumed to be false), or to summon witnesses to refute the charge against him."

5. Stats. Ann. 28.944; P.A. 1947, no. 33.

6. Stats. Ann. 28.945; Comp. L., sec. 17219.

The Michigan supreme court denied Oliver's release on habeas corpus and he appealed to the federal court on the ground of deprivation of liberty without due process. The state court's position was that Oliver's offense had been committed in the presence of the county judge, sitting as an investigator, and that it would have

3. This statute and comparable statutes in many other states are analyzed and discussed, Winters, "The Michigan One-Man Grand Jury," 28 J. Am. Jud. Soc. 137 (Feb. 1945). Mr. Winters presents at length and most illuminatingly the actual operation of the procedure in Michigan, the merits of the one-man system, its alleged abuses or potentialities for abuse, and its probable constitutionality. The constitutionality of the procedure and its alleged actual abuses are further discussed, Gallagher, "The One-Man Grand Jury—A Reply," 29 J. Am. Jud. Soc. 20 (June, 1945).

4. Stats. Ann. 28.982; Comp. L. 1929, sec. 17256. The superiority of this filtration process over grand jury action as a protection against unwarranted prosecution is indicated by Moley, "The Initiation of Criminal Prosecution by Information or Indictment," 29 Mich. L. Rev. 403 (1931).

been but "an idle gesture" for him to adjourn himself as a grand jury and reconvene himself as a circuit court. By a 4 to 4 vote the state court held that there was evidence enough to support a finding that Oliver had testified falsely. A full transcript of what Oliver and the other witness had said was denied the court, however, on the ground that full disclosure would hamper the work of investigation.

The Supreme Court explicitly declared, "The petitioner does not here challenge the constitutional power of Michigan to grant traditional inquisitorial grand jury power to a single judge, and therefore we do not concern ourselves with that question." Without here going into its detail of reasoning, suffice it that the court in effect invalidated Oliver's conviction on the ground that even contempt proceedings—except on charge of misconduct in open court which tends to "demoralization of the court's authority before the public"—must be based on notice of specific charges, opportunity to obtain counsel, prepare a defense and cross-examine witnesses, and must be held in public.

Thus it appears that, contrary to some lay opinion, the Supreme Court left the Michigan so-called one-man grand jury system intact. The opinion did not even say that recalcitrant witnesses cannot be punished for contempt, but only that the punishment must be imposed by fair and open trial such as is required in any contempt or other punitive proceeding.

At most the decision was a well deserved repudiation of alleged judicial proceedings conducted "in camera." At worst, in its effect on Michigan's magisterial investigatory system, it did no more than put the investigating magistrates' power to compel testimony on a parity with that of true grand juries.

New New Jersey Court Rules Presented at Newark Mass Meeting

To the bright account of judicial reorganization in New Jersey published in the last JOURNAL must be added an encouraging progress report. At a mass meeting in Newark last month, the Supreme Court presented a preliminary draft of the new rules of procedure under which the newly-reorganized judiciary will operate beginning next September. At an afternoon session the same day a delegation of lawyers from Washington, D. C., headed by Chief Justice Bolitha J. Laws gave an able demonstration of pre-trial procedure, a full transcript of which was published as a supplement to the *New Jersey Law Journal* of March 25.

The twelve hundred lawyers at the Newark meeting were said to make up the largest gathering in the history of the bar of that state. Commented the *Law Journal*:

"Why did they come? It was certainly not indifference or hostility which brought them. There can now be no doubt that the profession has a most active interest in the new rules. And it is a friendly interest, if comments heard at and since the meeting are an index."

Paragraphs

An annual judicial conference of the chief justices of the highest courts of the states, similar to the Judicial Conference of Senior Circuit Judges in the federal judicial system, may be organized as a result of a resolution passed by the House of Delegates of the American Bar Association at its recent mid-year meeting. The resolution referred to the success of annual conferences of governors and attorneys-general now held, and declared that the Association "approves in principle an annual conference of chief justices of the highest state courts to improve the administration of justice in the state courts," and requested the Section of Judicial Administration to plan the organization of such a conference.

Withholding of judges' salaries is an improper method of putting pressure on judges to clean up their dockets, Attorney-General Eugene F. Black of Michigan has ruled. A Michigan statute enacted last year provided that judges of certain courts could not draw pay unless they filed semi-annual affidavits that all cases more than six months old had been decided, but the attorney-general declared impeachment was the only recourse.

Rejection of the Minnesota plan for expert medical testimony, described in an article in this JOURNAL in April, 1947, was recommended by a committee of the Cleveland Bar Association, on the ground that instances of improper testimony are not sufficiently numerous nor grave to muster the needed support of the plan, and that existing committees cover the ground adequately.

A grant of $5,000 to the Northwestern Uni-